

License Number:

**TELECOMMUNICATIONS
LICENSE AGREEMENT**

for

1 Richmond Street West, Toronto

Between

TELUS Communications Inc.

(Licensee)

And

1 Richmond Street West Holdings Limited

(Licensor)

License # _____

TELECOMMUNICATIONS LICENSE AGREEMENT

This License Agreement (the "Agreement") made as of this 1st day of January, 2002, between **1 Richmond Street West Holdings Limited**, with its principal office c/o Tandem Property Management Inc., Suite 290, 36 Toronto Street, Toronto, Ontario, M5C 2C5 ("Licensor"), and TELUS Communications Inc., a Canadian corporation, with its principal office at Burnaby, British Columbia ("Licensee").

RECITALS

WHEREAS the Licensor is the owner of the building commonly known as 1 Richmond Street West, Toronto (the "Building"). Licensor represents and warrants that it has the full right and authority without further consent from any other party to grant to Licensee the license and rights contained in this Agreement; and

2. WHEREAS the Licensee represents and warrants to Licensor that Licensee is authorized to provide telecommunications services in the Building under the conditions described herein and that it has full authority without further consent from any other party to negotiate and execute this Agreement with Licensor.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and the mutual covenants herein expressed and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensee and Licensor agree as follows:

1 Grant of License

1 Licensor hereby grants to Licensee a non-exclusive license:

- (1) To install, operate, maintain, replace, and remove, at Licensees sole expense and risk, certain "Communications Equipment" (defined as the cabinets, racks, electronic equipment, and electrical power equipment including that as specified in Exhibit A), on and in the "Equipment Room" (as hereinafter defined);

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- (2) To install, maintain, operate, replace and remove at Licensee's sole expense and risk, certain "Connecting Equipment" (the cables (whether fibre optic, coaxial and copper cables and wires), conduits, inner ducts and connecting hardware including that as specified and described in Exhibit A), together with the right to pull such Connecting Equipment through the Building's "Entrance Link" (defined as the core sleeve penetration through the Building foundation) and through other "Building Communications Spaces" (defined as the telecommunications conduits and pathways necessary to reach from the Entrance Link to Licensee's Equipment Room in the Building and from the Equipment Room to the main distribution frame and from the main distribution frame to Licensee's customers in the Building), as may be necessary to provide communications services to Licensee's customers and as designated and approved by Licensor acting reasonably. Licensee's Communications Equipment and Licensee's Connecting Equipment are collectively referred to in this Agreement as "Licensee's Equipment"; and
- (3) To use Licensor's existing communications wiring, if available, at rates to be mutually agreed upon, for use of such wiring in order to connect Licensee's Equipment to Licensee's customers located in the Building. Licensor may permit use of existing Building Entrance Link and existing Building wiring only to the extent that Licensor has the possession of and authority to allow such use of said facilities. In no event shall Licensor be obligated to provide such allowed use of facilities to the extent that it does not own, control, or have authority to allow such usage.
- (2) Licensor shall provide a minimum of 75 square feet of floor space in the Building (the "Equipment Room"), in a location to be designated by the Landlord, acting reasonably and making its best efforts to accommodate the Licensee, acting reasonably. A space plan indicating the location of the Equipment Room once ascertained will be attached to this Agreement as Exhibit B. The Equipment Room will be used by Licensee as the Building service site, and for only that purpose. The Licensee is expressly forbidden to serve other properties from this location without the express written permission of the Licensor. Additional fees may be required, as agreed to between the parties, for using Licensee's Equipment Room as a service point for other properties outside the Building.
- (3) Licensor shall have the right in its sole and reasonable discretion to reasonably limit the type, size and location of Licensee's Equipment located in the Building. Further, Licensor may in its sole and reasonable discretion, require Licensee, at LICENSEE expense, to relocate within the Building any or all of Licensee's Equipment, including the Equipment Room. The substitute Equipment Room shall contain at least as much area as the Equipment Room from which Licensee is being relocated, and shall also, in Licensee's and Licensor's reasonable judgment, be suitable for Licensee's operations. In the event that Licensor requires Licensee to relocate Licensee's Equipment and/or the Equipment Room, Licensee shall within ninety (90) days of receipt of such notice of relocation, either: (i) terminate this Agreement upon written notice to Licensor; or (ii) relocate the Licensee's Equipment and/or the Equipment Room (the time period for relocation shall be extended to one hundred twenty (120) days if Licensee has begun but not yet completed the relocation within the required ninety (90) day period). Licensor shall allow Licensee to perform a standard cutover procedure, if required by said relocation, which will insure that the relocated equipment is operational for service prior to discontinuing service from old service location.



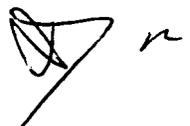
Licensor and Licensee acknowledge and agree that the relationship between them is solely that of independent contractors, and nothing herein shall be construed to constitute the parties as employer/employee, partners, joint ventures, co-owners, or otherwise as participants in a joint or common undertaking. Neither party, nor its employees, agents, or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other. Licensee hereby accepts and assumes full and exclusive liability for, and shall hold Licensor harmless from, the payment of all taxes, monies and other expenses arising from the conduct of Licensees business in the Building.

Licensor makes no warranty or representation that the Equipment Room, the Building Communications Spaces or the Building are suitable for Licensees use, it being assumed that Licensee has satisfied itself thereof. Licensee has inspected the Equipment Room, the Building Communications Spaces and the Building and accepts the same "as is" and agrees that Licensor is under no obligation to perform any work or provide any materials to prepare the Equipment Room, the Building Communications Spaces or the Building for Licensee.

- (6) The License granted herein is not exclusive. Licensor hereby reserves the right to grant, renew or extend similar licenses to others. The License granted herein is revocable only in accordance with the express terms of this Agreement.

2. **Fees**

- (1) Licensee shall pay to Licensor an annual fee (the "License Fee") of ONE THOUSAND, FIVE HUNDRED DOLLARS (\$1,500.00), plus goods and services tax, payable each year of the Agreement.
- (2) The annual fee shall be payable in advance on the Commencement Date and each anniversary of the Commencement Date. All payments shall be made to Licensor at the address given in Paragraph 19 of this Agreement and shall be in addition to any charges for use of Cable Distribution System ("CDS") cable-pair assignments ("CDS Fees") under Paragraph 13 ("Establishment of MPOE") below, and any costs for utilities and HVAC used by the Licensee pursuant to Paragraph 5 below.
- (3) Licensor and Licensee agree to use their good faith efforts to refrain from disclosing the financial terms of this Agreement. Either party may disclose the financial terms of this Agreement when required by law, regulation or prior agreement or to any of their respective professional advisors, lending institutions, or in the case of the Licensor to any actual or prospective purchaser or mortgagee of the Building. No recourse, action or penalty shall be associated with the good faith effort of non-disclosure herein embodied.



3. **Term**

The term of this Agreement (the "License Term") shall commence as of the date hereof ("Commencement Date"). The initial term hereof shall be **three (3) years** (the "Initial Term"), beginning on the Commencement Date, subject to extension or earlier termination in accordance with the provisions hereof. Provided that Licensee is not in default of this Agreement and has not habitually been in default under this agreement, Licensee shall have the option to extend this Agreement upon the same terms and conditions set forth herein, except as specifically stated herein, for one additional **three (3) year period** (the "Renewal Term") by giving written notice of such an intent to Licensor no more than one-hundred and eighty (180) days and no less than one hundred and twenty (120) days prior to the end of the Initial Term ~~or Renewal Term, as the case may be~~ (the "Initial Term" and the "Renewal Term" are collectively referred to as the "License Term") at a license fee charged for similar buildings in similar locations at the time of such extension ("Market Rent").

If the parties cannot agree as to the Market Rent, the parties shall appoint an arbitrator in accordance with Paragraph 14.

4. **Use**

Licensee shall use the Building Communications Spaces and the Equipment Room solely for the purpose of providing Building tenants and occupants with telecommunications services for which it has been certified to provide by all necessary federal, provincial and municipal authorities. To the extent that Licensee is providing communications services to any tenant or occupant (other than Licensee) within the Building, Licensee shall make available such communications services to all tenants and occupants of the Building. Licensee hereby acknowledges that this Agreement prohibits the installation or operation of all forms and types of rooftop communications equipment or wireless communications equipment.

5. **Electric Utilities**

Licensee shall install, at its own cost, a separate electrical panel and meter for the Licensee's Equipment in the Equipment Room and shall be responsible to the local electric utility for the electrical costs attributable to the use of such Licensee's Equipment. Licensor shall use reasonable efforts to notify Licensee in advance of any planned utility outages that may interfere with Licensee's use. Licensee further agrees that the Licensor has no obligation or responsibility to provide emergency or "backup" power to Licensee, and Licensee acknowledges that any such provision of emergency or "backup" power shall be the sole responsibility of Licensee.

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6. **Construction**

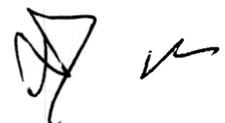
- (1) Prior to the commencement of any work or installation of any equipment, Licensee shall, at its sole cost and expense, prepare and deliver to Licensor working drawings, plans and specifications for such work or installation, as contained in Exhibits A, B and C detailing the type, size and location of Licensee's Equipment, the Building Communication Spaces to be used by Licensee and the Equipment Room, all specifically describing the proposed construction and work. No work shall commence until Licensor has approved, in writing, Exhibits A, B and C, and any other applicable construction or installation plans, which approval will not be unreasonably withheld or unduly delayed. Approval or disapproval and required changes shall be delivered to Licensee within twenty (20) working days after the receipt of such plans from Licensee. In no event shall Licensor's approval of such plans be deemed a representation that Licensee's Equipment will not cause interference with other systems in the Building or that Licensee's plans comply with applicable laws, rules or regulations, such responsibility shall remain with Licensee. The Licensee shall be responsible to reimburse the Licensor for all out of pocket expenses incurred by the Licensor in connection with its review and approval of such plans within ten (10) business days of receipt of an invoice.
- (2) Licensee warrants that the installation of Licensee's Equipment shall be in strict compliance with the approved plans and specifications prepared in connection with Exhibits A, B and C.
- (3) Licensee agrees that installation and construction shall be performed in a neat, responsible, and workmanlike manner, in conformity with the Ontario Building Code, the Licensor's Building specifications and such reasonable requirements as shall be imposed by Licensor acting reasonably. Licensee shall, at its sole cost and expense, repair or refinish any portion of the Building that is damaged by or during the installation of Licensee's Equipment and caused by Licensee or any of its agents, representatives, employees, contractors, subcontractors, or invitees. If Licensee fails to repair or refinish any such damage, Licensor may, in its sole discretion, repair or refinish such damage and Licensee shall within ten (10) days of receipt of an invoice therefore reimburse Licensor of all costs and expenses incurred in such repair or refinishing.
- (4) Licensee shall label each cable placed in the telecommunications pathways, in each telephone & closet through which said cables pass, with identification information including, but not limited to, License Agreement Number (to serve as identification), floor where cable originates and floor where cable terminates, and any other information as may be required by Licensor's Building rules.
- (5) Licensee shall obtain, at its sole cost and expense, prior to construction and work, any necessary federal, provincial, and municipal permits, licenses and approvals, copies of which will be delivered to Licensor prior to commencement of construction and work. Licensee's Equipment shall comply with all applicable safety standards, as modified from time to time, of any governing body with jurisdiction over Licensee's Operations, including without limitation, the Ontario Building Code.
- (6) Licensee shall not during construction or otherwise, in Licensor's sole and reasonable judgment, block access to or in any way obstruct, interfere with or hinder the use of the Building's loading docks, the sidewalks around the Building or any entrance ways thereto. If such conditions shall occur, Licensee shall take corrective action as promptly as feasible, but in no event more than twenty four (24) hours following notice by Licensor of such conditions.



- (7) Licensee shall have the right to amend Exhibits A and C, from time to time, with the express written consent of Licensor, which consent shall not be unreasonably withheld, for the purpose of serving additional occupants of the Building. All terms and conditions of this Paragraph 6 shall apply.

7. **Licensee's Covenants**

- (1) Licensee shall at its sole cost and expense, maintain Licensee's Equipment in proper operating condition and to maintain same in satisfactory condition as to safety.
- (2) Licensee shall, at its sole cost and expense, repair any damage to the Building, Building Communications Spaces, and/or to any other property owned by Licensor or by any lessee or licensee of Licensor or by any other occupant of the Building where such damage is caused by Licensee or any of its agents, representatives, employees, contractors, subcontractors, or invitees. If Licensee fails to repair or refinish any such damage, Licensor may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Licensor of all costs and expenses incurred in such repair or refinishing.
- (3) Licensee shall not interfere with the use and enjoyment of the Building by Licensor or by other lessees, or licensees of the Licensor or other tenants or occupants of the Building. If such interference shall occur, Licensor shall give Licensee written notice thereof and Licensee shall correct the same within twenty-four (24) hours after receipt of such notice. In the event Licensee fails to correct such conditions after proper notification and waiting period, Licensor reserves the right to take any reasonable actions to correct the same.
- (4) Licensee's Equipment shall not disrupt, adversely affect, or interfere with other providers of communications services in the Building or with any tenant's or occupant's use or operation of communications or computer devices. Licensee shall correct such interference within twenty-four (24) hours after receiving written notice of such interference and after such interference has been positively identified as being caused by Licensee's Equipment. Licensor reserves the right to disconnect power to any such Licensee's Equipment which Licensee fails to correct such interference after proper notification and waiting period.
- (5) Licensee agrees to comply with all Building rules (Exhibit E), as adopted and altered by Licensor from time to time, and will cause its agents, employees, contractors, invitees and visitors to do so. Licensee shall not be bound by any changes in the Building Rules until after it has received written notice of such changes. No revision of the Building Rules shall affect Licensee's rights or increase Licensee's financial obligations under this Agreement.
- (6) Licensee agrees to comply with all applicable municipal, provincial and federal codes and regulations pertaining to the installation and operation of Licensee's Equipment, and to the Licensee's provision of services.
- (7) Licensee agrees that Licensor shall not be liable for damage to Licensee's Equipment or theft, misappropriation or loss thereof no matter how caused and in no event shall the Licensor be liable for any indirect or consequential damages suffered by the Licensee or any others no matter how caused.

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8. **Access**

- (1) Licensor agrees that Licensee's authorized representatives shall have access to the Equipment Room (as specified in Exhibit B) at all times, for the purposes of installing, maintaining, operating, and repairing Licensee's Equipment, and Licensor further agrees to give Licensee ingress and egress to the Building Communications Spaces (as specified in Exhibit C) at all times during the term of this Agreement including non-exclusive use of an elevator. It is agreed, however, that only authorized engineers, employees or properly authorized contractors, subcontractors, and agents of Licensee, other authorized regulatory inspectors, or persons under their direct supervision and control will be permitted to enter the Building Communications Spaces, and only upon conditions set forth herein.
- (2) Except in the event of an emergency, Licensee agrees to give at least twenty-four (24) hours notice to Licensor of its intent to enter Building Communications Spaces. At the time that such notice is given, Licensee shall inform Licensor of the names of the persons who will be accessing the Building Communications Spaces, the reasons for entry, and the expected duration of the work to be performed. Licensor shall provide such information substantially in the form attached hereto as Exhibit D whenever feasible. In the event of an emergency, Licensee shall give to Licensor as much advance notice as reasonably possible of its intent to enter the Building Communications Spaces and, within five (5) days following such entry, shall provide to Licensor a written report detailing the nature of such emergency, the corrective actions taken, and other such information as contained in Exhibit D.
- (3) Permission for all entries upon the Building Communications Spaces (including entries for maintenance and/or installation) must be received from Licensor in advance, unless such entry is of an emergency nature and permission cannot be obtained in a timely fashion. Licensor shall not be obligated to provide elevator service during emergency situations and under emergency conditions, which emergency situations and conditions shall be reasonably determined by Licensor.
- (4) Licensor and its representatives shall have the right to enter the Equipment Room for any of the following purposes; provided, however, that (except in the event of an emergency) Licensor shall give Licensee at least twenty four (24) hours advance notice before entry and shall be accompanied by a representative of the Licensee and use reasonable efforts to minimize any interference with Licensee's operations or Licensee's Equipment: (i) to maintain the Equipment Room and the Building; (ii) to make inspection, repairs, alterations, improvements or additions, in or to the Equipment Room; (iii) to perform any acts related to the safety, protection, preservation, or improvement of the Equipment Room or the Building; and (iv) for such other purposes as Licensor deems reasonably necessary.

9. **Insurance**

- (1) Licensee shall maintain in force, at its expense, during the term of this Agreement, a policy of Commercial General Liability Insurance issued by a company acceptable to Licensor, insuring Licensee and, as additional insureds, the Licensor and any of its mortgagee(s), with a combined single limit of Five Million Dollars (\$5,000,000.00) for injury or death or property damage, and excess "Umbrella" liability coverage of not less than Two Million Dollars (\$2,000,000.00). Licensee shall maintain all risk property insurance on its Equipment in sufficient amounts to cover any loss thereof.

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- (2) Licensee's insurance shall contain provisions providing that such insurance shall be primary insurance insofar as Licensor and Licensee are concerned, with any other insurance maintained by Licensor being excess and non-contributing with the insurance of Licensee required hereunder and providing coverage for the contractual liability of Licensee to indemnify Licensor pursuant to Paragraph 10 below. Licensee shall obtain the agreement of Licensee's insurers to provide proof of such insurance to Licensor at the Building office prior to commencement of any construction and to notify Licensor, in writing, that a policy is due to expire at least 30 days prior to such expiration. Licensee shall name Licensor and any additional parties that may reasonably designate by written notice as additional insureds to the policies.
- (3) Licensee shall maintain in force all required worker's compensation or other similar insurance as required by provincial and municipal law.

10. **Indemnification**

Licensee shall exercise due care to avoid any action that may cause damage to any part of the Building or Licensor's other tenants or occupants. Licensee shall indemnify and hold Licensor, its officers, directors, agents, employees harmless from and against any loss, cost damage and expense of whatever kind arising directly or indirectly from the construction, installation, operation, maintenance, repair, and removal of Licensee's Equipment or from Licensee's breach of this Agreement, including, but not limited to, reasonable legal fees and court costs, except to the extent such loss, damage, cost or expense is due to the negligence or willful misconduct of Licensor or its employees, agents or invitees. The provisions of this Paragraph 10 shall survive termination of this Agreement.

11. **Release and Waiver of Subrogation Rights**

Notwithstanding anything contained in this Agreement to the contrary, Licensor and Licensee each release the other and their respective agents and employees from all liability to each other, or anyone claiming through or under them, by way subrogation or otherwise, for any loss or damage to property caused by or resulting from risks insured against or required to be insured against under this Agreement or otherwise insured against. Licensor and Licensee will each request its insurance carrier to include in policies provided pursuant to this Agreement an endorsement recognizing this waiver of subrogation. The waiver of subrogation endorsement need not be obtained if it incurs an additional cost for the affected policy, unless following written notice, the other party elects to pay that additional cost to obtain the waiver of subrogation endorsement. The provisions of this Paragraph 11 shall survive termination of this Agreement.

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12. **Liens**

Licensee shall be responsible for the satisfaction or payment of any liens by any provider of work, labour, material or services claiming by, through or under Licensee. Licensee shall also indemnify, hold harmless and defend Licensor against any such liens, including the reasonable legal fees of the Licensor. Such liens shall be discharged by Licensee within ten (10) days after notice of filing thereof by bonding payment or otherwise, provided that Licensee may contest, in good faith and by appropriate proceedings any such liens. The provisions of this Paragraph 12 shall survive termination of this Agreement.

13. **Establishment of MPOE**

- (1) Licensee recognizes that Licensor may desire to provide access to existing and future telecommunications service providers for tenants of the Building, and Licensor may deem it desirable to achieve this objective by providing a central telecommunications cable distribution system (CDS) in the Building for use by all competitive providers of telecommunications services. The CDS will include a main cross-connect ("MC") for use by all competitive service providers in order to reach tenant demarcation points in the Building. The MC shall serve as the minimum point of entry ("MPOE") demarcation point for service providers, including Licensee. The MC shall also serve as the origination point of the CDS. The telephone closet demarcation block on each floor of the Building will serve as the termination point of the CDS on that floor. Licensor shall charge all competitive service providers (including Licensee) a market based fee for each CDS cable-pair used ("CDS Fee").
- (2) If Licensor installs a CDS:
 - (1) Licensor may purchase from Licensee those portions of Licensee's Connecting Equipment that Licensor, in its sole discretion, determines is necessary to incorporate into the CDS. The purchase price of such portions of Licensee's Connecting Equipment shall be an amount equal to the then "as is" fair market value as agreed to by the parties, or as determined by a third party reasonably acceptable to both parties who is experienced in the valuation of such equipment. Licensee shall, at Licensor's option and expense, remove any remaining Licensee Connecting Equipment that is not purchased by Licensor.
 - (2) Licensee shall at Licensee's expense, relocate its existing services and demarcation facilities to the CDS, if such a frame is installed.
 - (3) Licensee shall utilize the CDS for providing all service to Licensee's customers once Licensor notifies Licensee that the MC is ready for service.
 - (4) Licensor agrees to allow Licensee a reasonable amount of time (not to exceed 90 days) for proper planning, engineering and cut over in this regard. Cut over to the CDS will be accomplished at times other than Normal Business Hours.

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- (3) In the event that Licensor enters into a similar agreement with another telecommunications service provider and charges such other provider for the use of cable pair within the CDS, ordered for similar terms and in similar quantities, at rates that are preferable to the rates charged to Licensee, then Licensee may thereafter substitute such preferable CDS fees for its then prevailing rates. Such substitution shall be effective immediately upon receipt by Licensor of notice from Licensee regarding Licensee's desire to make such a substitution of applicable CDS rates. Licensor shall inform Licensee of any modifications to the CDS fees and of any agreement to offer preferable CDS fees (including the effective dates of revisions to existing rate schedules) to any other telecommunications service provider for use of the CDS within the Building, and shall ensure that such notice is provided to Licensee prior to the commencement of the next monthly billing cycle following any such agreement. Upon at least ten (10) days notice to Licensor, Licensee may audit that portion of Licensor's books and records that pertains to CDS rates charged to telecommunications service providers in the Building and may do so at Licensor's offices or the place at which such records are normally maintained during regular business hours. In the event that Licensee finds, through an audit or otherwise, that Licensor has failed to provide Licensee with timely notice of the availability of such preferable CDS fees, Licensor shall pay to Licensee the difference between the most favourable fees charged for use of the CDS within the Building and the CDS fees actually paid by Licensee from the time of the effective date of the more favourable fee structure to the date at which the adjustment of CDS fees is made available to Licensee upon an ongoing basis.
- (4) Licensor shall repair or replace the CDS as necessary to eliminate any interruption or other adverse effects caused by malfunction, damage or destruction of the CDS, the cost of which shall be borne by Licensee if the problem was caused directly or indirectly by the act or omission of Licensee, its agents, representatives, employees or invitees, provided that the Licensor's obligation to repair or replace the CDS shall apply only to the extent necessary to reach premises in the Building that are then used by tenants after the malfunction, damage or destruction or that, if damaged or destroyed, will be again used by tenants upon the completion of restoration or repair thereof. In no event shall Licensee have any right to make any claim against Licensor for any damages whatsoever, including, without limitation, any indirect or consequential damages in any such circumstance. In the event of malfunction of, damage to, or destruction of the CDS, as Licensee's sole remedy, the annual License Fee and CDS Fee paid by Licensee under the Agreement shall equitably abate (to the degree related to the defect) from the date of such malfunction, damage or destruction until the date upon which Licensor completes its repair or replacement of the CDS ("Completion Date"), to the extent that Licensor is required to do so by this Agreement. The abated amount shall be refunded to Licensee within thirty (30) days of the Completion Date. Licensor shall promptly provide to Licensee the phone number(s) for the person or persons responsible for the operation and maintenance of the CDS.
- (5) Notwithstanding the foregoing elements of this Paragraph 13, in the event that Licensor installs a CDS, Licensee may, in its sole option and within ninety (90) days after such installation, terminate this Agreement upon written notice to Licensor.

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14. **Arbitration**

- (a) If the Licensor and Licensee shall fail to agree upon the Market Rent by that date which is sixty (60) days prior to the commencement of the Renewal Term, then the Licensor and Licensee each shall give notice (the "Determination Notice") to the other setting forth their respective determinations of the Market Rent and, subject to the provisions of paragraph (b) below, the parties shall jointly designate an arbitrator satisfactory to both parties to render a final determination of the Market Rent. If the parties are unable to agree on the designation of an arbitrator within fifteen (15) days after the delivery by each of them of their Determination Notice then either party may apply to a judge of the Ontario Superior Court of Justice pursuant to the provisions of the *Arbitrations Act* (Ontario) (the "Act") for the appointment of an arbitrator. The arbitration shall, subject to the provisions herein, be conducted in accordance with the provisions of the Act. The arbitrator shall conduct such hearings and investigations as the arbitrator shall deem appropriate and shall, within thirty (30) days after having been appointed, choose one of the determinations set forth in either the Licensor's or the Licensee's Determination Notice, and that choice by the arbitrator shall be binding upon the Licensor and Licensee. The determination rendered in accordance with the provisions of this paragraph (a) shall be final and binding in fixing the Market Rent. The arbitrator shall not have the power to add to, modify or change any of the provisions of this Agreement.
- (b) In the event that the determination of the Market Rent set forth in the Licensor's and Licensee's Determination Notices shall differ by five (5%) percent or less of the lower annual Market Rent specified in the Licensor's and Licensee's Determination Notices for each year during the Renewal Term, then the Market Rent shall not be determined by arbitration, but shall instead be set by taking the average of the determinations set forth in the Licensor's and Licensee's Determination Notices. Only if the determinations set forth in the Licensor's and Licensee's Determination Notices shall differ by more than five (5%) percent of the lower annual Market Rent specified in the Licensor's and Licensee's Determination Notices for any year during the Renewal Term shall the actual determination of Market Rent be made by an arbitrator as set forth in paragraph (a) above.
- (c) If the Market Rent has not been determined before the commencement date of the Renewal Term, then the Licensee shall continue to pay the License Fee payable during the final year of the Initial Term, together with all other payments pursuant to this Agreement which shall be adjusted forthwith after the determination of the Market Rent has become final and binding, to be calculated from the commencement date of the Renewal Term.

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15. Assignment and Subletting by Licensee

- (1) Licensee shall not assign this License without obtaining the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed. Notwithstanding the above, the Licensee may assign this License in whole or in part to an affiliate (as defined by the Business Corporations Act (Canada)) without the consent of the Licensor but upon thirty (30) days notice and subject to paragraph (2) below and further subject to such ~~affiliate~~ ^{affiliate} executing an agreement in favour of the Licensor whereby it agrees to be bound by this Agreement as if an original signatory pursuant hereto.
- (2) No assignment shall release Licensee from any liability or obligation under this Agreement, unless Licensor provides such release in writing.

16. Hazardous Materials

- (1) Licensee shall not bring or install any hazardous substance or material into the Building. In the event that any hazardous substances or materials are installed or brought into the Building by or on behalf of Licensee, then Licensee shall cause the removal of same within twenty-four (24) hours of Licensor's demand and shall indemnify and hold Licensor and Licensor's Parties (as defined in Paragraph 32 (3), below) harmless from any claim, loss, cost, damage, or expense resulting from such hazardous substances or materials or from Licensor's removal thereof. In the event that Licensee shall discover, uncover, disturb, or otherwise reveal any existing hazardous substances or materials within the Building, Licensee shall immediately stop any work in progress and report such findings to Licensor within twenty-four (24) hours. Licensee shall not conduct any further work in the reported area without Licensor's written approval.
- (2) Licensee shall have three options upon discovery of hazardous substances or material and cessation of work as described above: (i) Reroute its planned access route to avoid such hazardous substances or material areas; (ii) terminate this Agreement according to the procedure set forth in Paragraph 18 (Termination/Remedies); or (iii) Reschedule its installation work to a period after Licensor has completed corrective action in regard to such hazardous substances or materials; provided, however, that Licensee may terminate this Agreement upon written notice to Licensor if such corrective action has not been commenced and diligently pursued within thirty (30) days after Licensor's receipt of notice of Licensee's discovery of the hazardous substances or materials.

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7 **Events of Default**

Each of the following events shall be deemed to be an event of default by Licensee under this Agreement (“Licensee Event of Default”):

If Licensee shall default in the payment of any License Fees or CDS Fees or other sum or money due Licensor hereunder and such default shall continue for a period of ten (10) days after receipt of written notification by Licensor to Licensee of such default;

2. Except where different cure periods are expressly provided in this Agreement to the contrary, if Licensee shall default in the observance or performance of any of Licensee’s non-monetary obligations under this Agreement and such default shall continue for more than fifteen (15) days after written notification of such default by Licensor to Licensee (unless such default cannot reasonably be cured within such fifteen (15) day period, in which case such cure period shall be extended for the minimum period of time reasonably required to effect such cure provided that Licensee shall promptly commence and prosecute such cure to completion with all reasonable diligence);
3. If there shall be interference with the telecommunications or computer equipment of Licensor, tenant, or any other occupant of the Building or any other telecommunications or computer devices provided in the Building by reason of, or as a result of, the installation, operation, maintenance, repair, or removal of Licensee’s Equipment, which interference is not cured within twenty-four (24) hours of Licensee’s receipt of written notice by Licensor of such interference;
4. If Licensee shall fail to remove any hazardous substances or materials installed in the Building by or on behalf of Licensee within forty-eight (48) hours of written notice of such condition by Licensor to Licensee;
5. The revocation of Licensee’s permission to provide regulated or non-regulated telecommunications devices by any governing entity authorized to franchise or regulate Licensee’s provisioning of telecommunications services; and
6. The filing, execution, or occurrence of a petition in bankruptcy or other insolvency proceeding by or against Licensee; or an assignment for the benefit of creditors; or a petition or proceeding by or against the Licensee for the appointment of a trustee, receiver or liquidator of Licensee or of any of the Licensee’ property or a proceeding by any governmental authority for the dissolution or liquidation of Licensee.
7. An event of default under this Agreement by Licensor (“Licensor Event of Default”) shall occur where Licensor defaults in the observance or performance of any of Licensor’s obligations under this Agreement and such default shall continue for more than fifteen (15) days after written notification of such default by Licensee to Licensor (except where different cure periods are expressly provided in this Agreement to the contrary), unless such default cannot reasonably be cured within such fifteen (15) day period, in which case the cure period shall be extended for the minimum period of time reasonably require to effect such cure provided that Licensor shall promptly commence and prosecute such cure to completion with all reasonable diligence.



18 **Termination/Remedies**

- (1) Upon or after the occurrence of a Licensee or Licensor Event of Default, the non-defaulting party shall give written notice to the defaulting party, setting forth the nature of the Licensee or Licensor Event of Default. If the defaulting party fails to cure same within the time period specified by the relevant subparagraph of Paragraph 17, then the non-defaulting party may elect to terminate this Agreement and subject to the terms of this Agreement, it may sue for any other damages to which the non-defaulting party may be entitled at law or in equity except that (i) no claim for fees due after the date of termination shall be made if the Licensee's Event of Default is solely that listed in Paragraph 17.5, above, and such revocation has not been caused by the specific omission or improper act of Licensee (ii) in no event shall the Licensor be responsible for any indirect or consequential damages no matter how caused or suffered by the Licensee or others, and (iii) the maximum damages for which the Licensor may be liable for hereunder shall not exceed two (2) times the aggregate amount of the License Fee actually paid by the Licensee hereunder to and including the date of termination of this Agreement.

At the expiration or earlier termination of this Agreement (the "Termination Date") Licensee shall, at Licensee's sole cost and expense, without liens, remove Licensee's Equipment and all of Licensee's personal property from the Building. Any property not so removed within thirty (30) days after the Termination Date may at Licensor's sole option (i) be removed and stored by Licensor at Licensee's expense or (ii) become the property of Licensor without compensation to Licensee. As of the date of such removal, neither party shall have any claim against the other, except for claims or obligations that may have arisen or accrued prior to such termination or arise by reason of such Licensee's Equipment and other equipment or property removal, which claims or obligations shall survive such termination. Further, Licensee agrees, at its sole cost and expense, to repair or refinish all damage caused by the operation or removal of Licensee's Equipment, excepting damage caused by ordinary wear and tear. If Licensee fails to repair or refinish any such damage, Licensor may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Licensor of all costs and expenses incurred in such repair or refinishing. Notwithstanding the foregoing,

Licensee's Connecting Equipment may upon the parties agreeing on mutually acceptable terms and conditions regarding transfer of the Licensee's Connecting Equipment to the Licensor, at Licensor's option and upon written notice to Licensee, become the property of Licensor and remain in the Building. In the event the parties are able to agree as to the terms and conditions regarding transfer of ownership of the Licensee's Connecting Equipment, then the Licensee shall execute a bill of sale or other document necessary to effect such transfer of ownership, at no additional cost or consideration from Licensor to Licensee, within thirty (30) days after receiving such written notice and free and clear of all liens and encumbrances whatsoever.

In any suit or legal proceeding arising out of this Agreement or the underlying transaction the prevailing party shall be indemnified by the unsuccessful party for all reasonable expenses and costs including legal fees, which obligation shall survive the termination of the Agreement. In the event of a Licensee Event of Default or a Licensor Event of Default, as the case may be, the non-defaulting party shall except as is otherwise provided in Section 18 (1) above have all rights available in equity or at law.



19. **Notices**

Any or all notices or demands by or from Licensor to Licensee, or Licensee to Licensor, shall be in writing and shall be deemed given upon (a) personal delivery to the addressee. Until notified of a different address, as provided herein, all notices shall be addressed to the parties as follows:

Licensor:
Attention: Property Manager
1 Richmond Street West Holdings Limited
c/o Tandem Property Management Inc.,
Suite 290,
36 Toronto Street,
Toronto, Ontario,
M5C 2C5

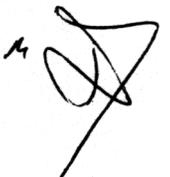
Licensee:
Robert Beatty, AVP, Building Access
TELUS Communications Inc.
100 Sheppard Ave. East
6th floor
Toronto, Ontario
M2N 6N5

20. **No Implied Waiver**

The waiver by Licensor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such terms, covenant, or condition for any subsequent breach of the same or any other term, covenant or condition herein contained.

21 **Subordination**

Licensee accepts this Agreement subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the land or the Building and to any renewals, modifications, consolidation, refinancing, and extensions thereof, but Licensee agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Agreement on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. This provision is hereby declared to be self-operative and no further instrument shall be required to effect such subordination of this Agreement.



22. **Legal Fees**

In the event of any action filed in relation to this Agreement, the prevailing party shall be entitled to recover from the other reasonable legal fees and other reasonable court costs. The Licensee shall pay upon demand all legal costs incurred by the Licensor in connection with the review, negotiation and finalization of this agreement.

23. **Casualty Damage; Licensee's Termination Option**

In the event of any fire, casualty, physical calamity or physical damage to the Building, which makes it impossible for Licensee to carry out the purposes of its installation, maintenance, and operation in the Building, or if the Building becomes unfit or undesirable for Licensee's use, Licensor or Licensee may terminate this Agreement upon ninety (90) days prior written notice to the other, in which event, Licensee shall remove Licensee's Equipment from the Building and neither party shall have any further liability hereunder, except as provided in Paragraph 10. Licensee shall have no obligation to pay fees during the period when the Building is rendered unfit for Licensee's use due to fire, casualty, physical calamity or physical damage to the Building.

Certification of Sale for Resale of Telecommunications Services

In order to assist Licensor in fulfilling any relevant tax obligations, Licensee shall, within thirty (30) days of written request, provide Licensor with a written certification that it will be using any services provided under this License for the purpose of providing or reselling communication services to other parties. Such certification shall be made in a form acceptable to relevant tax or franchise authorities and upon forms provided by such authorities, if available.

25. **Equipment to Remain Personal Property**

Except as otherwise provided herein, Licensee's Equipment shall remain personal property ("Personal Property") of the Licensee notwithstanding the fact that it may be affixed or attached to the Building, and shall, during the term of this Agreement, or any extension or renewal thereof, and upon termination thereof, belong to and be removable by Licensee.

Severability

If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, and the remaining terms and conditions shall be interpreted so as to give the greatest effect possible thereto.



27. **Governing Law**

The construction, interpretation and performance of this Agreement shall be in accordance with the laws of Ontario and the Canadian Radio - Television and Telecommunications Commission (otherwise known as the CRTC).

28. **Survival of Provisions**

Any obligation of the parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive termination or expiration of this Agreement.

29. **Force Majeure**

(1) Whenever a period of time is herein prescribed for the taking of any action by Licensor or Licensee, Licensor or Licensee shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labour or materials (not caused by the party seeking the benefit of this paragraph), war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of Licensor or Licensee. The provisions of this paragraph shall not apply to the payment of fees or the payments of other monies to be paid by Licensor or Licensee under this Agreement.

(2) In order to be entitled to an excuse for any delay or failure to perform under this Agreement pursuant to this Paragraph 29, the party claiming such excuse shall promptly give written notice to the other party hereto of any event or occurrence which it believes falls within the contemplation of this Paragraph 29.

30. **Registration**

Licensee agrees not to record this Agreement or any notice thereof on title to the Building.

31. **License Only**

This Agreement creates a license only and Licensee acknowledges that Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Building, Building Communications Spaces, or Equipment Room by virtue of this Agreement or Licensee's use of the Building, Building Communications Spaces or Equipment Room pursuant hereto. In connection with the foregoing, Licensee further acknowledges that in no event shall the relationship between Licensor and Licensee be deemed to be a so-called landlord-tenant relationship and that in no event shall Licensee be entitled to avail itself of any rights afforded to tenants under the laws of the state in which the Building is located.



32. **Successors in Licensor's Interest/Limitation of Liability**

- (1) The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Licensor and Licensee and, except as otherwise provided in this Agreement to the contrary, their respective heirs, distributees executors, administrators, successor's and assigns.

The obligations of Licensor under this Agreement shall no longer be binding upon Licensor in the event that Licensor sells, assigns or otherwise transfers its interest in the Building as owner or lessee (or upon any subsequent licensor after the sale, assignment or transfer by such subsequent licensor). In the event of any such sale, assignment or transfer, such obligations shall thereafter be binding upon the grantee, assignee or other transferee of such interest, and any such grantee, assignee or transferee, by accepting such interest, shall be deemed to have assumed such obligations. A lease of the entire Building shall be deemed a transfer within the meaning of the foregoing sentence.

Neither the partners (direct or indirect) comprising Licensor, nor the shareholders of Licensor (nor of the partners comprising same), nor any of the partners, shareholders, directors or officers of any of foregoing (collectively, the Licensor's Parties") shall be personally liable for the performance of Licensor's obligations under this Agreement. Licensee shall look solely to Licensor to enforce Licensor's obligations hereunder and shall not seek any damages against any of the Licensor's Parties. Notwithstanding anything contained in this Agreement to the contrary, Licensee acknowledges and agrees that Licensee shall look solely to the estate and interest of Licensor, its successors and assigns, in the Building, and the real property on which it is situated, for the collection of any judgment recovered against, or liability of, Licensor by reason of Licensor's breach of this Agreement or otherwise, and no other property or assets of Licensor or any of Licensor's Parties shall be subject to levy, execution, or other enforcement procedures for the satisfaction Licensee's remedies under or with respect to either this Agreement, the relationship of Licensor and Licensee hereunder, or Licensee's use of space licensed to Licensee hereunder.

33. **Entire Agreement**

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

34. **Headings**

The descriptive heading of the several paragraphs of this Agreement are inserted for convenience an ease of reference only and do not constitute part of this Agreement.



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

Licensor
1 Richmond Street West Holdings Limited,
by its manager **Tandem Property Management Inc.**

Licensee:
TELUS Communications Inc.

By:  _____

Name: DAVID JOHNSON
Title: PRES. TSC I

By:  _____

Name: ROBERT BEATTY
Title: MVP BUILDING ACCESS

EXHIBIT D - Access Request Form

(a) Mr. or Ms. _____, of _____ (company), requests permission to access telecommunications equipment within the Building Communications Spaces of _____ on _____ (date), at approximately _____ am/pm.

(b) For the purpose of _____ (detail below if necessary). The expected number of existing House cable pairs affected by this action is _____

Will new or additional equipment be located within the telephone closets? _____ (yes) (no). Please describe any new/additional equipment being placed in the telephone closet on floor(s) _____.

License Agreement # _____

(e) The expected duration of this visit is _____ (hours/days).

Licensee _____

(Name of Company)

By: _____

(Authorized Agent)

Date: _____



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EXHIBIT E'
SCHEDULE "C"

RULES AND REGULATIONS FORMING PART OF THE WITHIN LEASE

1. The sidewalk, entry passages, elevators, fire escapes and common stairways of the Building and the Complex shall not be obstructed by any of the tenants or used by them for any other purpose other than for ingress and egress to and from their respective demised premises. Tenants will not place or allow to be placed in the building corridors or public stairways any waste paper, dust, garbage, refuse or anything whatever that would tend to make them unclean or untidy.
2. The skylights and windows that reflect or admit light into passageways and common areas of the Building and the Complex shall not be covered or obstructed by any of the tenants, and no awnings shall be put up, without the prior written consent of the Landlord. (The Landlord shall supply and install standard window coverings for premises occupied by tenants in the Building).
3. The water-closets and other water apparatus shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or other substances shall be thrown therein. Any damage resulting by misuse shall be borne by the Tenant by whom or whose agents, servants or employees the same is caused. Tenants shall not let the water run unless in actual use, nor shall they deface any part of the Building or the Complex.
4. No Tenant shall do or permit anything to be done in the Premises or being 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.
5. Tenants, their clerks or servants, shall not make or commit any improper noises in the Building or the Complex, lounge about doors or corridors or interfere in any way with other tenants or those having business with them.
6. Nothing shall be thrown by the tenants, their clerks or servants, out of windows or doors, or down the passages, plumbing apparatus, elevator shafts or skylights of the Building or the Complex.
7. No birds or animals shall be kept in or about the Premises nor shall the tenants operate or permit to be operated any musical or sound producing instrument or device inside or outside the Premises which may be heard outside the Premises.
8. No one shall use the Premises for sleeping apartments or residential purposes, or for the storage of personal effects or articles other than required for business purposes.
9. The Landlord shall have the right:
 - (a) to require all persons entering or leaving the Building or Complex during such hours as the Landlord may reasonably determine, to identify themselves to a watchman by registration or otherwise to establish their right to enter or leave; and
 - (b) to exclude or expel any peddler or beggar at any time from the Premises, the Building or the Complex; and
 - (c) to institute, at the Landlord's option, a system whereby access to the Building or the Complex during such hours as the Landlord may reasonably determine, is only available by means of an identity card which may contain a photograph of the bearer, and if the Landlord institutes such system the Landlord shall make such cards available and the Tenant shall pay the Landlord the cost of such cards and photographs.
10. It shall be the duty of the respective Tenants to assist and co-operate with the Landlord in preventing injury to the premises demised to them respectively.



11. No flammable oils or other flammable, dangerous or explosive materials shall be kept or permitted to be kept in the Premises.

12. Furniture, effects and supplies shall not be taken into or removed from the Building or the Premises, except at such time and in such manner as may be previously approved by the Landlord, which approval shall include permission to use entrances, doorways and elevators at certain times for such purposes, and upon such terms (including payment of any usual charges for the use of elevators) as the Landlord shall impose.

13. No bicycles or other vehicles shall be brought within the Building or the Complex except in the parking garage or such other areas designated by the Landlord from time to time, and then only in compliance with the rules and regulations as established and in force from time to time for the use of the said parking garage.

14. Business machines, filing cabinets, heavy merchandise or other articles liable to overload, injure or destroy any part of the Building or the Complex shall not be taken into it without the prior written consent of the Landlord, and the Landlord shall in all cases retain the right to prescribe the weight and proper position of all such articles and the times and routes for moving them into or out of the Building and the Complex; the cost of repairing any damage done to the Building or the Complex by such moving or by keeping any such articles on the Premises shall be paid by the Tenant.

15. The Tenant shall not change any locks nor place any additional lock upon any door of the Premises without the prior written consent of the Landlord. The Tenant shall be responsible for all locks and all keys to such locks and shall return all keys to the Landlord upon termination of the Lease.

16. The Tenant shall give the Landlord prompt notice of any accident to or any defect in the plumbing, heating, air-conditioning, mechanical or electrical apparatus or any other party of the Building or the Complex.

17. The Tenant shall not install or permit the installation or use of any machine dispensing goods for sale in the Premises or the Building or permit the delivery of any food or beverage to the Building without the prior written approval of the Landlord or in contravention of any regulations fixed or to be fixed by the Landlord. Only persons authorized by the Landlord shall be permitted to deliver or to use the elevators in the Building for the purpose of delivering food or beverages to the Premises.

18. There shall be no cooking or food preparation in the Premises.

19. The Tenant shall at the end of each business day leave the Premises in a reasonably tidy condition for the purpose of allowing the performance of the Landlord's cleaning services.

20. The Landlord shall have the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care, cleanliness and appearance of the Premises, the Building and the Complex, and for the preservation of good order therein, and the same shall be kept and observed by the tenants and their employees and invitees.

