

## **TELECOMMUNICATION AND BUILDING ACCESS LICENSE**

This License is made as of the 1<sup>st</sup> day of March, 2005.

Between:

415 LEGGET LEASEHOLDS INC.  
c/o KRP Management Services Inc

(the "Licensor")

- and -

TELUS Communications Inc.

(the "Licensee")

### **RECITAL:**

- A. The Licensor is the Owner of the Multi-Dwelling Unit Building municipally described as 415 Legget Drive, Kanata, Ontario;
- B. The Licensee advises the Licensor that the Licensee is authorized by those government bodies having jurisdiction to provide Licensee's Services in the Building under the conditions described herein; and
- C. The Licensee wishes to provide Licensee's Services in the Building.

### **NOW THEREFORE**

In consideration of the mutual rights and obligations herein expressed and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto, agree as follows:

#### **1 Definitions**

In this License, the capitalized terms and phrases shall mean the following:

- 1.1 "Affiliate" means, as each term is defined in the *Canada Business Corporations Act*, as amended, collectively, an affiliate, subsidiary or associate which in the case of the Licensee, must be a LEC;

*[Signature]*

- “Applicable Law(s)” means all present and future laws, statutes, regulations, judgments, orders and decrees applicable to the parties or the transaction contemplated herein and having the force of law;
- 1.3 “Building” means the MDU building(s) municipally described in Recital A and located on the Lands;
- “Business Day” means a day other than a Saturday, Sunday or statutory holiday in the Province in which the Building is situated;
- “Cable” means fibre optic, coaxial and copper cables and wires, or any of them;
- “Commencement Date” means the date on which the term commences as provided in Section 4.1;
- 1.7 “Communications Equipment” means such Licensee telecommunications equipment and facilities including, but not limited to, cabinets, racks, electronic equipment, electrical power equipment and other similar and related equipment as the Licensee may require for the provision of the Licensee Services;
- 1.8 “Connecting Equipment” means the licensee Cable under the responsibility and control of the Licensee, connecting hardware and other similar and related equipment that is connected to the Communications Equipment which may include Entrance Cable and IBW;
- “CRTC” means the Canadian Radio-television and Telecommunications Commission;
- “Decision” means Telecom Decision CRTC 2003-45 entitled, *Provision of telecommunications services to customers in multi-dwelling units*, dated 30<sup>th</sup> June 2003;
- “Engineered Plans” means plans prepared by an engineer;
- “Entrance Cable(s)” means the Cable(s) owned and/or controlled by the Licensee that connects the Licensee’s network through the Entrance Link(s) to the Licensee Equipment located in the POP Space and the Licensee Equipment located in the POP Space to the Main Distribution Frame and includes the tie Cables between the POP Space and the Main Distribution Frame;
- “Entrance Link(s)” means the core sleeve(s) penetration through the foundation of the Building used to bring Cable(s) located within the Lands into the Building and that contains the Entrance Cable(s);

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**"Fee"** means the POP Space Fee or any cost or fee payable by the Licensee as provided in Articles 5, 6, 8 and 9 of this License;

**"Force Majeure"** means any act or event of God, war, terrorism, natural calamities, strikes, lockouts or other labour stoppages or disturbances, civil commotions or disruptions, riots, epidemics, 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, except that the lack of funds on the part of such party shall not be deemed to be an act or event of Force Majeure;

**"IBW"** or **"In-building Wire"** means Cable and associated facilities under the responsibility and control of the Licensee, the Building Owner or any third party, which run from the MTR to the riser closet, and in some geographic regions from the riser closet to, but not within, a tenant or occupant's suite;

**"Lands"** means the land legally described in Schedule "A" attached hereto;

**1.18 "LEC"** means a telecommunication common carrier that has obtained local exchange carrier status from the CRTC to provide local exchange services in the geographic region in which the Building is located;

**"License"** means this Telecommunication and Building Access License, including the right(s) and license(s) granted herein, including any Recitals and all attached Schedules, attachments and appendices and every instrument executed by the parties that amends, modifies or supplements it or them;

**"Licensee"** means the party as provided on page (1) one;

**1.21 "Licensee Equipment"** means, collectively, the Communications Equipment and the Connecting Equipment owned by the Licensee and/or controlled by the Licensee;

**1.22 "Licensee Services"** means the telecommunication or other communication services provided by the Licensee, as permitted by the CRTC, to one or more tenants or occupants of the Building or to another telecommunication service provider;

**1.23 "Licensor"** means the Owner of the Lands or its duly authorized agent;

**1.24 "MDU"** or **"Multi-Dwelling Unit"** means a building with at least two units and at least one unit occupied by a tenant;

**.25 "MTR"** means the area(s) located in the Building which contain the cross-connection point between the Entrance Cable and the IBW;

"Main Distribution Frame" or "MDF" means the frame(s) on which the Entrance Cable terminates and the IBW originates;

"Owner" means the registered legal owner of the Lands;

"Pathways" means electrical, mechanical or communications spaces, risers, conduits, ducts, trays, raceways, and other common areas located in the Building and the Lands;

"POP Space" means the exclusive use area occupied by the Communications Equipment in the approximate location as provided in Schedule "B" attached hereto, which area contains the square feet as provided in Schedule "F". Such area may be a point of presence room separate from the MTR or, alternatively or in addition, a defined area within the MTR occupied by the Communications Equipment which area may or may not be caged;

1.30 "POP Space Fee" means the fee payable by the Licensee to the Licenser as provided in Section 5.1;

"Riser Management Company" or "RMC" means an entity or company involved in the provision of Riser Management Services;

"Riser Management Services" or "RMS" means services provided by the Owner, or on behalf of the Owner, for the maintenance or wiring management of Cable or the management of any other aspect of the Licensee Services;

"Term" means the term as provided in Section 4.1; and

"Working Drawings" means a drawing or sketch that describes the proposed installation of the Licensee's Equipment.

## 2. Application of License

2.1. This License shall apply only so long as the Building is an MDU and the Licensee is a LEC and except as otherwise provided for in this License, the terms of this License shall apply to:

- (a) Licensee Equipment installed, owned, operated and/or controlled by the Licensee in the Building; and
- (b) the rights granted and uses permitted as set out in Article 3.

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### 3. Grant and Use

- 3.1 Pursuant to the terms and conditions of this License, the Lessor grants the Licensee the non-exclusive right to provide the Licensee Services which includes the Licensee's right to construct, install, test, operate, maintain, repair, service, upgrade, modify, remove and replace Communications Equipment in the POP Space and Connecting Equipment in the Lands and Building.

The Licensee, its employees, agents, contractors and those for whom it is responsible for in law shall be permitted subject to Section 3.3 to use and access all portions of the Building, Pathways and Lands necessary for the provision of the Licensee Services and for the matters as provided in Section 3.1. The Licensee shall be responsible for the acts or omissions of its employees, agents, contractors and those for whom it is responsible in law, which use and access the Building, Pathways and Lands.

All rights granted and uses permitted herein shall be available to the Licensee twenty-four (24) hours per day, three-hundred and sixty-five (365) days per year subject to the Lessor's reasonable requirements as provided in the attached Schedules "C" and "D".

The Licensee acknowledges and agrees that unless otherwise agreed to in writing by the parties:

- (a) that this License does not allow the installation or operation by or on behalf of the Licensee, of any type of rooftop or wireless communication equipment; and
- (b) not to use any part of the Licensee Equipment as a network hub facility, switch hotel, switch node, or similar facility that functions as an integral part of a network to serve persons outside of the Building.

### 4. Term and Renewal Term

The grant of this License is for the term as provided in Schedule "E" unless earlier terminated in accordance with Article 23 or subsequently renewed as provided in Section 4.2.

Provided that the Licensee is not in default of any of its obligations under this License, this License will be automatically renewed and extended unless the Licensee gives the Lessor at least one hundred eighty (180) days written notice prior to the end of the Term of the Licensee's intention not to renew. The renewal shall be governed by the same terms and conditions set out in this License, except for any further right to renew and

the POP Space Fee. The POP Space Fee, upon renewal, shall be based on the then prevailing fee for the alternate use of the POP Space, taking into account: (i) the location and the class of the Building; and (ii) the location and amount of space comprising the POP Space. In the event the parties are unable to agree to the POP Space Fee payable upon renewal, then such fee shall be determined pursuant to Section 29.1.

## 5. POP Space Fee

The Licensee agrees to pay the Lessor the POP Space Fee as provided in Schedule "F".

## 6. Fees for use of IBW under responsibility and control of the Lessor

The use of IBW under the responsibility and control of the Lessor shall be at the sole option of the Licensee and where the Licensee elects to use such IBW the fee payable by the Licensee to the Lessor for the use of such IBW shall be based upon the unrecovered capital cost reasonably incurred by the Lessor for the installation of such IBW.

Where the Lessor has acquired IBW at no capital cost, the Lessor shall not charge the Licensee any payment or fee for the use of such IBW.

## 7. Transfer of IBW under responsibility and control of the Licensee

### 7.1 The transfer of IBW under the responsibility and control of the Licensee to the Lessor, such transfer shall be on mutually acceptable terms and conditions.

## 8. Utilities Costs

### 8.1 Subject to the terms and conditions of this License, the Licensee shall have the right to connect the Licensee Equipment to the electric power distribution system within the Building at the sole cost and expense of the Licensee. Licensee, at its sole cost, expense and option may install a check meter to measure the electricity consumption of the Licensee and the Licensee agrees to pay for such electricity consumption based on the metered use of same. In the event the Licensee elects not to install a check meter and in the event the electrical consumption is not included in the POP Space Fee, the Lessor shall, acting reasonably, estimate the

amount of electricity consumed by the Licensee, which amount shall be paid within sixty (60) days of receipt of an invoice by the Licensee, in advance throughout the Term provided that any overpayments by the Licensee, based upon the actual consumption by the Licensee, shall be refunded to the Licensee by the Lessor within sixty (60) days of Lessor receiving an invoice from the applicable utility for such electricity consumption.

Except in the case of an emergency, the Lessor shall endeavor to provide to the Licensee notice of any planned construction, maintenance, utility outages or other Building repairs that may affect the Licensee Equipment or provision of Licensee Services.

- 8.3 The Licensee agrees that the Lessor has no obligation or responsibility to provide emergency or backup power to the Licensee, unless the Lessor agrees to provide emergency or backup power to the Licensee on such terms and conditions as may be mutually agreed to by the parties in writing.

## 9. Plan Approval and Other Costs

If required by the Lessor, the Licensee will:

- (a) provide Engineered Plans for approval by the Lessor, prior to any construction, installation, modification or replacement of Connecting Equipment which requires penetration of the Building foundation or which impacts the structural elements of the Building. Such plans to be prepared by a Lessor approved engineer;
- (b) provide Working Drawings for approval by the Lessor, prior to any construction of the POP Space or installation, modification or replacement of Licensee Equipment which impacts the base Building systems or base Building. Such plans to be prepared by the Licensee or its contractors, or by the Lessor's contractors; and
- (c) provide Working Drawings for approval by the Lessor, prior to a material installation of IBW which would materially impact the availability of space within the riser.

In addition to the POP Space Fee, the Licensee agrees to pay the Lessor, on a one time basis, within sixty (60) Days of receipt of an invoice from the Lessor, the cost for the review of Engineered Plans and Working Drawings referred to in Subsections 9.1(a), (b) and(c), except where:

- (a) regarding Subsection 9.1(a), a Licensor approved engineer is used by the Licensee to prepare the Engineered Plans; or
- (b) regarding Subsection 9.1(b), the Licensor's contractor is used by the Licensee, at its cost, to prepare the Working Drawings.

In addition to the POP Space Fee, the Licensee agrees to reimburse the Licensor for costs of other similar services reasonably required in connection with the installation and operation of the Licensee Equipment, as agreed to by the parties.

- 9.4** Any costs reasonably incurred by the Licensor as provided in Sections 9.2 and 9.3 shall be consistent with telecommunications industry standards.

The Licensee agrees to pay the Licensor for security escorted access to the Pathways, if requested by the Licensor, and as consistently applied by the Licensor to all utilities and persons accessing the Building's Pathways, within sixty (60) days of receipt of an invoice from the Licensor. Such fees shall be cost based and shall not be charged if recovered by the Licensor from the tenants or occupants of the Building.

## 10. Building Access Policies and Procedures

- 10.1** The Licensee agrees to abide by the Licensor's Building access policies, standards, rules, regulations and procedures, which shall be consistent with the class and use of the Building, and as are attached hereto as Schedules "C" and "C1".

The Licensee agrees to abide by the Licensor's security procedures which shall be consistently applied by the Licensor to all persons accessing the Building, as attached hereto as Schedule "D".

## Licensee Representations, Warranties and Covenants

Licensee represents and warrants:

- (a) that this License constitutes a legal and binding obligation of the Licensee enforceable against the Licensee in accordance with its terms, except as may be limited by the laws of bankruptcy, the laws affecting the rights of creditors and the jurisdiction of any Court or the CRTC; and

subject to the terms and covenants contained in this License, the Building, Pathways and Lands are accepted by the Licensee on an as is basis.

#### 11.2 Licensee covenants:

- to pay the Fees on the Commencement Date and thereafter as required by this License;
- to observe and perform all of its obligations set forth herein;
- (c) to install, operate, maintain, repair, remove and replace the Licensee Equipment in a safe and proper condition and in accordance with telecommunication industry standards;
- (d) to install the Licensee Equipment in accordance with the Working Drawings or engineered plans as approved or amended by the Lessor;
- (e) to reasonably limit space required by the Licensee Equipment and to cooperate with the Lessor and any other LEC to accommodate any other LEC in available space in the Building so as to minimize impact on the Building;
- (f) that any consent or approval of the Licensee pursuant to the terms of this License shall not be unreasonably withheld, conditioned or delayed;
- to abide by all Applicable Laws;
- (h) to repair, at its sole expense, any damage to the Building, Pathways and Lands, where the damage is caused by the Licensee, its employees, agents, contractors and those for whom it is responsible in law;
- (i) not to block access to, or obstruct or hinder the use of the Building's loading docks, halls, stairs, elevator, entranceways or sidewalks around the Building during construction or otherwise; and
- (j) that any installation construction, maintenance, repair, removal or replacement by the Licensee of the Licensee Equipment shall be performed in a neat, responsible, good and workmanlike manner.

#### 12. Lessor's Representations, Warranties and Covenants

##### 12.1 Lessor represents and warrants that:

it has sufficient right, title and interest in the Building and Lands to grant this License; and

this License constitutes a legal and binding obligation of the Licensor enforceable against the Licensor in accordance with its terms, except as may be limited by the laws of bankruptcy, the laws affecting the rights of creditors and the equitable jurisdiction of any Court or CRTC, as applicable.

12.2 Licensor covenants:

- (a) the use and access by the Licensee of the POP Space shall be unencumbered, subject to the terms of the License;
- (b) to observe and perform all of its obligations set forth herein;
- (c) 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;
- (d) that any consent or approval of the Licensor pursuant to the terms of this License shall not be unreasonably withheld, conditioned or delayed;
- (e) provided the Licensor is reimbursed by the Licensee for its costs, to cooperate with the Licensee in obtaining all necessary consents, permits and authorizations as may be required by any federal, provincial and municipal or other governmental authority having jurisdiction over the Licensee's construction, installation, connection, testing, operation, maintenance, repair, modification, disconnection, replacement and removal of the Licensee Equipment, and the provision of the Licensee Services. To this end, the Licensor will, without restricting the generality of the foregoing, execute, in a timely fashion, all necessary authorizations to enable the Licensee to obtain building permits, plans, drawings, site plan approvals and zoning and bylaw amendments and variances, and other similar matters and to obtain the release of any information with respect to the POP Space, Building or Lands from any person; and
- (f) to abide by all Applicable Laws.

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### 13. Insurance

Licensee will, without limiting its obligations or liabilities under this License, at its own expense, obtain and maintain, during the Term or any renewal:

- (a) Commercial general liability insurance in an amount not less than Five Million (\$5,000,000.00) Dollars inclusive per occurrence against liability for bodily injury, personal injury, death and property damage including contingent employer's liability, contractual liability and non-owned automobile liability relating to Licensee's use and occupation of the POP Space, the Building and the Lands pursuant to this License. The required insured amount shall be composed of any combination of primary and excess (umbrella) insurance policies. Such insurance shall name Lessor as an additional insured limited to the extent of the negligence of Licensee or those for whom Licensee is responsible in law and include both cross-liability and severability of interest clauses.
- (b) "All risks" property insurance in an amount not less than the replacement cost of Communications Equipment in the POP Space. Licensee shall arrange for its property insurers to waive their subrogation rights against Lessor.
- (c) Boiler and machinery insurance for electrical and mechanical breakdown of heating, ventilation and air conditioning machinery and equipment of the Licensee.

Licensee shall provide Lessor with a certificate evidencing the insurance required above, as well as any renewal certificates thereafter for the duration of the License recording that Lessor shall receive thirty (30) days written notice prior to cancellation to the detriment of Lessor.

Lessor will, without limiting its obligations or liabilities under this License, at its own expense, obtain and maintain during the Term or any renewal:

- (a) Commercial general liability insurance in an amount not less than Two Million (\$2,000,000.00) Dollars inclusive per occurrence against liability for bodily injury, personal injury, death and property damage relating to Lessor's ownership, use, occupation, operation, management and/or maintenance of the Building, POP Space and Lands. The required insured amount for comprehensive general liability shall be composed of any combination of primary and excess (umbrella) insurance policies.
- (b) "All risks" property insurance in an amount not less than the replacement cost of the Building and POP Space.

- (c) Boiler and machinery insurance for electrical and mechanical breakdown of heating, ventilation and air conditioning machinery and equipment in the Building.

#### Indemnification/Liability

- 14.1 The Licensee will be liable for and will indemnify and save harmless the Licensor, its directors, officers, employees, and contractors, and those for whom it is responsible in law (collectively, the "Licensor Indemnitees"), from and against any and all losses, suits, actions, causes of action, proceedings, damages, costs, claims and expenses (collectively, the "Losses") arising from physical damage to any tangible property or bodily injury, including death, to any person caused by or arising out of any breach by the Licensee of its obligations under this License or any negligent act or omission relating to the Licensee's use and occupation of the POP Space, the Building or the Lands under this License, provided that the Licensee will not be required to indemnify the Licensor Indemnitees to the extent any such Losses are caused by any negligent or willful act or omission of any of the Licensor Indemnitees.

The Licensor will be liable for and will indemnify and save harmless the Licensee, its directors, officers, employees, and contractors, and those for whom it is responsible in law (collectively, the "Licensee Indemnitees"), from and against any and all losses, suits, actions, causes of action, proceedings, damages, costs, claims and expenses (collectively, the "Losses") arising from physical damage to any tangible property or bodily injury, including death, to any person caused by or arising out of any breach by the Licensor of its obligations under this License or any negligent act or omission relating to the Licensor's ownership or management of the Building or the Lands under this License, provided that the Licensor will not be required to indemnify any Licensee Indemnitees to the extent any such Losses are caused by any negligent or willful act or omission of any of the Licensee Indemnitees. Notwithstanding the foregoing, in no event will the Licensor be liable for or indemnify and save harmless any of the Licensee Indemnitees from and against any indirect, special, incidental or consequential damages, including loss of revenue, loss or profits, loss of business opportunity or loss of use of any facilities or property, even if advised of the possibility of such damages.

#### Construction

Subject to Section 16.1, the Licensor acknowledges and agrees that the Licensee shall not be charged for any costs associated with the

construction, maintenance, operation or repair of the MTR or Pathways of the Building or the Lands, or damages caused by the Licensee or those for whom it is liable for at law.

In the event the Licensee wishes to install Licensee Equipment during the construction of the MDU, the Licenser shall give reasonable access to the Licensee or its agents or contractors for the installation of the Licensee Equipment. Prior to access to install any Licensee Equipment, the Licensee shall provide the Licenser with notice of its intention to provide Licensee Services. Upon receipt of such notice, the Licenser shall within ten (10) Business Days provide the Licensee with suitable copies of site plans to enable the Licensee to develop an installation plan for the installation of the Licensee Equipment. The Licensee shall submit Working Drawings or engineered plans if reasonably required by the Licenser, for approval by the Licenser and the Licensee agrees to pay to the Licenser any costs reasonably incurred by the Licenser for the approval of such Working Drawings or engineered plans. Any costs of approval of such Working Drawings or engineer drawings if required, shall be in accordance with Section 9.2.

Upon agreement by the parties that the Licenser shall install the Licensee Equipment as requested by the Licensee, the Licensee shall be responsible for such installation costs reasonably incurred by the Licenser for such purpose.

- 15.4 The Licensee agrees to provide to the Licenser, Working Drawings or engineered plans for that Communications Equipment requiring connection or attachment to the base Building systems, or material installations of Connecting Equipment, for the approval of the Licenser.

The Licensee shall, at its sole cost and expense, prior to undertaking construction and other work in the Building, Lands and Pathways, obtain any necessary, consents, approvals, permits and authorizations of any federal, provincial, municipal or other governmental authority having jurisdiction.

## 16. Construction and Provision of Additional Facilities

In the event the Licensee requests the Licenser to construct or provide facilities such as floor space, ventilation or any other building facilities, beyond those in existence, the Licensee shall reimburse the Licenser for costs reasonably incurred by the Licenser for the provision, installation, construction and construction supervision of such facilities, on a cost basis.

## 17. Installation of In-building Wire

The Licensee shall, have the option to install IBW or upgrade its IBW and related facilities within the Building at its sole cost. The Lessor shall provide reasonable access to the Licensee as required, to carry out the work of installing or upgrading the IBW, provided that the Licensee provide the Working Drawings as required by Subsection 9.1 (b) or (c), for the approval of the Lessor.

Both parties agree that any IBW installed subsequent to the signing of this License shall be labeled at the MTR, with respect to identification and safety, in accordance with accepted telecommunication industry standards.

If there is insufficient space in the Pathways to install IBW, the Licensee shall be permitted to construct additional riser space, at the sole cost of the Licensee, if such space can be accommodated within the Building as determined by the Lessor acting reasonably, or upgrade or replace existing IBW such that existing Pathways may be used more efficiently.

## 18. Industry Standards

Connecting Equipment installed by either the Licensee or Lessor shall, at a minimum, meet accepted telecommunication industry standards.

## 19. Riser management

The Lessor acknowledges and agrees with the Licensee that:

- (a) the Licensee shall not be required to use the RMS of the Owner, any other third party or any RMC for any IBW regardless of who has responsibility or control of IBW unless agreed to in writing by the Licensee in its sole discretion. In the event the Licensee does not use the RMS then the Lessor and those for whom it is responsible for in law shall, subject to Section 17.3, not interfere with the Licensee's access to and use of Cable;
- (b) should the Licensee elect in writing to use the RMS of the Lessor the Licensee agrees to pay the Lessor a fee for such usage, which shall be cost based, such costs to be reasonably incurred;

- (c) in the event RMS are provided by the Licensee any other LEC has the sole option of using these services; and
- (d) any clean-up and inventorying of IBW that is under the responsibility and control of the Licensee shall be mutually agreed to by the parties in writing.

#### **Assignment, Sublicensing and Sharing of Space and Equipment**

The Licensee may assign this License with the prior consent of the Licensor, provided that the Licensee may without the consent of the Licensor, assign this License, to a party that is the transferee of all or substantially all of the assets of the Licensee or to an Affiliate, or by way of security to a creditor, provided the Licensor receives prior written notice of any assignment, sufficient information and the Licensee remains liable to the Licensor. The Licensee agrees to provide a copy of the Assignment to the Licensor upon execution.

- 20.2 The Licensor may assign this License with the consent of the Licensee, provided that the Licensor may without the consent of the Licensee, assign this License, to a party that is the transferee of all or substantially all of the assets of the Licensor or to an Affiliate, or by way of security to a creditor.

Notwithstanding Section 20.2, it will be a condition of any conveyance, transfer or assignment of the Licensor's interest in the POP Space, the Building or the Lands that this License will be assigned to the party in whose favour the conveyance, transfer or assignment is made and such party agrees in writing to be bound by the terms and conditions of this License. The Licensor agrees to provide a copy of the Assignment to the Licensee upon execution.

A change of control of the Licensor or the Licensee will not be considered an assignment for the purposes of this License.

The Licensor acknowledges and agrees that the Licensee is permitted to allow other LECs to connect to and use copper IBW under its responsibility and control, at no cost. Licensee to advise the Licensor of any LEC it permits to connect to and use copper IBW.

The Licensee shall not sub-license all or any part of the POP Space, or enter into any co-usage or sharing arrangement in respect of the POP Space or any part of it, save and except that directed by the CRTC, or any other governing body having jurisdiction, without the prior written consent of the Licensor.

## 21. Hazardous Substances

Each of the parties agree not to install, bring upon or use any hazardous substance within or on the Building except for those hazardous substances commonly used in the telecommunications or building operations industries. Any such hazardous substances or situation shall be in compliance with all Applicable Laws.

- 21.2 The Licensor agrees to disclose knowledge of any hazardous substances or situations existing prior to the Commencement Date. Any such substances or situations shall be in compliance with all Applicable Laws.

## 22. Events of Default

Each of the following events shall be an event of default by the Licensor or Licensee, as the case may be pursuant to the terms of this License:

- (a) the Licensee defaults in the payment of the POP Space Fee or any other sum due under this License and such default continues for more than fifteen (15) days after receipt of written notice of such default by the Licensor to the Licensee;
- (b) either party defaults in the observance or performance of any of its material obligations under this License and such default continues for more than thirty (30) days after receipt of written notice from the non-defaulting party of such default, unless such default cannot be reasonably cured within such thirty (30) day period, in which event the period for curing such default will be extended for the period of time reasonably required to effect such cure, provided that the defaulting party promptly commences and pursues such cure with reasonable diligence immediately upon receipt of the notice; or
- (c) either party becomes insolvent, ceases to do business as a going concern, is adjudged a bankrupt or makes an assignment for the benefit of creditors, or if a receiver or receiver-manager is appointed for that party and no steps are taken to discharge such receiver or receiver-manager, or if that party takes the benefit of any statute in force for the winding up or liquidation of corporations.

Upon the occurrence of an event of default pursuant to Section 22.1, the non-defaulting party may terminate this License forthwith on giving written notice to the defaulting party.

### 23. Rights of Termination

The Licensee may terminate this License without liability to the Licensor, if:

- (a) any structures, facilities or other works of any nature or kind whatsoever, including third party telecommunications equipment or facilities, screen, shield or interfere in any manner with the signals transmitted or received by the Licensee Equipment; or
- (b) 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 Licensor under this License, the Licensor, at its sole option and expense, may attempt to repair such damage within one hundred eighty (180) days after the date of damage to the Building. In the event the Licensor elects not to or is unable to repair the damage within such one hundred eighty (180) days, the Licensee shall have the right to terminate this License upon providing thirty (30) days prior written notice to the Licensor, in which event the Licensee shall remove the Licensee's Equipment in accordance with Section 24.1. The Licensee shall have no obligation to pay the POP Space Fee or any other amounts under this License during the thirty (30) day notice period, and the portion of the POP Space Fee paid by the Licensee in advance shall be refunded by the Licensor to the Licensee on a pro-rated basis to the date of damage of the Building.

Either party may terminate this License without liability to the other party, upon reasonable notice to the other in any of the following circumstances:

- (a) in the event the Licensee does not install any Licensee's Equipment in the Building;
- (b) the Licensee no longer provides Licensee's Services in the Building;
- (c) the revocation of the Licensee's LEC status by the CRTC;
- (d) the Licensee is unable to secure, on terms and conditions reasonably satisfactory to it, all necessary consents, approvals, permits and authorizations of any federal, provincial, municipal or other governmental authority having jurisdiction over the provision of Licensee Services or any other matters required by the Licensee to provide Licensee Services; or
- (e) the Building is no longer an MDU.

Reasonable notice of either party with respect to subsections (a) and (b) above shall be three hundred sixty five (365) days following notice where the POP Space is not required by an entering LEC and thirty (30) days following notice where the POP Space is required by an entering LEC.

#### 24. Restoration Obligations on Termination or Expiration of the License

Upon expiration of the License or termination in accordance with Sections 23.1 and 23.2, the Licensee agrees to remove the Communications Equipment from the POP Space within thirty (30) days after receiving written notice by the Licensor requesting such removal and where applicable, repair any damage to the Building caused by such removal. If the Licensee fails to remove its Communications Equipment within the thirty (30) days as required above, the Licensor may remove such Communications Equipment and repair any damage occasioned thereby, at the sole cost and expense of the Licensee.

The Licensee shall not be required to remove the IBW under its responsibility and control unless the Licensee deems such IBW unusable for future use or space is not otherwise required.

#### 25. Licensor's Alterations

The Licensor reserves the right, upon reasonable advance notice to the Licensee, to relocate the POP Space to another area of the Building similar in size and condition to the POP Space, in which event the Licensor will pay the costs of relocation, except where such relocation is required by Applicable Laws, or otherwise specified in this License, provided that the Licensor acknowledges that the Licensee's obligation to provide Licensee's Services shall be paramount and further acknowledges that any relocation may require the installation and activation of the Licensee's Equipment in the relocated area prior to dislocation from the existing POP Space.

Where a relocation is required by Applicable Laws, the allocation of the cost of such relocation shall be as agreed to by the parties, and if the parties are unable to agree, such allocation shall be determined pursuant to Section 29.1.

#### 26. Liens

Each party shall be responsible for the satisfaction or payment of any liens for any provider of works, labour or materials, or services claiming by,

through or under such party regarding each party's interest pursuant to this License. Upon notice from the other party any lien shall be removed within ten (10) Business Days of the request by the other party, by payment of sufficient money to the Court to obtain the removal of such lien.

27. Interference

The Licensee Equipment and the equipment of those for who the Licensee controls and is responsible for at law, shall not interfere with the use and enjoyment of the Building by the Licenser, or Building tenants or occupants. If such interference shall occur, the Licenser shall give the Licensee written notice thereof and the Licensee shall use commercially reasonable efforts to correct the same, forthwith after receipt of such notice. In the event Licensee fails to correct such conditions after proper notification and waiting period, Licenser reserves the rights to take any reasonable actions to correct the interference including deactivation or removal of any Licensee Equipment.

The Licenser's Building systems or any of the tenants or occupants in the Building for whom the Licenser controls and is responsible at law installed after the Licensee Equipment shall not interfere with the provision of Licensee Services. If such interference shall occur the Licensee shall give the Licenser written notice thereof and the Licenser shall use commercially reasonable efforts to correct same forthwith after receipt of such notice within the time frame as dictated by the nature of the interference. In the event the Licenser fails to correct such interference after using reasonable commercial efforts after written notice, the Licenser shall use its best efforts to correct such interference forthwith. If such interference is not corrected after the best efforts of the Licenser, the resolution of such interference shall be determined pursuant to Section 29.1.

In the event interference is caused by a party to this License the party which did not cause the interference shall be entitled to recover the cost of detection and rectification of the interference from the other party.

28. Governing Law

The construction, interpretation and performance of this License shall be in accordance with the laws of the Province in which the Building is located and the laws of Canada applicable therein.

29. Dispute Resolution

29.1 The parties agree to use commercially reasonable efforts to resolve any dispute, failing which any party may refer the dispute, or the application or performance or obligations of the parties to this License to a single arbitrator to be agreed upon by the parties, provided that if a single arbitrator cannot be agreed upon by the parties hereto within ten (10) days after the appointment of a single arbitrator has been requested by one of the parties in writing, then the dispute shall be referred to a board of three arbitrators, one to be appointed by each of the Landlord and the Tenant and a third arbitrator to be appointed by the first two arbitrators in writing; and if either the Landlord or the Tenant shall refuse or neglect to appoint an arbitrator within ten (10) days after the other party shall have appointed an arbitrator and shall have served a written notice upon the party so refusing or neglecting to appoint an arbitrator requiring such party to make such appointment, then the arbitrator first appointed shall, at the request of the party appointing him, proceed to hear and determine the dispute as if he were a single arbitrator appointed by both the Landlord and the Tenant for that purpose. If two arbitrators are so named within the time prescribed and they do not agree within a period of ten (10) days upon the appointment of the third arbitrator, then upon the application of either the Landlord or the Tenant, the third arbitrator shall be appointed by a Judge of the Ontario Court (General Division). The determination which shall be made by the said arbitrators or a majority of them, or by the single arbitrator, as the case may be, shall be final and binding upon the parties hereto and the costs of the arbitration and remuneration of the third arbitrator, if any, shall be borne equally between the parties hereto, each of the parties bearing the remuneration of the arbitrator appointed by it. The provisions of this paragraph shall be deemed to be submission to arbitration within the provisions of The Arbitration Act of Ontario and any statutory modification or re-enactment thereof; provided that any limitation on the remuneration of arbitrators imposed by such legislation shall not have application to any arbitration proceeding commenced pursuant to this paragraph.

30. Applicable Law

30.1 This License, including the actions and obligations of the parties are subject to all Applicable Laws.

### 31. Severability

- 31.1 Should any provision of this License be illegal, unenforceable, or inconsistent with Section 30.1, that provision shall be considered separate and severable from the remaining provisions of this License and the remaining provisions shall remain in force and be binding upon the parties.

### CRTC

The parties hereto acknowledge and agree that the Licensee and the provision of Licensee Services are subject to compliance with the orders, decisions including the Decision, guidelines, rules, regulations and directions (collectively, the "Order") of the CRTC. In the event the CRTC issues any Order in respect of the subject matter of this License, and such Order affects the rights and/or obligations of either party, such party shall be entitled to require that this License or portions thereof, as required, be amended in a reasonable manner so as to give effect to such Order and in the event the parties cannot agree upon the appropriate amendment required to make this License consistent with any CRTC Order, then such amendment required shall be determined by the CRTC. Notwithstanding anything contained in this License, in no event shall this License be interpreted as limiting the rights of the Licensee or the Lessor, to avail itself of the provisions of the *Telecommunications Act*.

### 33. Interest

In the event any Fee is not paid within the time period required by this License, in addition to any other rights and remedies available to the Lessor in law or equity, the Lessor shall be entitled to recover all accrued but unpaid Fees together with interest thereon at a rate equal to two percent (2.0%) per annum above the prime commercial loan rate most recently published by the Lessor's principal bank.

### 34. Force Majeure

Without limiting or restricting the applicability of any Applicable Law governing frustration of contracts, in the event either party fails to meet any of its obligations under this License within the time prescribed as a result of Force Majeure, such failure shall be deemed not to be a breach of the obligations of such party under this License, and the time for the performance of such obligation shall be extended accordingly as may be appropriate under the circumstances.

35. Notice

Any notice or demand by or from the Licensor to the Licensee, or by or from the Licensee to the Licensor, shall be in writing and shall be deemed given upon (a) personal delivery to the addressee, (b) five (5) days after sending by registered mail, postage prepaid, return receipt requested, or (c) successfully sent by facsimile during normal business hours. Until notified otherwise, the addresses and facsimile numbers for delivery of notice are:

In the Case of the Licensor:

KRP Management Services Inc.  
555 Legget Drive, Suite 206  
Kanata, ON  
K2K 2X3

Fax: ( 613 )591-0018

Attention: Debbie Milling, Director of Property Management

In the Case of the Licensee:

TELUS Communications Inc.  
90 Gough Road  
Markham, Ontario  
L3R 5V5

Fax: 416 -496-6767

Attention: Robert Beatty, Director, Building Access & Planning

Copy: Richard D. Johnson, Manager, Building Access

36. Disclosure

Both parties acknowledge that the terms and conditions of this License, including Fees, shall be made available on the website of the Licensee. The Licensee shall remove all end user information, wiring maps and building plans from the License that is posted to the website.

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37. Currency

37.1 All amounts contained in this License are in Canadian dollars.

The parties hereto have executed this License as of the day and year first above written.

415 Legget Leaseholds Inc.,  
c/o KRP Management Services Inc.  
Licensor

Per: 

Name: Martin A. Vandewouw

Title: President, KRP MANAGEMENT SERVICES INC.

I am authorized to bind the Licensor.

TELUS Communications Inc.  
Licensee

Per: 

Name: Robert Berry

Title: AVP, Customer Access

I am authorized to bind the Licensee.

**Schedule “A”**  
**DESCRIPTION OF LANDS**

PIN 04517-0567

Part Block 33, Plan 4M-280, Parts 3 & 5 on Plan 4R-3424

PIN 04517-0572

Part Block 34, Plan 4M-280, Parts 1, 2, 4 & 6 on Plan 4R-3424

**Schedule “B”**

**DESCRIPTION OF POP SPACE LOCATION**

**Schedule “C”**  
**RULES AND REGULATIONS**

## SCHEDULE C

### RULES AND REGULATIONS

1. **Definition** - In these rules and regulations, "Tenant" includes the employees, servants, agents, invitees, subtenants and licencees of the Tenant and others over whom the Tenant can reasonably be expected to exercise its control.
2. **Common Elements** - The Landlord reserves entire control of the Common Elements and will maintain them in such manner as it deems best for the benefit of the tenants generally. The Landlord reserves the right to restrict and regulate the use of the Common Elements by the Tenant and by persons making deliveries to the Tenant.
3. **Smoking** - Smoking is not permitted in the Common Elements, except as may be otherwise designated. The Landlord shall have the right, in its sole discretion, to determine whether any designated smoking area shall be established, and the size and location of any such area.
4. **Obstructions** - The sidewalks, driveways, entrances, vestibules, passages, corridors, halls, elevators and stairways shall not be encumbered or obstructed by the Tenant or be used by it for any purpose other than for entrance to and exit from the Leased Premises.
5. **Deliveries** - The Tenant shall not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking area, or other Common Elements. The Tenant shall ensure that deliveries of materials and supplies to the Leased Premises are made through such entrances, elevators and corridors and at such times as may from time to time be designated by the Landlord and shall promptly pay or cause to be paid to the Landlord the cost of repairing any damage in or to the Building caused by any person making such deliveries. The Landlord reserves the right to remove at the expense and risk of the owner any vehicle not using designated "Vehicle Standing" areas.
6. **Security** - The Landlord may from time to time adopt appropriate systems and procedures for the security and safety of the Building including restricting access during non-business hours and the Tenant shall comply with the Landlord's reasonable requirements relating thereto.
7. **Locks** - No additional locks or bolts of any kind shall be placed by the Tenant upon any of the doors or windows of the Leased Premises, nor shall any changes whatsoever be made to existing locks or the mechanics thereof except by the Landlord at its option. The Tenant shall not permit any duplicate keys to be made, but additional keys as reasonably required shall be supplied by the Landlord when requested by the Tenant in writing and at the Tenant's expense. Upon termination of the Tenant's lease, the Tenant shall surrender to the Landlord all keys to the Leased Premises and other part or parts of the Building together with any parking passes or other devices permitting entry.
8. **Antennae** - The Tenant shall not mount or place an antenna or aerial of any nature on the exterior of the Leased Premises or Building.
9. **Garbage** - The handling and disposal of garbage shall comply with arrangements prescribed by the Landlord from time to time. No disproportionate or abnormal quantity of waste material shall be allowed to accumulate in the Leased Premises and the cost of removal or clearing of quantities in excess of such normally provided Service may be charged to the Tenant.
10. **Repairs, Alterations and Improvements** - The Tenant shall carry out repairs, maintenance, alterations and improvements in the Leased Premises only during times agreed to in advance by the Landlord and in a manner which will not interfere with the rights of other tenants in the Building.
11. **Maintenance** - The Tenant will provide adequate facilities and means to prevent the soiling of walls, floors and carpets in and abutting the Leased Premises whether by shoes, overshoes, any acts or omissions of the Tenant or otherwise.
12. **Installations and Wiring** - The Tenant shall not mark, paint, drill into or in any way deface the walls, ceilings, partitions, floors or other parts of the Leased Premises and the Building except with the prior written consent of the Landlord and as it may direct. If the Tenant desires electrical or communications connections, the Landlord reserves the right to direct qualified persons as to where and how the wires should be introduced, and without such directions, no boring or cutting for wires will be permitted. No gas pipe or electric wire will be permitted which has not been ordered or authorized in writing by the Landlord.
13. **Heating, Air Conditioning and Plumbing Systems** - The Tenant shall not attempt any repairs or alterations or modifications to the heating, air conditioning or plumbing systems.

**Water Fixtures** - The Tenant shall not use the plumbing facilities for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the Tenant shall pay the cost of any breakage, stoppage or damage resulting from a violation of this provision.

15. **Personal Use of Leased Premises** - The Leased Premises shall not be used for residential, lodging or sleeping purposes or for the storage of personal effects or property not required for business purposes as permitted under the Lease.
16. **Solicitations** - The Landlord reserves the right to restrict or prohibit canvassing, soliciting or peddling in the Building.
17. **Heavy Articles** - The Tenant shall not, in the Leased Premises or the Building, bring in, take out, position, construct, install or move anything liable to injure or destroy any part of the Building including, without limiting the generality of the foregoing, any safe, business machinery or other heavy machinery or equipment without the prior written consent of the Landlord. In giving such consent, the Landlord shall have the right, in its sole discretion, to prescribe the permitted weight and the position thereof, and the use and design of planks, skids or platforms required to distribute the weight thereof. All damage done to the Building by moving or using any such heavy equipment or machinery shall be repaired at the expense of the Tenant. The moving of all heavy equipment or other machinery shall occur only by prior arrangement with the Landlord.
18. **Bicycles, Animals** - The Tenant shall not bring any animals, except for seeing eye dogs, into the Building, and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Building except in areas designated from time to time by the Landlord for such purposes.
19. **Furniture and Equipment** - The Tenant shall ensure that furniture, equipment and fixtures being moved into or out of the Leased Premises are moved through such entrances, elevators and corridors and at such times as may from time to time be designated by the Landlord and shall promptly pay or cause to be paid to the Landlord the cost of repairing any damage in the Building caused thereby.
20. **Heating/Cooling** - The Tenant shall not use any means of heating or cooling the Leased Premises other than that provided by or specifically otherwise permitted in writing by the Landlord.
21. **Undue Electrical Loads, Heat, Vibration** - No material or equipment which could cause undue loads on electrical circuits, or undue vibration, heat or noise shall be brought into the Building or used there in by or on behalf of the Tenant, and no machinery or tools of any kind shall be affixed to or used in the Leased Premises without the prior written consent of the Landlord.
22. **Fire Regulations** - No Tenant shall do or permit anything to be done in the Leased Premises or bring or keep anything therein which will in any way increase the risk of fire, or obstruct or interfere with the rights of other tenants, or violate or act at variance with the laws relating to fires or with the regulations of the fire department or the board of health. The Tenant shall cooperate in any fire drills and shall participate in all fire prevention or safety programs designated by the Landlord.
23. **Flammable Materials** - No flammable oils or other flammable, dangerous or explosive materials shall be kept or permitted to be kept in the Leased Premises.
24. **Food and Beverages** - Only persons approved from time to time by the Landlord may prepare, solicit orders for, sell, serve or distribute foods or beverages in the Building, or use the elevators, corridors or other Common Elements for any such purpose. The Tenant shall not permit in the Leased Premises the use of equipment for the preparation, serving, sale, distribution, or dispensing of food and beverages except with the prior written consent of the Landlord and in accordance with arrangements approved by the Landlord.
25. **Notice of Accidents** - The Tenant shall give immediate notice to the Landlord in case of fire or accident in the Leased Premises or in the Building, or in case of defects therein or in any fixtures or equipment thereof, notwithstanding the Landlord may have no obligations with respect thereto.
26. **Janitorial Services** - The Tenant shall not use or engage any person or persons other than the janitor or janitorial contractor of the Landlord for the purpose of any cleaning of the Leased Premises, except with the prior written consent of the Landlord.
27. **Dangerous or Immoral Activities** - The Tenant shall not make any use of the Leased Premises which could result in the risk or injury to any person, nor shall the Leased Premises be used for any immoral or criminal purpose.
28. **Proper Conduct** - The Tenant shall not perform any acts or carry on any practice which may damage the Common Elements or be a nuisance to any other tenant in the Project.

29. **Additional Rules and Regulations** - The Landlord shall have the right to make such other and further reasonable rules and regulations as in its sole judgment may from time to time be necessary or of benefit for the safety, care, cleanliness and appearance of the Project, and for the preservation of good order therein.

**Schedule “C1”**

**RULES AND REGULATIONS continued**

All connections and installations are to be in accordance with plans approved by the Licensor and on notice of Licensor in order to prevent or minimize any impact on the Licensor or others in the Building or Lands.

**Schedule "D"****SECURITY**

Access of shared facilities and / or exclusive use areas are subject to Licensor's supervision and controlled access on notice.

The Landlord shall have the right to establish security rules and regulations governing the Building from time to time and the Tenant hereby agrees to observe and abide by all such security rules and regulations.



**Schedule "E"****TERM**

The term of this Agreement, and the rights granted herein, shall be for a term of one (1) year commencing March 1<sup>st</sup>, 2005 to and including February 28<sup>th</sup>, 2006 (the "Term"). The Term of this Agreement shall automatically renew for subsequent one (1) year periods unless either party delivers written notice to the other party at least sixty (60) days prior to the termination of the initial term or then current renewal term, as the case may be, that the Agreement is terminated. The term of this Agreement may be terminated earlier by either party: (a) upon sixty (60) days' written notice to the other party; or (b) if the Licensee no longer provides telecommunications services or facilities to any of the tenants in the building.

**Schedule "F"****POP SPACE AND POP SPACE FEE**

1. The POP Space contains twenty five square feet, which is comprised of space directly in front of the required patch panel.
2. The annual POP Space Fee is calculated based on the square feet of the POP Space times twenty-five Dollars (\$25.00), gross. The parties agree that such fee is consistent with the amount which would be charged for alternate use of the POP Space, taking into account the location and amount of such space. The Lessor's GST number is 86002 6046 RT0001.
3. The Licensee agrees to pay the Lessor, in advance, beginning on the Commencement Date and on each successive year of the Term thereafter, a POP Space Fee of six hundred and twenty-five Dollars (\$ 625.00 ) per annum plus GST.