

TELECOMMUNICATIONS LICENSE AGREEMENT
for 144 -146 Front Street West, Toronto

THIS AGREEMENT made as of the 21st day of January, 2002

BETWEEN:

O&Y Enterprise Real Estate Services, a division of
O&Y Properties Inc. (as agents for the owners, Lead Sky
Enterprises Ltd.)
(the "Licensor")

- and -

TELUS Communications Inc.
(the "Licensee")

WHEREAS:

1. The Licensor owns or co-owns the Building located on land in the City of Toronto and legally described in Schedule "A" attached hereto (the "Lands");
2. In order to provide telecommunications services in the Building, the Licensee requires a license to access and use the Premises and certain other space on the Lands and in the Building to install, connect, test, operate, maintain, repair, disconnect, replace and remove the Equipment ;
3. The Licensor has agreed to grant the Licensee the license it requires on the terms and conditions set out herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this License and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1 Definitions And Interpretation

1.1 The Schedules referred to in this License and attached hereto are deemed to be incorporated herein and include the following:

- (a) Schedule "A" - The Lands;
- (b) Schedule "B" - Plan of the Equipment Room;
- (c) Schedule "C" - Definitions and Interpretation;

(d) *SCHEDULE "D" - TERMINATION FOR DEMOLITION* ^M
as amended from time to time, and such additional schedules as the parties may hereafter agree in writing to include in this Agreement.

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2. Grant

2.1 The Licensor grants the Licensee the right to operate the Equipment in order to provide telecommunications services to the tenants of the Building, other occupants of the Building and, if mandated by the CRTC to allow other telecommunication service providers to cross-connect to the Equipment, upon written notice to the Licensor and in accordance with Section 6(a). In order to provide such services, the Licensee may, in accordance with this Agreement:

- (a) install, connect, test, operate, maintain, repair, disconnect, replace and remove the Equipment;
- (b) use the Building, Premises and Lands including the Entrance Link, the Main Distribution Frame, and all Pathways, as required for the provision of telecommunication services;
- (c) connect the Entrance Cable to the Licensee Equipment and to the Main Distribution Frame; and
- (d) connect the Licensee Equipment to the In-Building Wire and with the approval of the Licensor, to other equipment in the Building or on the Lands including the electric power distributing system within the Building.

2.2 In order that the Licensee has the access required to exercise the rights granted above, Licensor grants the following licenses regarding access:

- (a) an exclusive license to access and use the Premises;
- (b) an exclusive license to access and use the Licensee Dedicated Conduit within the Pathways (if applicable); and
- (c) a non-exclusive license to access and use all portions of the Lands, including the Building, necessary to bring the Entrance Cable from the property line of the Lands through the Entrance Link of the Building, the Main Distribution Frame and all Pathways associated with the Premises, Building and Lands.

2.3 All access granted herein may be exercised by the Licensee twenty-four (24) hours per day, three-hundred and sixty-five (365) days per year subject to:

- (a) the Licensor's reasonable security requirements;
- (b) Licensor's emergencies; and
- (c) any event of force majeure as provided in paragraph 27.

2.4 This License shall not constitute a right by the Licensee to have or claim a property interest in, or leasehold interest in any part of the Lands or the Building.

2.5 The Licensee accepts such licenses and access in relation to them on an "as is/where is" basis.

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3. Licensee Fee and Additional Costs

3.1 This Agreement is fully net to the Licensor.

3.2 The Licensee shall pay to the Licensor an annual fee of \$0.03 per gross leasable area of the Building, plus G.S.T. ("License Fee"). The License Fee shall be subject to adjustment based on the actual gross leasable area of the Building as determined by the Licensor's Architect in accordance with BOMA's standards (using the ANSI/BOMA Z65.1-1996 Standard). The Licensor's Architect's Certificate as to the gross leasable area of the Building measured as aforesaid shall be conclusive. At the time of signing of this agreement it is understood that the gross leasable area of the Building is ~~144,255~~ ^{145,255} square feet therefore the annual fee is ~~\$4,327.65~~ ^{\$4,357.65} plus G.S.T..

3.3 The Licensee agrees to pay the License Fee to the Licensor without any set-off, deduction or abatement whatsoever and shall do so in the following manner. The Licensee shall pay the entire annual License Fee to the Licensor, in advance on the Commencement Date and thereafter on the anniversary date of such Commencement Date in each succeeding year throughout the Term.

3.4 In addition to the License Fee, the Licensee agrees to pay for all other expenses, without duplication, incurred by the Licensor related to the licences granted by way this Agreement, including in connection with the operation, installation, repair, maintenance, alteration, replacement and removal of the Licensee Equipment, and for all expenses related to the operation, maintenance and repair of the Equipment Room, including without limitation:

(a) a pro-rated share of the Licensor's costs of heating, ventilating and air-conditioning supplied to the Equipment Room which share is calculated by multiplying the total of such costs by a fraction, the numerator of which is the total area of the Premises and the denominator of which is the total area of the Equipment Room;

charges for the Licensee's electricity usage which shall be based on actual readings from a submeter installed by the Licensee at its cost;

any business taxes, realty taxes and other taxes imposed upon the Licensor, (save and except any income or capital taxes), on account of the Equipment being anywhere on the Lands and/or in the Building, including in the Equipment Room and Pathways; and

if no Equipment Room exists in the Building, a pro-rated share of the Licensor's initial capital cost of the construction and installation of the Equipment Room, which includes the cost of providing centrally located electrical services suitable for reconnection to the Licensee's submeter in the Equipment Room, the cost of providing and/or upgrading air-conditioning equipment within the Equipment Room and the cost of providing suitable security devices in the Equipment Room with "pro rated" being determined in the manner set out in Section 3.4(a) above.

3.5 If the Licensee fails to pay when due any amounts due under this Agreement, interest shall accrue on the unpaid amount from the due date to the date of payment at the rate per annum which is 2% above the then current prime interest rate charged by the Licensor's bank and shall be payable by the Licensee to the Licensor forthwith on demand.

	
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4. Term and Renewal Term

4.1 The term of this Agreement will be for five years (the "Term") commencing the date first above written (the "Commencement Date") and expiring January 20th, 2007 unless earlier terminated or subsequently renewed as provided for herein.

NON LICENSEE PROVIDING SIX (6) MONTHS WRITTEN NOTICE PRIOR TO THE END OF THE TERM,

4.2 Provided that the Licensee ^{HAVE A RIGHT TO} is not in default of any of its obligations under this Agreement, this Agreement will ~~be automatically be renewed~~ for one (1) period of five (5) years (the "Renewal Term"), unless the Licensee gives the Licensor at least one hundred and twenty (120) days written notice prior to the end of the Term of the Licensee's intention not to renew. The Renewal Term will be governed by the terms and conditions set out herein except for any further right to renew and the amount of the License Fee which will be determined and paid in accordance with Sections 4.3 and 4.4.

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4.3 The annual License Fee to be paid during the Renewal Term will be determined by agreement between the parties. ~~If the parties cannot agree to the annual License Fee payable during the Renewal Term by no later than ninety (90) days prior to the expiration of the Term, the parties will mutually select an independent evaluator to prepare an evaluation of then current license fees charged in the market for similar licences and access rights and, based on such evaluation, determine the annual License Fee payable during the Renewal Term. Both parties agree to be bound by the decision of the evaluator. The evaluator, at his or her absolute discretion, may accept information from either or both parties, and the cost of the evaluation will be shared equally by the parties. If the parties cannot agree to an independent evaluator by no later than sixty (60) days prior to the commencement of the Renewal Term, either party may, by notice to the other, submit the matter of the annual License Fee payable during the Renewal Term to arbitration in accordance with the provisions of Section 28.~~

4.4 If the determination of the amount of the annual License Fee payable during the Renewal Term is delayed beyond the commencement of the Renewal Term, the Licensee will continue to pay the License Fee in the amount payable during the Term. When the annual License Fee for the Renewal Term is determined, the Licensor will refund any overpayment of the License Fee or the Licensee will pay any deficiency in the License Fee, as applicable.

IF THE LICENSEE FEE OR ANY OTHER TERM OF THE RENEWAL HAS NOT BEEN DETERMINED PRIOR TO THE COMMENCEMENT DATE OF THE RENEWAL TERM, THE LICENSEE WILL BE CONSIDERED A MONTH TO MONTH TENANT.

5. Installation & Maintenance of Licensee's Equipment

The Licensee agrees to obtain all required permits and approvals at its cost prior to installing any Equipment and prior to making any changes, additions, improvements or alterations to same. All Equipment that the Licensee intends on installing or improving or altering is subject to the prior approval of the Licensor, and is to be installed, improved or altered in accordance with plans and specifications approved by the Licensor and by contractors approved by the Licensor, and same shall be subject to supervision by the Licensor. All such approvals shall not be unreasonably withheld or delayed. The Licensee agrees that it shall be the Licensee's sole obligation to operate, maintain, repair and replace all of the Equipment. Notwithstanding the foregoing, the Licensor shall have the right in cases of emergency, without notice to the Licensee, to maintain or repair or replace all of any part of the Equipment which cost shall be paid for by the Licensee, but this shall not imply any obligation on the part of the Licensor to do so.

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Upon installation of the Equipment the Licensee agrees to provide the Licensor with a list of the Equipment installed.

6. Cable Provisions

Provisions of this Section are included in this Agreement to define the relationship between the Licensor and Licensee with respect to the installation and operation of Cable in the Building, and the use of Pathways.

(a) Licensee's Cable

During the Term of this Agreement, the Licensee shall be granted access to the Pathways for the purpose of installing the Entrance Cable and the Licensee In-Building Wire for the Licensee's sole use in the Pathways in quantities and in accordance with specifications, in both cases, first approved by the Licensor, such approval not to be unreasonably withheld or delayed. Any installation work, or other work undertaken by the Licensee, shall be performed only by an approved contractor, authorized by the Licensor to perform the work within the Building. Prior to commencement of the work, the Licensee shall provide the Licensor with plans and specifications as required by the Licensor acting reasonably. The Licensee shall not begin any work until the Licensor's written approval (not to be unreasonably withheld or delayed) of the plans and specifications has been received. At the time of submitting a written request for such approval to the Licensor, the Licensee shall provide the Licensor with complete information relating to the work to be performed and the specifications related to the Entrance Cable and Licensee In-Building Wire to be installed and information related to the installation, operation, repair and maintenance thereof (including without limitation, all permits, governmental approvals, technical plans and specifications, drawings, weight, proposed installation, location, power supply sources and all ancillary and related work).

The Licensee acknowledges and agrees that the Licensor may, due to a lack of same, withhold its approval to the use of the existing vertical pathways in the Building and the Licensor will, in such event, provide the Licensee with Licensee Dedicated Conduit as required by the Licensee, but at the Licensee's sole cost.

The Licensee shall keep accurate and up to date, a detailed inventory, description and location plan of all the Entrance Cable and Licensee In-Building Wire which the Licensee installs in the Building and shall provide such information to the Licensor without cost upon request.

Except as required and mandated by the CRTC, the Licensee shall not cross-connect or permit cross-connection of the In-Building Wire to that of any other telecommunications carrier without the Licensor's written approval. The Licensee shall immediately notify the Licensor of any cross-connection request received by the Licensee so that appropriate agreements can be executed between the requesting party and the Licensor regarding use and access within the Building. To "cross-connect" means to connect one wire or cable under the management and control or ownership of another carrier by anchoring each wire to a connecting block and placing a third wire between the two, or by any other means and any other connection of the telecommunication system or any of its

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components that is under the management, control or ownership of a carrier to a system or any component of another carrier.

(b) Management of Telecommunications Pathways and Cable

- (i) At any time during the Term of this Agreement, the Licensor may undertake to provide a structured program of management of the Building's Pathways and/or Cable. Such management may be performed by the Licensor's appointed designate at the Licensor's sole discretion (the "Riser Manager"). Upon implementation of this management function by a Riser Manager, the Licensee may be required to pay its share of "Infrastructure Management Fees" for its use of the Pathways and management of Cable in the Building, which will be determined in a non-discriminatory and reasonable manner as agreed to by the parties and failing agreement as determined by arbitration in accordance with Article 28. Infrastructure Management Fees include, but are not necessarily limited to, the costs associated with providing access to the Pathways, maintaining an inventory of Cable, and general clean up and maintenance of the Pathways and the fees of the Riser Manager.
- (ii) In the event the Licensor itself, undertakes to provide a structured program of management of the Building's Pathways and/or Cable, the Licensee may be required to pay a share of the Licensor's actual out of pocket costs associated with such management, which out of pocket costs will be determined in a non-discriminatory and reasonable manner as agreed to by the parties and failing agreement as determined by arbitration in accordance with Article 28, and the standard administration fee in respect of the Building, which administration fee will not exceed 21% of the out of pocket costs.

(c) Licensor to Install and Operate a CDS

- (i) During the Term or any Renewal Term, the Licensor may undertake to provide or install a CDS to satisfy the collective Cable requirements of all service providers and occupants of the Building or any of them.
- (ii) The installation of a CDS during the Term shall not affect the rights and access granted to the Licensee or the ability of the Licensee to provide telecommunication services to tenants or occupants of the Building pursuant to the terms and conditions of this Agreement, including, but not limited to Sections 2.1 and 2.2. In the event the Licensor installs a CDS during the Renewal Term, any telecommunication services offered by the Licensee to any tenants or occupants of the Building that were not existing customers of the Licensee prior to installation of the CDS, shall be delivered through the CDS pursuant to the terms and conditions of a CDS usage agreement, as may be entered into by the parties. In the event the parties are unable to agree to the terms and conditions of the CDS usage agreement, the Licensee may not provide telecommunication services to tenants or occupants of the Building that were not existing customers of the Licensee prior to installation of the CDS, although the Licensee may complete its obligations to any customer existing prior to installation of the CDS pursuant to the terms of this Agreement during the Term and any Renewal Term.

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In the event the Licensor installs a CDS, pursuant to subparagraph (i) above, the Licensor and Licensee mutually agree to enter into good faith negotiations in an attempt to enter into a CDS usage agreement satisfactory to each.

If the Licensor establishes a CDS and a CDS usage agreement is entered into between the parties, the Licensor (a) it will maintain, repair, replace and upgrade the CDS in order to maintain appropriate service standards and ensure that it is so maintained, repaired, replaced or upgraded, (b) will act expeditiously to ensure that any problems that the Licensee may report with respect to the Licensee's use of the CDS are repaired or corrected, and (c) may alter the CDS.

If at the expiration of the Term the parties enter into a CDS usage agreement, the use of the CDS will be subject to reasonable connection and usage fees, as may be agreed to by the parties.

7. Certain Specific Licensee Obligations

The Licensee shall:

- (a) conduct all activity in a first class manner consistent with a first class building, be responsible for all aspects of the operation of all of the Equipment, and ensure that its activities in the Building do not interfere with the normal operation of the Building;
- (b) abide by all rules and regulations of the Licensor of which it receives written notice, provided such rules and regulations do not materially affect the rights and access granted herein to the Licensee;
- (c) ensure that its employees, agents and contractors engaged in the activities permitted by this Agreement, (i) abide by all of the terms of this Agreement, (ii) at all times conduct themselves in a first-class manner; and (iii) maintain a professional appearance and demeanor;
- (d) not canvass any persons, nor distribute handbills, flyers or any other promotional or advertising material in any part of the Building without the Licensor's prior written consent;
- (e) not commit or permit waste upon or damage to the Building or any nuisance or other act that disturbs the quiet enjoyment of tenants or occupants of the Building, including without limitation, use of loudspeakers or other promotional equipment or material;
- (f) not do or permit anything to be done in the Building that hinders or interrupts the flow of traffic to in and from the Building or obstructs the free movement of persons in, to or from the Building;
- (g) not engage in any business conduct other than that permitted under this Agreement;
- (h) not keep, use or store in or upon the Building any material which may be prohibited by hazardous materials legislation or by any fire insurance policy covering the Building;

	
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- (i) ensure that no construction or other lien is registered or filed against the Building and prohibit any contractor retained by it and each of their subcontractors from doing any work relating to installation, repair or restoration of improvements or equipment, in any of the Building, if the contractor or subcontractor is not in good standing under applicable worker compensation insurance requirements;
- (j) prior to installation, servicing, removal or performance of any work which the Licensee wishes to perform, obtain the Licensor's approval, not to be unreasonably withheld or delayed, as to the timing and methods of the installation, servicing, and removal of work and use only those service access facilities as are designated from time to time by the Licensor;
- (k) at all times, maintain as built drawings identifying all the Licensee In-Building Wire and the Entrance Cable and other improvements installed in the Building with the Licensor's consent and shall ensure that each such item and in particular, the Licensee In-Building Wire and the Entrance Cable, is physically labeled in a manner and in locations approved by the Licensor;
- (l) comply with all pertinent laws, regulations and by-laws, including obtaining all municipal or other governmental or non-governmental regulatory approvals, licenses or permits that are needed to enable it to use the Equipment, in accordance with this Agreement;
- (m) comply with all rules and regulations imposed by the CRTC;

obtain and negotiate any and all required municipal access agreements;

comply with the provisions of health and safety legislation in force in that it is solely responsible for the health and safety of all its employees with respect to the obligations of the Licensee hereunder;

keep and maintain the Licensee Equipment and the Premises clean and tidy, be solely responsible for repairs to the Licensee Equipment and the Premises, and avoid making or causing clutter, untidiness, or causing the need for repairs in or to the Pathways or any other part of the Building. If, as a result of the Licensee's activities within the Building, the Licensor incurs any additional cleaning or maintenance costs or expenses, the Licensee shall be responsible to pay any such additional costs, forthwith upon receipt of an invoice from the Licensor;

- (q) pursue joint planning with other telecommunication services providers operating or intending to operate in the Building;
- (r) pay to the Licensor, within 30 days of each invoice, the actual out of pocket costs (including an administration fee of 25% of the cost) for extra security services provided or required by the Licensor to be provided in connection with any access required by the Licensee in connection with its rights under this Agreement, and in connection with any work performed by or on behalf of the Licensee;

	
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- (s) pay to the Licensor within 30 days after each invoice is submitted to it by the Licensor, the Licensor's actual out of pocket costs of having any plans and specifications of the Licensee reviewed by its consultants, plus an administration fee equal to 25% of the cost;
- (t) following completion of the initial installation and any additional modifications, replacement or upgrades, if any, provide the Licensor with a certificate of a professional engineer acceptable to the Licensor, certifying that the installation of all Equipment has been carried out in accordance with the plans and specifications approved by the Licensor and its consultants.

8. Licensor's Representation and Warranty and Covenants

8.1 The Licensor represents and warrants that it has sufficient right, title and interest in the Lands, the Building and the Premises to grant this License to the Licensee.

8.2 The Licensor covenants with the Licensee as follows:

- (a) to not enter the Premises except in the case of an emergency, meaning a risk that a situation where injury or death or where damage to the Premises, the Building or the Licensor's property may exist; and,
- (b) to cooperate with the Licensee if required, 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' installation, connection, testing, operation, maintenance, repair, disconnection, replacement and removal of the Equipment, and/or the provision of telecommunications services by the Licensee. To this end, 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 to obtain the release of any information with respect to the Premises, Building or Lands from any person, all at the Licensee's expense.

9. Signal Interference

The Licensee shall take all steps necessary to ensure that all Equipment does not unreasonably interfere with or unreasonably disturb the operation of any equipment of the Licensor or the equipment of other licensees or the use and occupation of the Building by tenants or occupants of it. Should any such interference develop, the Licensee shall forthwith rectify and diligently pursue the rectification of such interference immediately upon being requested by the Licensor to do so. The cause of the interference will be determined and, if the Licensee is responsible for the interference, the Licensee, at its cost, shall take immediate steps (including the installation of filters, if necessary) to reduce the interference to a level considered acceptable by Industry Canada, or such other federal agency as at the time has jurisdiction or as determined by the Licensor, acting reasonably. Even if the Equipment is not the primary cause of the interference, if considerations of cost or engineering simplicity indicate that a modification to the Equipment is the most expedient solution to an interference problem, the Licensee agrees to do such modifications, so long as (i) any such modification does not materially degrade the performance

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of the Equipment, and (ii) the cost of making such modification is borne by the party whose equipment is, in fact, the primary cause of the interference. If the interference is determined to be as the primary result of the Equipment and cannot be rectified by the Licensee within seven (7) days of notice being provided to the Licensee, then the Licensor may terminate this Agreement and the Licensee will remove all of its Equipment from the Building according to this Agreement.

10. Relocation of Equipment Room and/or Licensee Equipment

- (a) The Licensor can, at any time, relocate the Equipment Room within the Building and the Licensee shall, at the Licensor's request, upon no less than 60 days prior notice to the Licensee, relocate the Licensee Equipment to the relocated Equipment Room at the Licensor's sole cost and expense.

If the Licensor requires the Licensee to relocate all or any portion of the Licensee Equipment in any Building, the Licensee will do so within 60 days of written notice from the Licensor, to an alternative location within the Building, designated by the Licensor which location shall be sufficient to allow the Licensee to provide the type, level and quality of services provided by it prior to such relocation. In the event of any relocation, the Licensor shall be responsible, at its cost for all reasonable work needed to be done to the Equipment Room to accommodate the Licensee Equipment and for the reasonable costs of physically relocating such equipment. In no event, however, will the Licensor be responsible for any other costs incurred by the Licensee as a result of any relocation such as, for example, any lost revenue or the cost of new equipment. If the Licensee fails to relocate any such Equipment as requested by the Licensor within the time specified by the Licensor, then the Licensor may remove the Equipment at the Licensee's expense, and without any liability on the part of the Licensor for any loss, cost, damage or expense arising from, or connected with that action by the Licensor, whether or not the Licensor is negligent.

11. Control and Management of Project

11.1 The Building shall at all times be under the exclusive control and management of the Licensor. The Licensor may from time to time alter, expand, diminish, operate, renovate, remerchandise and supervise the Building including the "Common Facilities", and may change its areas, locations and arrangements and do whatever else to it that the Licensor determines to be advisable. "Common Facilities" are those elements of the Building (including but not limited to the Pathways) that are not intended for leasing and that serve the operation of the Building, but Common Facilities do not include any Common Infrastructure. During the business hours for the Building, the Licensee shall have a non-exclusive right to use, in compliance with the Licensor's rules and regulations, and in common with all other persons entitled to use them, the parts of the Common Facilities appropriate, intended and designated from time to time by the Licensor for that use.

In its control and management of the Building the Licensor shall provide the Licensee with a reasonable amount of prior written notice of any intentional power interruption that is scheduled for the Building.

	
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12. Removal of Equipment

12.1 The Licensee shall at its expense, remove all Equipment at the expiry or termination of this Agreement, repairing, within a reasonable time frame of the expiration or termination, any damage caused by the Licensee to the reasonable satisfaction of Licensor. In the alternative, the Licensee may transfer ownership of all Equipment to the Licensor on such terms and conditions as agreed to by the parties pursuant to Section 12.2 below.

12.2 The Licensor and Licensee agree that all Equipment is and will remain the property of the Licensee following the expiration or termination of this Agreement and that the Equipment will not be considered fixtures, notwithstanding that all or some of it may be affixed to the Building, Premises or the Lands. For further certainty, without limiting the generality of the foregoing, the Licensor may not incorporate the Licensee In-Building Wire into any CDS except with the prior written consent of the Licensee on terms and conditions (including those relating to consideration) acceptable to the Licensee.

13. Insurance

13.1 The Licensee shall maintain in force, at its expense, during the Term of this Agreement and any Renewal Term, a policy of Commercial General Liability Insurance issued by an insurer acceptable to the Licensor insuring the Licensee and, as additional insureds, the Licensor, the legal owners of the Building, any property manager or any lender that holds security on the Building that the Licensor may reasonably designate by written notice, only in respect of matters related to the operations of the Licensee in the Building, with a combined single limit of Ten Million Dollars (\$10,000,000.00) for injury or death or property damage including damage to the Building and any property of Licensor in the Building, the legal owners of the Building, or injury or death of Licensor's or legal owners' employees, or any injury or loss suffered by any of the customers of the Licensee and their employees in the Building. The Licensee's liability insurance will contain owners' and contractors' protective coverage, contingent employer's liability insurance, a cross liability and severability of interests clause, will be written an occurrence basis, and will provide protection against economic and consequential loss.

13.2 The Licensee will also maintain an automobile liability insurance policy.

13.3 The Licensee shall maintain all risk property insurance on the Equipment in sufficient amounts to cover any loss thereof, with waiver of subrogation against the Licensor.

13.4 The Licensee's insurance shall contain provisions providing that such insurance shall be primary insurance insofar as the Licensor, the legal owners and the Licensee are concerned, with any other insurance maintained by the Licensor and legal owners of the Building being excess and non-contributing with the insurance of the Licensee required hereunder and providing coverage for the contractual liability of the Licensee to indemnify the Licensor pursuant to Sections 15(a) and (b) below. The Licensee shall obtain the agreement of the Licensee's insurers to provide proof of such insurance to the Licensor prior to commencement of any construction and to notify the Licensor, in writing, that a policy is cancelled or materially changed at least 30 days prior to such cancellation or material change.

	
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14. Release

In no event will the Licensor be liable to the Licensee and the Licensee releases the Licensor for:

- (a) any damage to the Equipment and Premises or loss of use of such property;
- (b) the quality, adequacy, compatibility or sufficiency of any Pathways provided to the Licensee hereunder, it being acknowledged by the Licensee that all Pathways are provided "as is" and "where is", the use of which is at the sole risk of the Licensee;
- (c) the activities of any third party, under the terms of another telecommunications access license or similar agreement, whether or not the party has been escorted while within the Building;
- (d) any claims resulting from lightening or other electrical current passing through the Building or facilities that cause any damage to the Licensee's Equipment or result in the interruption of any service by the Licensee; and

the inadequacy of any utility service, or the loss of or the failure to provide any utility service save and except for the failure of the Licensor to provide reasonable prior written notice in accordance with Section 11.2. The Licensee acknowledges that interruptions in the supply of any services, systems or utilities are not uncommon in office buildings and the Licensee further acknowledges that any sensitive Equipment in and on the Building will be protected by the Licensee from any failure in supply or interruptions through the use of a UPS system, surge protectors and other appropriate safety systems.

This release extends to any negligent acts or omissions of the Licensor but not to any grossly negligent or willful acts or omissions of the Licensor.

Other than as expressly provided for in this Agreement, there are no other warranties, representations, conditions or guarantees of any kind provided by the Licensor to the Licensee, either express or implied, whether by statute, agreement, tort, product liability, other theory of law, or otherwise, regarding this Agreement or the privileges afforded to the Licensee pursuant to this Agreement.

Indemnity

The Licensee shall indemnify and hold the Licensor and legal owners of the Building and their officers, directors and employees harmless from and against any claims, losses, costs, damages, expenses and legal fees on a solicitor and own client basis for liability resulting from:

- (i) the construction, installation, operation, maintenance, repair and removal of the Equipment; and
- (ii) the Licensee's use of and access to the Building as provided in this Agreement,

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including any claims or demands made by customers of the Licensee or users of the Equipment in the Building, arising directly or indirectly from any act, omission or negligence of the Licensee.

The Licensee shall indemnify and hold the Licensor and the legal owners of the Building and their officers, directors and employees harmless from and against claims, losses, costs, damages and expenses for liability resulting from bodily injury or property damage and any resultant economic and consequential loss only, made by the Licensee or customers of the Licensee or users of the Equipment, which are a direct result of the acts, omissions or negligence of the Licensor and legal owners of the Building to the maximum amount of Ten Million (\$10,000,000.00) Dollars.

- (c) Notwithstanding anything contained in this Agreement, in no event is the Licensee required to indemnify and hold harmless the Licensor or legal owners and their officers, directors and employees, or any other person or entity from and against any claims, losses, costs, damages and expenses and legal fees on a solicitor and own client basis arising directly or indirectly from any act, omission or negligence of any Riser Manager in accordance with Section 6(b) or pursuant to any CDS in accordance with Section 6(c) of this Agreement.
- (d) The provisions of this Article 15 shall survive termination or the expiration of this Agreement for the applicable statutory periods regarding limitation of actions or claims.

Expanded Meaning of Licensor – Agency and Trust

Wherever a release or indemnity clause is provided for under this Agreement in favour of the Licensor, it will be deemed to include also the legal owner or legal owners of the Building, and any tenant that leases the entire building, and any property manager with responsibility for managing the Building, and their respective officers, directors, and employees. The group of persons and entities referred to in the preceding sentence is referred to as the “Released Persons” individually and collectively. The Licensor acts as agent or trustee for the benefit of the Released Persons, and each of them, to allow them to enforce the benefit of this provision as well as the benefit of each release and indemnity clause in this Agreement that is intended to benefit them.

17. Default

If the Licensee defaults in the payment of any money required to be paid by Licensee under this Agreement and the default continues for a period of 5 business days after written notice has been given by the Licensor to the Licensee, the Licensor may terminate this Agreement without prejudice to its other remedies at law or in equity (including the right to claim damages). If the Licensee defaults in respect of any other provision of this Agreement and the default is not cured within 10 business days after written notice from the Licensor, then the Licensor may terminate this Agreement without prejudice to its other remedies at law or in equity (including the right to claim damages). If the Licensee makes an assignment for the benefit of creditors or becomes bankrupt or insolvent, or a receiver or manager is appointed in respect of any substantial part of the Licensee’s assets and undertaking, or if a judgment is obtained against the Licensee and execution is levied against a material portion of the Licensee’s assets having regard to the overall assets and undertaking of the Licensee, or if the Licensee takes proceedings for winding up, liquidation, or for dissolution of its assets, the Licensor may, without notice, terminate this

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Agreement without prejudice to its other remedies at law or in equity (including the right to claim damages). Each of the events described above in the preceding sentence will be considered as a default under this Agreement.

18. Transfer

This Agreement may not be assigned or transferred in whole or in part by the Licensee to another(s), including any lender, without the consent of the Licensor, not to be unreasonably withheld or delayed and the Licensee will not be entitled to sub-license to or enter into co-usage or sharing agreements with other suppliers of services. (The kinds of transactions referred to above are called "Transfers" in this Section.) No Transfer will be permitted unless the transferee enters into an agreement with the Licensor, in a form approved by the Licensor (acting reasonably) prepared at the expense of the Licensee or the transferee, in which the transferee agrees to be bound by this Agreement. It will be considered reasonable (without limiting the Licensor's right to withhold consent on other reasonable grounds) for the Licensor to withhold consent, to the extent that amounts or other value is or are paid or provided to the Licensee in connection with a Transfer and the amount or value reflects benefits primarily associated with the size, nature or location of the Building. If there is a dispute in that regard it will be determined by arbitration in accordance with Section 28. The restrictions and requirements set out above in this Section will not be enforced to the extent that any of them is, or are, found to contravene the laws and regulations administered by the CRTC. The Licensor may assign or transfer this Agreement to any person or entity. Notwithstanding the above, the Licensee may without the consent of the Licensor but, on at least thirty (30) days prior written notice to the Licensor, assign this Agreement, in whole or in part, to an Affiliate so long as the Affiliate remains an Affiliate of Telus Communications Inc. and so long as such Affiliate enters into an assignment or other agreement with the Licensor agreeing to be bound by the terms of this Agreement.

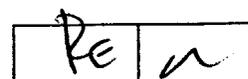
19. Financing of Equipment

The Licensee may, without the consent of but on prior written notice to the Licensor, grant security by way of a mortgage, charge, general security agreement or otherwise in respect of the Licensee's Equipment (but not in respect of In-Building Wire or conduits associated with it or, not in respect of any part of the Building including, any permanent fixtures, or any improvements to the Building) to a bank or other financial institution. The Licensee will not cause or permit any charge, security interest, mortgage, or encumbrance, or any notice of them to be registered against title to the Building.

20. Termination Rights

Either party may terminate this Agreement on 30 days' prior written notice to the other in the following circumstances:

- (a) if the Building is substantially damaged and the Licensor determines that it will take longer than 180 days to restore it; or
- (b) if the Equipment Room is damaged and in the Licensor's opinion it will take longer than 90 days to restore it; or

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LICENSOR LICENSEE

- (c) if all or any portion of the Building is expropriated; but in this case the Licensee can only terminate if, in the Licensor's opinion, it is not feasible to relocate any part of the Equipment which may be required to be relocated; or
- (d) if the Licensor elects to redevelop a substantial portion of the Building or elects to convert a portion of the Building to other uses and, as the result of the development or conversion of use, it is, in the Licensor's opinion, not feasible to relocate any part of the Equipment which may require to be relocated in connection with the redevelopment or conversion of use; or
- (e) if the Licensee has not provided any telecommunication services to any tenants or occupants of the Building (in that it has no customers) for a period of at least 120 days.

In the event the Licensor terminates this Agreement pursuant to subparagraphs (a) to and including (d) above, the Licensor shall pay the Licensee its pro-rated share of any Licensee Fee paid in advance prior to such damage, expropriation or development as the case may be.

21. Notices

21.1 Except as expressly provided for herein to the contrary, any notice, request, demand, consent or other communication provided or permitted by this Agreement will be given in writing and delivered personally or by registered mail addressed to the party for which it is intended at the address set out below, provided that either party may change its address for purposes of receipt of any such communication by giving prior written notice of such change to the other party in a manner prescribed above.

- (a) Licensor at the following address:
O&Y Enterprise Real Estate Services
144 Front St. West
Suite 430
Toronto, Ontario
M5J 2LT

Attention: Rick Chalmers, RPA, Property Manager
Phone: (416-593-4017)

with a copy to
O&Y Enterprise, a division of O&Y Properties Inc.
1 First Canadian Place
Suite 3300, P.O. Box 72
Toronto, Ontario
M5X 1B1

Attention: Eric Yapp, Manager National Telecommunications
Phone: (416) 862-6027

	
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(b) The Licensee at the following address:
TELUS Communications Inc.
100 Sheppard Avenue East
6th floor
Toronto, Ontario, M2N 6N5

Attention: AVP, Building Access
Phone: (416) 228-3411

with a copy to:
TELUS Legal Services
32S, 10020 – 100 Street
Edmonton, AB, T5J 0N5

Attention: VP Legal Services
Phone (780) 493-3085

21.2 Where notice is delivered personally (with confirmation received) before 3:00 p.m. (recipient's time) on a business day, it will be deemed to have been received that business day. Thereafter it will be deemed to have been received on the next business day. Where notice is delivered by registered mail it will be deemed to have been received three (3) business days following the date of mailing, provided that if there will be, between the time of mailing and the time of deemed receipt, an actual or threatened disruption in postal service, notice will be effective only if delivered personally or by facsimile as provided for herein.

22. Status Statement and Subordination

On the written request of the Licensor, the Licensee shall sign a certificate prepared by the Licensor confirming that this Agreement is in full force and effect, with no default hereunder or, if there is a default, particularizing such default and otherwise confirming such terms of this Agreement as the Licensor shall request. The Licensee agrees to execute and return such certificate within 10 days of the Licensor's request. The Licensee confirms that this Agreement shall be subordinate to any existing or future mortgage or other encumbrance on the Building. At the request of the Licensor, the Licensee shall execute such documentation as the Licensor or its lender may reasonably request, confirming such subordination.

23. No Registration

The Licensee shall not cause this Agreement, or any notice of it, to be registered against title to the Building.

	
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CRTC Decision

The Licensor and the Licensee acknowledge that the access rights of telecommunication service providers in multi-tenant buildings are currently the subject of regulatory proceedings initiated by the CRTC. In the event the CRTC issues a ruling or decision in respect of such access rights while this Agreement is in effect, and such ruling or decision affects the rights and/or obligations of either party hereto, such party shall be entitled to require that this Agreement or portions thereof, as required, be amended in such a reasonable manner so as to give effect to such ruling or decision and in the event the parties cannot agree upon the appropriate amendment required to make this Agreement consistent with the CRTC ruling or decision, then such amendment shall be determined by the CRTC.

Entire Agreement

The parties agree that this Agreement and the Schedules attached to it is the entire agreement between the parties. There are no representations or agreements, either oral or written, with respect to the License other than this Agreement. This Agreement may only be amended by further written agreement of the parties.

Severability of Provisions

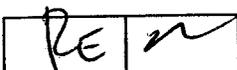
Should any provision of this Agreement be illegal or unenforceable, that provision shall be considered separate and severable from the remaining provisions of this Agreement and the remaining provisions shall remain in force and be binding upon the parties (unless the illegal or unenforceable provisions are such that they have fundamentally frustrated the intention of the parties, or either one of them, in which case the frustrated party may terminate this Agreement on 30 days' prior written notice).

27. Force Majeure

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

Arbitration Proceedings

~~Either party may take to arbitration, any issue that is expressly subject to arbitration in accordance with this Agreement, and no other issue, and such party shall provide written notice of such intent to the other party and each party shall appoint a single arbitrator to arbitrate the particular issue within fifteen (15) business days after receipt by such other party of the notice to arbitrate, and shall inform the other party in writing of such appointment; the two arbitrators so appointed shall~~



LICENSOR LICENSEE

~~within fifteen (15) business days of the giving of the last mentioned information appoint a third arbitrator and give notice of such appointment to both the Licensor and the Licensee. The decision of the three arbitrators or a majority of them as to the particular issue shall be made within thirty (30) days of the giving of the last mentioned notice and shall be binding upon the Licensor and the Licensee. If a party fails to appoint an arbitrator within the time limit for such appointment, then the arbitrator appointed by the other party shall proceed alone to determine the particular issue and the decision of such arbitrator shall be binding upon the Licensor and the Licensee.~~

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~~If the arbitrators appointed by the Licensor and the Licensee fail to appoint a third arbitrator within the time limit therefor, then either the Licensor or the Licensee may within fifteen (15) days of the expiry of the time within which the third arbitrator was to be appointed, apply to a judge of a senior court of the region in which the Building is located, to have him or another judge of the said court appointed by him determine the particular issue, which determination shall be binding on the Licensor and the Licensee. Each party shall pay the fees and the expenses of the arbitrator appointed by it and one-half of the fees and expenses of the third arbitrator and one half of any other costs of the arbitration.~~

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29. Enurement

This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.

30. Interpretation

Whenever the singular or plural, or the masculine, feminine or neuter pronoun is used in this agreement, each shall include the other or others respectively, as and where the context requires it. The headings in this Agreement are for convenience of reference only and in no way define, limit or enlarge the scope or meaning of any of the provisions of the Agreement.

31. Amendment or Waiver

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

32. Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of the Province in which the Building is situated and the Federal laws of Canada, applicable therein.

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IN WITNESS WHEREOF, the parties have entered into this Agreement.

SIGNED, SEALED AND DELIVERED

O&Y Enterprise Real Estate Services, a division
of O&Y Properties Inc. (as agents for the
owners, Lead Sky Enterprises Ltd.)
(Licensor)

In the Presence of

Per: Razali Embong

Per: _____
I/we have authority to bind the corporation

TELUS Communications Inc.
(Licensee)

Per: [Signature]
AVP BUILDING ACCESS

Re	[Signature]
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LICENSOR LICENSEE

LEGAL DESCRIPTION - 144 FRONT STREET WEST

SCHEDULE "A"

IN THE CITY OF TORONTO, in the Municipality of Metropolitan Toronto and being composed of Part of Lot A, Plan 184-E, and Lot 1, Plan 699-E, which said parcel may be more particularly described as follows:

PREMISING that the northerly limit of Front Street West has a bearing of north 74 degrees 00 minutes 00 seconds east (N. 74° 00' 00" E.) and relating all bearings herein thereto.

COMMENCING at the southwesterly angle of said Lot A;

THENCE north 16 degrees 00 minutes 20 seconds west (N. 16° 00' 20" W.) along the westerly limit of Lot A aforesaid a distance of 250.00 feet more or less to the southerly limit of a lane;

THENCE north 74 degrees 00 minutes 00 seconds east (N. 74° 00' 00" E.) along the southerly limit of said lane 50.21 feet more or less to a point in the westerly limit of University Avenue;

THENCE south 21 degrees 55 minutes 40 seconds east (S. 21° 55' 40" E.) along the westerly limit of University Avenue aforesaid 251.36 feet more or less to a point in the northerly limit of Front Street West distant 76.15 feet more or less measured easterly therealong from the southwest angle of said Lot A;

THENCE south 74 degrees 00 minutes 00 seconds west (S. 74° 00' 00" W.) along the southerly limit of Lot 1, Plan 699-E aforesaid and along the southerly limit of Lot A, Plan 184-E aforesaid in all 76.15 feet more or less to the point of commencement.

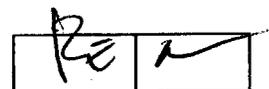
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SCHEDULE "C"

DEFINITIONS AND INTERPRETATION

1. In this License, unless the context requires otherwise, the capitalized terms appearing herein have the meaning given thereto, and the following terms have the following meanings:

- (a) "Affiliate" has the meaning given thereto in the *Canada Business Corporations Act* as of the 1st day of August, 2001;
- (b) "Building" means the building owned or co-owned by Licensor, containing approximately 87 sq. ft. of gross leasable area, and municipally described as located on the 6th floor of 144 - 146 Front Street West, Toronto;
- (c) "Cable" means fibre optic, coaxial, copper cables and wires;
- (d) "CDS" means a central telecommunications cable distribution system;
- (e) "Communications Equipment" means cabinets, racks, electronic equipment, electrical power equipment and other similar and related equipment to be installed by the Licensee in the Premises as the Licensee may require for the provision of telecommunications services by the Licensee;
- (f) "Connecting Equipment" means fibre guides, fibre entrance cabinets, fibre patch panels, and other similar and related fibre management equipment and connecting hardware to be installed by the Licensee that is, connected to the Communications Equipment, or Cable or Licensee In-Building Wire;
- (g) "CRTC" means the Canadian Radio-television and Telecommunications Commission;
- (h) "Entrance Cable" means the Cable owned and/or controlled by the Licensee that connects Licensee's telecommunications network to the Licensee Equipment located in the Premises and the Licensee Equipment located in the Premises to the Main Distribution Frame and includes the tie Cables between the Premises and the Main Distribution Frame;
- (i) "Entrance Link" means the core sleeve penetration through the foundation of the Building used to bring Cable onto the Lands and into the Building and that contains the Entrance Cable;
- (j) "Equipment" means individually and collectively the Licensee Equipment, the Entrance Cable and the Licensee In-Building Wire;
- (k) "Equipment Room" means the area in the Building which has been designated by the Licensor for the placement of the Premises and the premises of other telecommunication service providers, as more particularly shown on Schedule "B" attached;

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LICENSOR LICENSEE

- (l) "In-Building Wire" means, collectively, the Licensee In-Building Wire, Tenant In-Building Wire and Licensor In-Building Wire;
- (m) "License" means this Agreement including any and all attached schedules, attachments and appendices and every instrument executed by the parties that amends, modifies or supplements it or them;
- (n) "Licensee Dedicated Conduit" means the Pathway or Pathways in the Building which the Licensor and Licensee have agreed will be used exclusively to house and carry Licensee In-Building Wire or Licensor In-Building Wire dedicated to the exclusive use of Licensee and/or the Tenant In-Building Wire dedicated to the exclusive use of Licensee;
- (o) "Licensee Equipment" means, collectively, the Communications Equipment and the Connecting Equipment;
- (p) "Licensee In-Building Wire" means the Cable in the Building owned and/or controlled by Licensee that is to be used to provide telecommunications services to tenants of the Building, other Building occupants and telecommunications service providers in accordance with this Agreement, but does not include the Entrance Cable;
- (q) "Licensor In-Building Wire" means the Cable in the Building owned and/or controlled by Licensor that is to be used to provide telecommunications services to tenants of the Building, other Building occupants and telecommunications service providers including the Licensee;
- (r) "Main Distribution Frame" or "MDF" means the main distribution frame or main distribution frames located in the Building;
- (s) "Pathways" means risers, conduits, ducts, trays and raceways located in the Building and on the Lands;
- (t) "Premises" means that portion of the Equipment Room containing approximately 87 square feet of rentable area on the 6th floor of the Building shown cross-hatched on the attached Schedule "B" in which the Communications Equipment is to be situated; and,
- (u) "Tenant In-Building Wire" means the Cable in the Building owned and/or controlled by a tenant of the Building that is to be used to provide telecommunications services to the tenant who owns or controls the Tenant In-Building Wire, other Building tenants and occupants and telecommunications service providers, including Licensee.

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