

PROTOCOL AGREEMENT

MINISTRY OF TRANSPORTATION AND HIGHWAYS / BC TEL (1994)

GENERAL

Whereas BC TEL is constituted by a special act of Parliament of Canada as a Federal undertaking having the rights and obligations thereby and otherwise at law provided ("the Federal purpose").

And whereas the Ministry of Transportation and Highways represents Her majesty the Queen in the Right of the Province of British Columbia with respect to the provision of transportation in the Province of British Columbia as outlined by the Highway Act and the Ministry of Transportation and Highways Act.

Now therefore, without limiting the Federal purpose and Provincial statutory authority, the two organizations agree that the same public is served. As such, the interrelated activities of both parties should be carried out in a responsive, professional and business like basis.

The protocol agreement has been established to achieve these objectives through mutual cooperation and respect.

The parties will endeavour to reach agreements that are in the best interest of the public, rather than self-serving to either party.

I KEY CONTACTS

BC TEL and MOTH field personnel that handle day-to-day affairs will be listed, updated, and exchanged bi-annually, on February 01 and September 01 each year. See attached:

Appendix A - MOTH
Appendix B - BC TEL

II CONSTRUCTION PROJECT PLANNING

For projects of common interest, the parties will meet or exchange necessary information at specified time periods to enable contracts to be scheduled and budgeted to meet each party's requirement.

. . . / 2

II CONSTRUCTION PROJECT PLANNING Con't

Priorities By:

- a) November 01 of each year -

BC TEL/MOTH key contacts will meet for a confidential review of anticipated projects to be included in the next fiscal year.

- b) Between November and March of each year -

Significant changes to project lists will be exchanged.

- c) February of each year -

MOTH will provide a list of "early tender" projects and identify the Project Managers.

- d) April of each year -

Key contacts will meet to firm up approved construction projects, schedules, and identify the MOTH Project Manager.

III PERMITS

MOTH and BC TEL will both seek to process information expeditiously to facilitate issuance of permits with sufficient project lead time.

- a) New construction (new poles for BC TEL, not on a MOTH active project).

Whenever possible, a two-week turnaround will be sought through electronic, facsimile transmittal, or other rapid method of communication.

- b) A new pole, or relocated existing pole, will require a permit before being placed.

III PERMITS Con't

c) Permits Waived

Pole replacements at the same location do not require a new permit. The provisions of the existing Ministry permit will apply to the new pole(s). A permit will be required if four or more poles in proximity to each other are being replaced.

Guys, anchors, overhead guy wires, push brace, side walk guy anchors and other similar appurtenances may be installed or replaced without permit in the same location with due respect to pedestrian, bicyclist and motorist visibility. Warranties outlined in Part IV do not apply to these works.

Where safety is an issue because of the location of appurtenances that form part of the construction of a pole, pole line or structure, either party will bring it forward and every attempt will be made to resolve the problem in a cooperative manner.

IV MOTH INITIATED OVERHEAD POLE LINE (PLANT)/STRUCTURE MOVES

- a) MOTH initiated relocations of pole line (plant)/structure will be paid for by MOTH at a flat rate of \$400 per existing pole to the holder of the pole permit.

Notwithstanding the above, pole line (plant)/structure relocations initiated by MOTH within two years of an original permit date are under warranty by MOTH. All pole line (plant)/structure costs will be paid for at full direct cost by MOTH.

- b) MOTH agrees to compensate BC TEL \$3.50 per sheath metre of cable. A sheath metre of a telephone cable is an enclosed telephone cable one metre long regardless of the number of pairs in the cable. Where there is more than one cable, they will be paid for separately. Where telephone circuits are open wire, any number of open wires is considered the equivalent of one cable. Compensation will only be paid when the Ministry requests the move and at least one splice of the line is involved.

IV MOTH INITIATED OVERHEAD POLE LINE/STRUCTURE MOVES Con't

- c) Interim Project Pole and Structure Relocations (defined as any pole/structure move between the existing location and the final permitted new location) - all MOTH initiated interim relocations required for project construction staging will be paid for at full direct cost by MOTH.
- d) For the purposes of Part IV and V of this protocol agreement, "direct cost" shall mean BC TEL's actual cost charged to the job plus related overhead, excluding third party liability throughout this agreement.
- e) Invoicing by BC TEL in (a) will be on the basis of present or existing plant, and not for final design. (i.e. If three poles presently exist and four are proposed, billing will be for three poles.)
- f) Upon contact by MOTH Project Manager with his counterpart at BC TEL, a project relocation schedule will be developed and agreed to by both parties.

If there is a subsequent delay in the pole line move, due to a delay by BC TEL forces, and this results in MOTH having to forgo liquidated damages from its contractor, then BC TEL will accept those damages.

If there is a subsequent delay in the pole line move, caused by a party other than BC TEL (such as the Municipality, contractor, or other utility), that results in MOTH having to forgo liquidated damages from its contractor, then BC TEL will not be responsible for those charges.

If BC TEL is delayed in the pole line move by another party, BC TEL, on written notice to the MOTH Project Manager, shall be entitled to an extension of time as agreed to by both parties, to complete the pole line move.

IV MOTH INITIATED OVERHEAD POLE LINE/STRUCTURE MOVES Con't

- g) Where the relocation of a pole line has been initiated by MOTH, the minimum MOTH road clearance standards for communication wires attached to the relocated pole line will be 5.0 metres, except where the communication wires cross a freeway, expressway or signalized intersection, in which case the minimum clearance standard will be 5.5 metres.

This agreement recognizes that because of geography and climate, road clearance standards in excess of these minimum standards may be required. It will be the responsibility of the MOTH key contact to advise the BC TEL key contact of any additional road clearance requirement related to a pole line permit application as soon as possible and that BC TEL will endeavour to meet these requirements wherever it is practical and reasonable.

This agreement also recognizes that the current Joint Pole Agreement between BC TEL and B.C. Hydro has been developed to the benefit of those organizations. It is agreed to by BC TEL that they will participate in a review of the joint pole agreement with B.C. Hydro and MOTH to ensure that issues related to road clearance are addressed to the satisfaction of all three parties.

V MOTH INITIATED UNDERGROUND PLANT RELOCATION

- a) For the purposes of this part V, the following will be treated as underground plant and will be eligible for compensation under (b) and (c) below:
- i) above ground facilities servicing underground plant, such as telecommunications equipment huts, pedestals, etc.; and,
 - ii) all equipment and cable that is located either in the above ground facilities or in the underground plant or that is used to connect the two, but not including service drops.

V MOTH INITIATED UNDERGROUND PLANT RELOCATION Con't

- b) Feeder Conduit Relocation (defined as underground support structures or conduits containing four or more ducts, and all associated equipment and cables) - All MOTH initiated relocations will be paid for at full direct cost from date of permit, and for a period of twenty years. Beyond the twenty year period, all costs shall be borne by BC TEL.
- c) Distribution Conduit Relocation (defined as underground support structures or conduits containing three or fewer ducts and all associated equipment and cables) - All MOTH initiated relocations of distribution conduits made within two years of the original permit date will be paid for at full direct cost by MOTH.

All MOTH initiated relocations occurring beyond the two year warranty period and not covered in (b) will be paid for by MOTH at a flat rate \$25.00 per metre of line trench (regardless of the number of conduits in the trench). Service connection costs shall be borne by BC TEL.

- d) MOTH agrees to compensate BC TEL \$3.50 per sheath metre of direct buried cable (cable located outside of a duct bank). A sheath metre of a telephone cable is an enclosed telephone cable one metre long regardless of the number of pairs in the cable. Where there is more than one cable, they will be paid for separately. Compensation will only be paid when the Ministry requests the move and at least one splice of cable is involved.
- e) Interim Project Underground Relocations (defined as underground plant moved between the existing location and the final permitted new location) - All MOTH initiated interim relocations required for project construction staging will be paid for at full direct cost by MOTH.
- f) Invoicing by BC TEL will be on the basis of present or existing plant, and not final design.
- g) Upon contact by MOTH Project Manager with his counterpart at BC TEL, a project relocation schedule will be developed and agreed to by both parties.

. . . / 7

V MOTH INITIATED UNDERGROUND PLANT RELOCATION Con't

If there is a subsequent delay in the underground cable move, due to a delay by BC TEL forces, and this results in MOTH having to forgo liquidated damages from its contractor; then BC TEL will accept those damages.

If there is a subsequent delay in the underground cable move caused by a party other than BC TEL (such as the municipality, contractor, or other utility), that results in MOTH having to forgo liquidated damages from its contractor, then BC TEL will not be responsible for those charges.

If BC TEL is delayed in its cable move by another party, BC TEL, on written notice to the MOTH Project Manager, shall be entitled to an extension of time as agreed to by both parties, to complete the cable move.

VI ROAD RIGHT-OF-WAY MAINTENANCE

- a) There exists, in certain areas, the ability for the two organizations to undertake a combined right-of-way maintenance operation, or at least to ensure that the organizations' programs do not conflict or overlap.

In February of each year, the key contacts will meet to exchange right-of-way management plans, determine and arrange, where feasible, for cost sharing projects.

Due to contractual requirements, existing MOTH vegetation control standards will remain in effect until 1994. In the interim, they will be reviewed by a BC Hydro/MOTH Joint Task Committee with the mandate to develop a vegetation management standard. The recommendations of this Joint Task Force will be brought forward to BC TEL for consideration and adoption.

The Ministry of Forests and Lands protocol regarding the clearing of merchantable timber along right-of-ways applies equally to BC TEL and MOTH.

- b) Removal of abandoned poles from MOTH rights of way. If BC TEL poles have not been removed from MOTH highway right of way within 10 working days from the time that they have been abandoned, MOTH may invoke Section 12 of the Highway Act with respect to the repair, alteration, renewal or removal or any pole considered unsafe.

. . . / 8

VI ROAD RIGHT-OF-WAY MAINTENANCE con't

"Abandoned poles" in this section refer to unused poles from which all BC TEL plant has been removed but which remain in their vertical position, and poles which have been removed from their placed position in the ground and located horizontally on the highway right of way.

VII RIGHT-OF-WAY SETTLEMENTS

BC TEL and MOTH agree that a requirement exists to establish a mechanism to extinguish BC TEL easements required by MOTH for highway right of way and at the same time incorporate telephone structures located on those easements into this protocol agreement. For the purpose of the Part VII, "easement" means an easement by way of statutory right of way over private land or Crown land other than a highway right of way.

MO TH agrees:

- a) To provide preliminary plans of BC TEL easements required by MOTH to BC TEL as soon as the plans become available to MOTH.
- b) Upon execution of the Reference Survey Plan by BC TEL, to issue to BC TEL a permit to construct its facilities either in the same location or in another mutually acceptable alternate location.

BC TEL agrees:

- c) To execute Reference Survey Plans, based on approved preliminary plans, to extinguish BC TEL easements as soon as possible.
- d) To forego compensation for the extinguishment of easement rights.
- e) To accept the relocation costs as provided for in this protocol agreement as full compensation for those easement rights and disturbance costs to poles and structures.
- f) To be bound by the terms of this protocol agreement for any future disturbance costs arising to the affected poles and structures.

. . . / 9

VII RIGHT-OF-WAY SETTLEMENTS con't

Plant relocation costs for proposed subdivisions will remain the responsibility of the developer.

The Ministry will not declare land surplus until BC TEL has made arrangements with the perspective purchaser to acquire an interest in those lands.

VIII PERMIT STATUS: MOTH/MUNICIPAL JURISDICTION

- a) MOTH acquisition of a municipal road. If the Ministry assumes responsibility for a municipal road, MOTH will issue a permit to BC TEL for existing BC TEL plant. The conditions outlined in the protocol agreement related to compensation apply to the permit.
- b) Municipality assumes responsibility for a MOTH road. Upon expansion of municipal boundaries, jurisdiction and control of non-arterial highways is transferred to the municipality. It is the responsibility of BC TEL to comply with permit requirements of the authority having jurisdiction.

IX DISPUTE RESOLUTION

Both organizations desire to settle differences at the lowest possible management level on an equitable and timely basis. It is intended to continue the unwritten policy that there will not be legal action initiated by either party with respect to any matter covered by this agreement. In any claims settlement, the full direct cost (full costs excluding third party liability) of damages will be considered.

The dispute resolution procedure will be as follows:

- STEP 1 - The first line managers from each organization will give their best effort to resolve all conflicts and issues as they arise on any project.
- STEP 2 - If a resolution is not derived in Step 1, then either party may refer it to the key contact in its organization. This level will be the MOTH District Highways Manager/Project Manager and the BC TEL District Manager, Access Operations*. Within thirty (30) days of referral, a decision is to be given.

. . . / 10

IX DISPUTE RESOLUTION con't

STEP 3 - If a satisfactory resolution is not derived in Step 2, then the issue is to be referred to the BC TEL Regional Manager, Access Operations* and the MOTH Regional Highways Director. A decision is to be given within sixty (60) days of referral in Step 2.

* New job titles may apply to this section of the agreement.

STEP 4 - If the Step 3 individuals cannot reach an agreement, then they must agree on, by the sixtieth day in Step 3, a process for resolution which may require referral to the respective executives, a mutual single third party arbitrator, or some other means appropriate under the circumstances. A final resolution within six months of first notice is expected.

Nothing in this Part IX is intended to prevent either party from taking legal action if necessary to recover damages arising from physical injury or damage to, or loss of property.

X LIAISON COMMITTEE

A small committee of no more than two senior management representatives from each organization will meet at least once a year in December, and, if needed, also in June of each year. This protocol agreement will be reviewed and amended as required, and other management concerns will be addressed at that time. It is not intended that operational problems or resolutions should be a mandate of this committee.

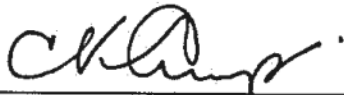
XI AGREEMENT NOT BINDING

This protocol agreement is only an expression of the intent of the parties and is not intended to be legally binding on either party.

XII EFFECTIVE DATE OF AGREEMENT

Subject to XI above, This protocol agreement is to become effective from the date that the agreement is signed by both organizations and will remain in effect until otherwise revised or terminated.

THIS PROTOCOL AGREEMENT MADE THE 14th DAY OF April, 1994



C.K. (Ken) Crump
Vice President
Residential Sales and Service Div.
BC TEL



M.V. (Vince) Collins
Deputy Minister
Ministry of Transportation
and Highways



Where ideas work

August 9, 2017

TELUS Communications Company
200 Consilium Place, Suite 1600
Scarborough, ON, M1H 3J3

Dear Grace Suh:

**Re: Notice to Renew
Wireless Master Use Agreement between the Ministry of Transportation and
Infrastructure ("the Ministry") and TELUS Communications Company ("TELUS")**

This letter acknowledges the letter sent by TELUS on August 8, 2017 to the Ministry with the intent to renew the Master Use Agreement ("the Agreement") between the Ministry and TELUS for wireless telecommunication sites located on Ministry right-of-way.

In accordance with section 6.3 of the Agreement, the Ministry agrees to extend the terms of the Agreement by an additional term of 10 years commencing December 4, 2017 and ending December 3, 2027.

Please keep this letter for your records as this formally acknowledges the extension of the Agreement for an additional 10 years.

Yours Truly,

Mark Janzen
Senior Project Manager
Utilities Services
Business Management Services Branch
Ministry of Transportation and Infrastructure



TELUS
Technology Strategy and Operations
200 Consilium Place Suite 1600
Scarborough, Ontario
Canada M1H 3J3
telus.com

August 8, 2017

Ministry of Transportation and Infrastructure
Business Management Services Branch
PO Box 9850 Station Prov Govt
Victoria, BC
V8W 9T5

Attn: Mark Janzen

Re: Letter dated August 2, 2017 Notice to Renew Wireless Master Use Agreement between the
Ministry of Transportation and Infrastructure (the "Ministry") and TELUS Communication Company

Mr. Janzen:

Please be advised that we are in receipt of your letter dated August 2, 2017. We hereby confirm that we wish to extend the term of the Amending Agreement by an additional term of 10 years commencing December 4, 2014 7 and ending December 3, 2027.

Kindly provide us with any document required to complete this extension, if applicable.

I can be reached at grace.suh@telus.com or 647-837-8269.

Thanks and regards,

Grace Suh
Senior Real Estate Manager
TELUS Communications Company

**AMENDING AGREEMENT
(WIRELESS COMMUNICATION SITES)**

THIS AGREEMENT is dated for reference July 31, 2009

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as
represented by the Minister of Transportation

(the "Province")

AND:

TELUS COMMUNICATIONS COMPANY (Reg. No. 06-0415951), a general partnership registered
under the *Partnership Act*

("Telus")

WHEREAS:

- A. The Province and BC Tel Mobility Cellular Inc. (Inc. No. C0362286) entered into an agreement which commenced on December 4, 1997 pursuant to which BC Tel Mobility Cellular Inc. was authorized to use and occupy provincial public highways for the purposes set out in that agreement (the "Master Use Agreement").
- B. BC Tel Mobility Cellular Inc. changed its name to TELUS Mobility Cellular Inc. on October 18, 1999.
- C. TELUS Mobility Cellular Inc. amalgamated with three other TELUS companies to form TELUS Mobility Cellular Inc. (Corp. No. 3706770) on January 1, 2000.
- D. TELUS Mobility Cellular Inc. (Corp. No. 3706770) amalgamated with TELUS Communications Inc. (Corp. No. 384903-1) and two other TELUS companies to form TELUS Communications Inc. (Corp. No. 384903-1) on January 1, 2001.
- E. All of the assets of the TELUS mobility business, including the Master Use Agreement, were transferred from TELUS Communications Inc. through a corporate reorganization to a wholly owned TELUS partnership named TELE-MOBILE Company (this included all assets of Clearnet PCS Inc.) on July 1, 2001.
- F. Clearnet PCS Inc. (Corp. No. 3132684) and TELUS Communications Inc. amalgamated to form TELUS Communications Inc. (Corp. No. 384903-1) on September 1, 2001.
- G. All TELE-MOBILE Company partnership interested on Clearnet PCS Inc. were distributed to its sole shareholder, TELUS Communications Inc. prior to the corporate dissolution of Clearnet PCS Inc.
- H. TELUS Communications Company, a British Columbia partnership, was formed by way of a partnership agreement between TELUS Communications Inc. and TELE-MOBILE Company, on

February 20, 2006.

- I. The parties have agreed to extend the term of and amend the Master Use Agreement as set out below.

For valuable consideration, the parties agree as follows:

ARTICLE 1 - EXTENSION OF TERM OF MASTER USE AGREEMENT

- 1.1 The parties acknowledge and agree that the term of the Master Use Agreement is extended pursuant to section 6.2 of the Master Use Agreement for a period of time terminating on December 3, 2017.

ARTICLE 2 - AMENDMENT OF MASTER USE AGREEMENT

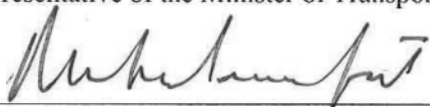
- 2.1 The Master Use Agreement is amended as follows:
- (a) the recitals and section 1.1 to and including section 27.10 are deleted and replaced with the provisions set out in Appendix 1 to this Agreement; and
 - (b) the contents of Schedule A to the Master Use Agreement are deleted and replaced with the provisions set out in Appendix 2 to this Agreement.

ARTICLE 3 - MISCELLANEOUS

- 3.1 Notwithstanding the date of execution of this Agreement, it is deemed to take effect on December 4, 2007 except for the deletion of Schedule A of the Master Use Agreement and its replacement with the provisions set out in Appendix 2 to this Agreement which is deemed to take effect on April 1, 2004.
- 3.2 Except as amended by this Agreement, the Agreement is ratified and confirmed.
- 3.3 Time is of the essence of this Agreement and remains of the essence of the Agreement as amended by this Agreement.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of **HER MAJESTY THE
QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA** by an authorized
representative of the Minister of Transportation and Infrastructure



Authorized representative of the Minister of Transportation and Infrastructure

**MIKE PROUDFOOT
ASSISTANT DEPUTY MINISTER
HIGHWAYS DEPARTMENT**

SIGNED on behalf of
TELUS COMMUNICATIONS COMPANY
by its authorized signatories



Rob Markley, Manager, Real Estate

APPENDIX 1

WHEREAS

- A. In accordance with section 58 of the *Transportation Act*, the BC Transportation Financing Authority, a corporation continued under the *Transportation Act*, holds all of the Province's right to and title in the soil and freehold of every Highway;
- B. The Province may, pursuant to subsections 58(3) and 62(1) of the *Transportation Act* authorize any person to use or occupy a Highway on the terms the Minister considers appropriate;
- C. The Company wishes to use and occupy Highways from time to time for the purpose of installing, maintaining and operating the Wireless Communications Facilities in accordance with the terms of this Agreement and each Site Permit;
- D. The Minister has agreed to grant to the Company and the Company has agreed to accept from time to time a licence to use or occupy each Site, in accordance with the terms of this Agreement and the Site Permit, for the purpose of installing, maintaining and operating the Wireless Communications Facilities; and,
- E. The Ministry and the Company have agreed to incorporate the terms of this Agreement by reference into each Site Permit that will be granted by the Ministry to the Company to use or occupy each Site.

NOW THEREFORE in consideration of the covenants, agreements, and the sum of \$1.00 now paid by the Company to the Ministry and for other valuable consideration (the sufficiency of which is hereby acknowledged by the Ministry), the parties covenant and agree as follows:

1. INCORPORATION OF TERMS

- 1.1. The parties hereby agree that every Site Permit granted under this Agreement shall be deemed to incorporate by reference the terms of this Agreement as if the terms of this Agreement were set out in full in the Site Permit.

2. DEFINITIONS

- 2.1 In this Agreement:

“**Application**” means an application in writing submitted by the Company to the District Manager in accordance with Article 9 to use and occupy a Site for the purposes of carrying out the Site Activities;

“**Commencement Date**” means December 4, 1997;

“**Company Representative**” means the person described in section 21.1 or another other person designated, in writing, from time to time by the Company;

“Contaminant” means

- i) all hazardous, toxic, dangerous and potentially dangerous materials or substances, all liquid or gaseous materials and all other substances which are reasonably capable of causing pollution or contamination to air, land or water which are regulated or prohibited by law, and
- ii) all substances and materials defined as “waste” in the *Environmental Management Act*;

“District Manager” means the District Manager, Transportation of the Ministry for the district of the Ministry in which a Site is located or another other person designated, in writing, by the Minister;

“Equipment” means the transmission and reception antennas, apparatus, fixtures, conduits, attachments, cables, wires, shelters, cabinets and all other appurtenances and structures comprising the Wireless Communications Facility;

“Fee” means the fee set out in Schedule A;

“Highway” means a provincial public highway as defined in the *Transportation Act*;

“Highway Works” means the works and activities of the Ministry relating to a Highway or a Site which may be undertaken by the Ministry, or caused by the Ministry to be undertaken by an authorized representative, agent, contractor, or employee of the Ministry;

“Minister” means the Minister of Transportation, and includes the Deputy Minister of Transportation and any person authorized to act for or on behalf of either of them;

“Ministry Representative” means the person described in section 21.2 or another other person designated, in writing, by the Minister;

“Ministry Structures” includes all buildings, bridges, towers, signs, lighting structures and video poles located on a Site;

“Site” means the portion of a Highway (excluding its travelled surface) and the Ministry Structures on the Highway that may be designated from time to time by the Ministry as a location for a Wireless Communications Facility and will be described with greater certainty on the plan or plans appended to each Site Permit;

“Site Activities” means the activities of the Company on a Site related to the installation, maintenance and operation of the Wireless Communications Facility, including the installation, construction, repair, replacement, relocation, maintenance, operation, dismantling and removal and restoration of the Wireless Communications Facility, in accordance with the terms of this Agreement;

“Site Permit” means an authorization granted by the Minister to the Company under subsection 62(1) of the *Transportation Act* to allow the Company to use or occupy a Site;

“Taxes” means all taxes, rates, levies, duties, charges and assessments which relate to the Equipment and improvements at each Site, now or hereafter assessed, levied or charged by all governmental authorities;

“Term” means the time period set out in section 6.1 as may be extended in accordance with the terms of this Agreement; and

“Wireless Communications Facility” means the Equipment installed, maintained and operated at each Site by the Company for the purpose of providing wireless communications services.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

3.1 The Company represents and warrants to the Ministry that, on the execution of this Agreement and during the Term,

- a) it is a corporation duly organized and validly existing under the laws of British Columbia or it is a corporation extra provincially registered under the laws of British Columbia;
- b) it is in good standing with respect to the filing of annual reports according to the records of the Office of the Registrar of Companies of British Columbia;
- c) it has the power and capacity to enter into this Agreement and each Site Permit and to observe, perform and comply with the terms of this Agreement and each Site Permit;
- d) all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement and each Site Permit by the Company;
- e) this Agreement and each Site Permit
 - i) have been duly authorized by all necessary corporate action of the Company,
 - ii) have been legally and properly executed by the Company, and
 - iii) are valid, subsisting and legally binding upon and enforceable against the Company in accordance with their terms;
- f) the observance and performance of the terms of this Agreement and each Site Permit will not constitute a breach by the Company of or a default by the Company under
 - i) any statute, regulation or bylaw of all governmental authorities applicable to or binding on the Company,
 - ii) the constating documents of the Company, or
 - iii) any contract or agreement to which the Company is a party;
- g) the Company is not in breach of any statute, regulation or bylaw any governmental authority applicable to the Company or its operations;
- h) that prior to the issuance of a Site Permit to it, the Company holds, or will hold, all permits, licences, consents and authorities issued by all governmental authorities that are necessary in connection with the offering and provision of the telecommunications services by the Company and the installation, maintenance and operation of each Wireless Communications Facility;

- i) the making of this Agreement and the completion of the transactions contemplated hereby and the performance of and compliance with the terms of this Agreement does not conflict with or result in a breach of, or the acceleration of any indebtedness under any terms, provisions or conditions of, or constitute a default under the memorandum or articles of the Company or any indenture, mortgage, deed of trust, agreement, security agreement, license, franchise, certificate, consent, permit, authority or other instrument to which the Company is a party or is bound or any judgment, decree, order, rule or regulation of any court or administrative body by which the Company is bound or, to the knowledge of the Company, any statute, regulation or bylaw any governmental authority applicable to the Company; and
- j) all representations, warranties, covenants and agreements made in this Agreement and all certificates and other documents delivered by or on behalf of the Company are material and will conclusively be deemed to have been relied upon by the Ministry, notwithstanding any prior or subsequent investigation by the Ministry.

3.2 The provisions of section 3.1 will continue in full force and effect notwithstanding the fulfillment by the Company of its obligations under this Agreement and each Site Permit.

4. REPRESENTATIONS AND WARRANTIES OF THE MINISTRY

4.1 The Ministry represents and warrants to the Company that, on the execution of this Agreement and during the Term,

- a) the Ministry has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
- b) all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement and each Site Permit by the Ministry; and,
- c) this Agreement has been legally and properly executed by the Ministry and is legally binding upon and enforceable against the Ministry in accordance with its terms.

4.2 The Ministry makes no representation or warranty to the Company regarding any Site and the use and occupation of any Site for the purposes of carrying out the Site Activities and the Company accepts and shall use and occupy each Site in an "as-is" condition for the sole purposes of carrying out the Site Activities.

5. GRANT

5.1 On the terms set out in this Agreement and each Site Permit, the Minister grants to the Company, its employees, agents and contractors a non-exclusive licence of occupation over each Site for the purpose of carrying out the Site Activities.

6. TERM

6.1 The term of this Agreement commences on the Commencement Date and, subject to sections 6.2 and 6.3, terminates on the tenth anniversary of the Commencement Date, or such earlier date provided for in this Agreement.

- 6.2 Unless the Company or the Ministry, not later than 180 days prior to the expiration of the Term, delivers written notice to the other party of the termination of this Agreement and each Site Permit, the Company may deliver to the Ministry not earlier than 180 days and not later than 90 days prior to the expiration of the Term a written request to extend the Term and, provided the Company is not in default of its obligations under this Agreement and every Site Permit, the Ministry will extend the Term for an additional ten years commencing on December 4, 2007 and terminating on December 3, 2017.
- 6.3 If the Term is extended under section 6.2, then unless the Company or the Ministry, not later than 180 days prior to the expiration of the Term, delivers written notice to the other party of the termination of this Agreement and each Site Permit, the Company may deliver to the Ministry not earlier than 180 days and not later than 90 days prior to the expiration of the Term a written request to extend the Term and, provided the Company is not in default of its obligations under this Agreement and every Site Permit, the Ministry will extend the Term for an additional ten years commencing on December 4, 2017 and terminating on December 3, 2027.
- 6.4 In the event that the Company remains in possession of any Site after the expiration of the Term, the Company shall be deemed to be in unauthorized occupation of that Site despite the Ministry's acceptance of the Company's payment of the Fee, if such payment is made.

7. FEE

- 7.1 In consideration of the licence granted by the Ministry to the Company in this Agreement and each Site Permit, the Company will pay to the Ministry the Fee in accordance with the provisions set out in Schedule A on the first day of April in each year of the Term commencing on the Commencement Date and the Fee will be prorated for the first time period.

8. LIMITATION ON THE GRANT

- 8.1 The Company acknowledges and agrees that neither this Agreement nor a Site Permit grants to the Company the exclusive use and occupancy of any Site.

9. SITE PERMIT

- 9.1 The Company may submit to the District Manager during the Term an Application for the installation, maintenance and operation of a Wireless Communications Facility on a Site.
- 9.2 Each Application submitted under section 9.1 will include a plan which describes in detail the Site Activities to be carried out at the Site. The Plan will include:
- a) a location plan which clearly identifies the boundaries of the Site;
 - b) a site plan which provides details of the design of the Wireless Communications Facility to be installed, maintained and operated at the Site including
 - i) the specifications of the Equipment,
 - ii) the location and method of placement or attachment of the Equipment,

- iii) a detailed description of the layout of the cables and cable routing, and
 - iv) the location of all utility connections to the Site;
 - c) the method and frequency of access to the Site; and,
 - d) non-proprietary information as the Ministry may reasonably request in connection with the installation, maintenance and operation of the Wireless Communications Facility that may impact the Ministry's radio communications or electrical equipment or the operation and use of the Highway.
- 9.3 The Minister may, in the Minister's sole discretion, grant a Site Permit to the Company pursuant to an Application.
- 9.4 The Company hereby acknowledges and agrees that the decision of the Minister as to the grant or refusal to grant a Site Permit will be final and the Minister will not be liable to the Company for the Minister's decision to refuse to grant a Site Permit to the Company, including all costs incurred by the Company in preparing the Application and the Company hereby releases and discharges the Minister and the Ministry from and against all claims for loss or damage, or compensation, including loss of profits, arising directly or indirectly out of the Minister's decision to refuse to grant a Site Permit to the Company.
- 9.5 The Ministry will notify the Company as to whether or not the Minister will grant the Site Permit to the Company not later than 30 days from the date of receipt by the District Manager of the Application.
- 9.6 If the Minister decides in the Minister's sole discretion to grant a Site Permit to the Company, the Ministry will deliver written notice to the Company of the Minister's decision to grant the Site Permit to the Company and the Minister will grant the Site Permit to the Company on the terms of this Agreement and the terms that the District Manager may, acting reasonably, impose or prescribe in the Site Permit.
- 9.7 The term of a Site Permit will commence on the date it is granted to the Company by the Minister and it will terminate on the expiration of the Term.
- 9.8 The grant by the Minister to the Company of a Site Permit shall not relieve the Company of its responsibilities or obligations, covenants or agreements under this Agreement or any Site Permit or create any added responsibilities for the Ministry or constitute a waiver on the part of the Ministry of compliance by the Company with the terms of this Agreement and each Site Permit.
- 9.9 Subject to all conditions contained in the applicable Site Permit, the Company may replace, exchange, substitute or modify the Equipment contemplated in a Site Permit with other Equipment provided that if, as a direct or indirect result of the replacement, exchange, substitution or modification of the Equipment:
- a) the size of the Site is enlarged;
 - b) the number of the antennas installed at the Site increases;
 - c) the size, weight and/or configuration of the Equipment materially increases; or,
 - d) the Ministry determines, in its sole discretion, that the Equipment and the configuration of the

Equipment no longer comprise the design of the Wireless Communications Facility contemplated in the applicable Site Permit,

the Ministry, upon written notice to the Company may, in its sole discretion, terminate the Site Permit within 30 days unless the Company completes changes to the configuration of the Equipment to the previously approved design of the Wireless Communications Facility.

- 9.10 Where the Company contemplates changes to the Wireless Communications Facility that are substantially different than the configuration of the Equipment contemplated in a Site Permit, the Company will submit an Application to the Ministry to replace, exchange, substitute or otherwise modify the Equipment at the Site.
- 9.11 Subject to all conditions contained in a Site Permit, the Company may not replace, exchange, substitute or modify the Equipment contemplated in a Site Permit where all or a portion of the Equipment is installed, attached or mounted in any way on a Ministry Structure unless the replacement, exchange, substitution or modification of the Equipment has been approved by the District Manager.

10. OCCUPATION OF THE SITE

- 10.1 The Company agrees to carry out the Site Activities so as not to interfere, interrupt or obstruct the use and occupation of each Site by the Ministry.
- 10.2 If the Ministry determines, in its sole discretion, that the Site Activities interfere with, interrupt or otherwise obstruct the use and occupation of any Site by the Ministry, the Ministry may, in its sole discretion, deliver written notification to the Company setting out the interference, interruption or obstruction and a reasonable time period within which the Company will cease the interference, interruption or obstruction.
- 10.3 If the Ministry has determined, in its sole discretion, that the Site Activities have caused the interference, interruption or obstruction referred to in section 10.2, and the Company fails to cease the interference, interruption or obstruction to the satisfaction of the Ministry within such time period as may be specified by the Ministry, then the Ministry may, on written notice to the Company, terminate the applicable Site Permit.
- 10.4 Where the Ministry determines, in its sole discretion, that there is an interference, obstruction, impediment, or interruption to the public passage on any Highway or to the integrity of the infrastructure comprising a Highway, the Ministry Structures, or the Site by virtue of, or arising directly or indirectly from the Site Activities, the Ministry may deliver written notice to the Company specifying the interference, obstruction, impediment, or interruption and the Ministry may, at its option, elect to do any one or more of the following:
 - a) pursue any remedy available to it at law or in equity;
 - b) require that the interference, obstruction, impediment, or interruption be cured to the reasonable satisfaction of the Ministry within a time period specified by the Ministry; or,
 - c) undertake and cause to be undertaken all actions in its own name or in the name of the Company that may be required to cure the interference, obstruction, impediment, or interruption and all costs, expenses and payments incurred by the Ministry therefore will be payable by the Company to the Ministry on demand.

- 10.5 If the Company fails to cure the interference, interruption or obstruction referred to in section 10.2 or 10.4 in the time period specified by the Ministry, or if in the opinion of the Ministry, the Company fails to make reasonable efforts to cure and is not diligently pursuing to cure the interference, obstruction, impediment, or interruption referred to in section 10.2 or 10.4 to the reasonable satisfaction of the Ministry, then the Ministry may, in its sole discretion, terminate the applicable Site Permit and the Company will comply with the termination provisions of the Agreement.
- 10.6 No failure or delay on the part of the Ministry to deliver written notice of the interference, obstruction, impediment or interruption, irrespective of how long such interference, obstruction, impediment or interruption continues, will not constitute a waiver by the Ministry of its rights under this Agreement or any Site Permit.
- 10.7 The Ministry, in its sole discretion, may specify the terms of the entry on a Site by the Company, or an agent, contractor, employee, or sublicensee of the Company, including postponement of entry to a Site and the Company releases and discharges the Ministry from all costs, expenses, claims, losses or damages arising directly or indirectly from any such postponement.
- 10.8 The terms and conditions for access to a Site for the installation, routine maintenance, repair, and other non-emergency visits will be stated in each Site Permit.
- 10.9 Where there is an unscheduled repair or emergency, the Company will be entitled to access the Site at any time, subject to all special conditions in a Site Permit.
- 10.10 The Company will be responsible for compliance with all conditions and regulations under the *Workers Compensation Act* and for all assessments and levies which may be made thereunder in respect of the Site Activities and Wireless Communications Facility.

11. ELECTRICAL INTERFERENCE

- 11.1 If the Ministry determines, in its sole discretion, that the Wireless Communications Facility or the Site Activities interrupt or otherwise interfere with the efficient functioning of the radio communications or electrical equipment of the Ministry which is situated at a Site or in the vicinity of a Site, the Ministry may, in its sole discretion, deliver written notice to the Company of the interference or interruption, and the Company will cease the Site Activities forthwith on receipt of that written notice from the Ministry, and:
- a) the Company will modify, adjust or repair the Wireless Communications Facility to eliminate the interference or interruption to the satisfaction of the Ministry; or,
 - b) deliver a written notice to the Ministry that it elects to terminate the applicable Site Permit.
- 11.2 If the Company elects to conduct any modification, adjustment, repair or replacement activities, the Company will have 30 days from the date of the Ministry's notice of interference or interruption to conduct modification, adjustment, repair or replacement activities and conduct testing to satisfy the Ministry that the Site Activities will not interfere with or otherwise interrupt the efficient functioning of the radio communications or electrical equipment of the Ministry and if the testing fails to satisfy the Ministry, in its sole discretion, that the Site Activities will not interfere with or otherwise interrupt the efficient functioning of the radio communications or electrical equipment of the Ministry, the Ministry may, in its sole discretion:

- a) terminate the applicable Site Permit; or,
 - b) extend the time period for the Company to conduct modification, adjustment, repair or replacement activities and conduct testing to satisfy the Ministry that the Site Activities will not interfere with or otherwise interrupt the efficient functioning of the radio communications or electrical equipment of the Ministry.
- 11.3 If the Ministry elects to extend the time period as set out in section 11.2, and the Company fails to satisfy the Ministry that the Site Activities will not interfere with or otherwise interrupt the efficient functioning of the radio communications or electrical equipment of the Ministry within the time period specified by the Ministry, the Ministry will terminate the applicable Site Permit at the expiry of the specified time period.

12. SHARED OCCUPATION OF SITE

- 12.1 The Company agrees to provide the Ministry access to each Wireless Communications Facility to facilitate the installation, maintenance and operation of the Ministry's radio communications equipment which access will not be unreasonably withheld by the Company.
- 12.2 The Company, in its reasonable discretion, will set the terms for the installation and maintenance of the Ministry's radio communications equipment at each Wireless Communications Facility.
- 12.3 The Ministry will be responsible for all costs associated with Ministry's use of the Wireless Communications Facility.

13. RELOCATION

- 13.1 If a Site is required by the Ministry for Highway Works, the Company will, within 90 days of receipt of a written notice delivered to the Company by the Ministry, move, remove or alter the Wireless Communications Facility at the expense of the Company.
- 13.2 If the Ministry elects, in its sole discretion, to terminate a Site Permit within the time period stated in section 13.1 to facilitate Highway Works, the Company will:
- a) upon receipt of a new Site Permit, move, remove or relocate the Wireless Communications Facility to the Site identified in the new Site Permit and install, maintain and operate the Wireless Communications Facility in such a manner that is mutually agreeable to the parties at the sole expense of the Company; or,
 - b) comply with Article 18 to return the previous Site to the condition existing on the Commencement Date, normal wear and tear excepted, to the satisfaction of the Ministry, at the sole expense and cost of the Company.
- 13.3 The obligation of the Company to pay the Fee in regard to a Site in connection with which a Site Permit has been terminated will cease as of the date of termination of the Site Permit and the Company releases and discharges the Ministry from all costs, expenses, claims, losses or damages arising directly or indirectly from the termination of the Site Permit under this section. The unused portion of the Fee for the Site shall be refunded to the Company if the Wireless Communications Facility cannot be relocated to another Site.

- 13.4 The Company may elect to terminate a Site Permit on 90 days prior written notice delivered to the District Manager, and the Company will comply with the provisions set out in Article 18, and the obligation of the Company to pay the Fee in regard to that Site will cease as of the date of termination of the Site Permit.

14. **SUBLICENCE OF THE SITE BY THE COMPANY**

- 14.1 Subject to section 14.5, the Company may not sublicense the rights, in whole or in part, granted to it by the Site Permit without the prior written consent of the Ministry, such consent not to be unreasonably withheld.
- 14.2 The Company hereby agrees to pay to the Ministry the Fee for each sublicense of its rights in whole or in part granted by the Site Permit.
- 14.3 The Company will not assign this Agreement, in whole or in part, to any other person or entity, without the prior written consent of the Ministry, such consent not to be unreasonably withheld. A change in control of the Company will constitute an assignment of this Agreement by the Company.
- 14.4 Section 14.3 does not apply to the Company if the shares of the Company which carry votes for the election of the directors of the Company trade on a stock exchange located in Canada.
- 14.5 The Company may sublicense its rights under a Site Permit but the Company will not enter into any sublicense or agreement except in accordance with the terms of this Agreement to a sublicensee whose proposed use of the Site or a portion of the Site complies with the terms of this Agreement.
- 14.6 The Company will provide to the Ministry on the grant of a sublicense an executed copy of the sublicense.
- 14.7 No sublicense or agreement to grant any sublicense shall grant rights to a sublicensee beyond the scope of this Agreement or the applicable Site Permit and the sublicensee shall have no rights to the Site except under this Agreement and the Site Permit.
- 14.8 The Company will deliver to the Ministry at the request of the Ministry a certificate obtained from each sublicensee stating that neither the Company nor the sublicensee is in default of any term of the sublicense, except for the defaults if any described in the certificate and a certificate signed by the Company stating the Company is not in default of any term of this Agreement. The Ministry may require that any certificate certify the state of performance or observance of any particular terms of this Agreement or the relevant sublicense. The Company shall provide a similar certificate upon request of the Ministry from each further sublicensee.
- 14.9 In the event of a breach by a sublicensee of its sublicense, the Company shall at its expense take all necessary steps to correct such breach when requested by the Ministry to do so and if the breach is not corrected within the time or times specified by the Ministry, the Company at the further request of the Ministry will terminate the sublicense in accordance with the terms of the sublicense and repossess the Site.

15. COVENANTS OF THE COMPANY

15.1 The Company covenants with the Ministry, to:

- a) pay the Fee to the Ministry in accordance with the terms of this Agreement;
- b) enter upon and occupy each Site solely for the purpose of carrying out and executing the Site Activities;
- c) repair each Site as may be reasonably directed by the Ministry;
- d) keep and maintain the Wireless Communications Facility and the Site in a state of repair and condition that conforms at all times with all laws, bylaws, directions, regulations and specifications of all governmental authorities in any way relating to or applicable to the Wireless Communications Facility and each Site. The standard of care shall be that kept by a prudent and careful owner in occupation, and at least equivalent to the state of repair and condition of the Site on the Commencement Date, save for damage by fire, lightning, tempest, and normal wear and tear, and on the expiration of the Term, yield up the Site in equivalent repair and condition to the repair and condition in which the Site would have been kept by a prudent and careful owner in occupation during the Term;
- e) unless otherwise permitted under this Agreement, not, without the prior written consent of the Ministry, make, cause, permit or suffer to be made any alteration, improvement or addition to the Site other than the alterations, improvements or additions required for the purpose of installation, maintenance and operation of the Wireless Communications Facility as designated in the applicable Site Permit;
- f) not erect, paint, display, place, affix or maintain or permit to be erected, painted, displayed, placed, affixed or maintained any sign, decoration, picture, lettering, symbol or notice of any nature or kind whatsoever on any Site, except as expressly authorized in a Site Permit;
- g) not interfere with or otherwise impede
 - i) the provision of highway maintenance services by the Ministry, or by servants, agents, contractors or authorized representatives of the Ministry in connection with a Highway,
 - ii) existing works;
 - iii) public passage on a Highway, or
 - iv) the approach, movement, passage or travel upon a Highway of an emergency vehicle as defined in the *Motor Vehicle Act* other than as expressly authorized under this Agreement;
- h) permit the authorized representatives of the Ministry, to enter upon each Site at any time for any purpose;
- i) not interfere with the activities of any person authorized by the Ministry to enter upon and use any Site under a prior or subsequent disposition or authorization granted by the Ministry;
- j) comply with and perform all lawful directives of the District Manager as may be issued by the

District Manager in connection with the Company's activities and each Site;

- k) observe, abide by and comply with all applicable laws, bylaws, orders, directions, and regulations of all governmental authorities directly or indirectly applicable to the Company, the carrying out and executing of the Site Activities;
- l) obtain all applicable licenses, permits, and approvals which may be required by the laws, bylaws, orders, directions, and regulations of all governmental authorities in connection with or relating to the Company and the Site Activities;
- m) abide by and conform to and cause its employees, servants, agents, invitees and contractors to abide by and conform to all rules, lawful directives or policies issued by the Ministry in connection with the carrying out and execution of the Site Activities;
- n) maintain in full force and effect the insurance referred to in Article 20 of this Agreement and not do any act or thing which would invalidate all or any part of such insurance coverage and upon the request from time to time of the Ministry, to deliver forthwith to the Ministry evidence that the insurance remains in force and effect by way of the originals or duly executed certified copies of all current insurance policies and endorsements to comply with the insurance requirements to be maintained by the Company under this Agreement;
- o) repair and restore the Site in accordance with written directives issued by the Ministry or the District Manager;
- p) not commit or suffer any willful or voluntary waste, spoil or destruction on the Site or do or suffer to be done on the Site anything that may be or become a nuisance or annoyance to the owners or occupiers of adjoining land;
- q) pay all accounts and expenses, as they become due, for labour performed on, or material supplied to, each Site, in accordance with the *Builders Lien Act* and, on behalf of the Ministry, immediately after the commencement of any construction on a Site to place written notices in at least two conspicuous places on the Site which give notice that the Ministry will not be responsible for the cost of labour, services or materials performed on or supplied to the Site and to permit the Ministry to enter on the Site for the purpose of placing such notices on the Site;
- r) discharge, at the expense of the Company, all valid claims of lien or other charges or encumbrances against a Site that are not authorized by the Ministry and that arise, directly or indirectly, from any activity, request or direction of the Company or with the privity or consent of the Company or for the direct benefit of the Company, its employees, servants or agents; and
- s) pay and discharge when due, the Taxes including all accounts, charges, levies, assessments assessed, levied or charged which relate to the Site used or owned by the Company or any improvements used or owned by the Company on the Site and upon the request from time to time of the Ministry, to deliver forthwith to the Ministry evidence of the receipts or other evidence of the payment of the Taxes, insurance premiums, or other monetary obligations of the Company required to be observed by the Company under this Agreement.

16. ENVIRONMENTAL PROVISIONS

- 16.1 The Company covenants that the Company and all employees, agents, contractors and sublicensees of the Company shall not cause, bring, permit, or suffer to be brought Contaminants on any Site to be used for storage or disposal of Contaminants.
- 16.2 The Company shall promptly, upon becoming aware of any deposit, spill, discharge, or release of a Contaminant on a Site, or of any event on or affecting a Site which is a result of actions of the Company or any sublicensee of the Company, which constitutes an offense or a breach, or is reportable under any law, bylaw, or regulation of a governmental authority relating to Contaminants and the protection of the environment, give written notice to the Ministry of the deposit, spill, discharge or release or any such event on or affecting a Site: and,
- a) comply with all lawful orders and requests from the Ministry, and all government authorities relating to the deposit, spill, discharge, release or any such event; and,
 - b) undertake and complete all removal and remedial actions necessary to contain, remove and clean up all Contaminants that may have been deposited or spilled in, under or upon a Site as a result of that event, and that removal shall be to the reasonable satisfaction of the Ministry.
- 16.3 Notwithstanding section 16.2, the Ministry may undertake, but shall not be obliged to carry out, the lawful orders and requests of all governmental authorities or carry out the remedial actions and complete the removal of any Contaminant referred to in section 16.2 of this Agreement, which are the result of actions of the Company or any sublicensee of the Company, and the Company will immediately pay to the Ministry all costs and expenses incurred by the Ministry in so doing.
- 16.4 The provisions in this Article shall survive the expiration of the Term.

17. EVENTS OF DEFAULT

- 17.1 Any of the following events will constitute a default under this Agreement and every Site Permit whether any such event be voluntary, involuntary or result from the operation of law or any judgment or order of any court or administrative or government body:
- a) the Company defaults in the payment of the Fee, or the payment of any other sum payable under this Agreement, and the default continues for 30 days after the Ministry gives written notice to the Company of the default;
 - b) the Company fails to comply with the terms of a Site Permit or the directions of the District Manager in regard to a Site Permit and the failure of the Company arises in connection with Site Permits that in the aggregate equal a number that is 20% or more of the number of Site Permits issued by the Ministry to the Company under this Agreement;
 - c) the Company fails to perform or observe any of the covenants, agreements, conditions or provisions contained in this Agreement or a Site Permit on the part of the Company to be performed or observed and the failure continues for, or is not remedied within, the period of 30 days after the Ministry gives written notice to the Company of the nature of the failure;
 - d) this Agreement or a Site Permit is taken in execution or attachment by any person;

- e) the Company becomes insolvent or bankrupt or makes an assignment for the benefit of the creditors, a receiver is appointed for the Company, a voluntary or involuntary petition into bankruptcy is filed, or proceedings for the re-organization or winding-up of the Company are instituted, or an order is made, a resolution passed or a petition is filed for the liquidation, dissolution or winding up of the Company;
 - f) a bankruptcy petition is filed or presented against the Company, or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Company or a compromise or arrangement is proposed in respect of the Company under the *Companies' Creditors Arrangement Act* (Canada); or,
 - g) the Company permits any sum in connection with this Agreement which is not disputed to be due by it to remain unpaid after legal proceedings have been commenced to enforce payment thereof.
- 17.2 On the happening of an event of default described in section 17.1, or at any time thereafter, the Ministry may deliver written notice to the Company specifying the default and the Ministry may, at its option, elect to do any one or more of the following:
- a) pursue any remedy available to it at law or in equity;
 - b) require that the default be cured within a time period specified by the Ministry;
 - c) terminate this Agreement and every Site Permit; or,
 - d) if the default with respect to which the Ministry has specified a time period within which to cure the default, has not been cured to the satisfaction of the Ministry within such time period as may be specified by the Ministry then the Ministry may terminate this Agreement and every Site Permit.
- 17.3 The rights, powers and remedies conferred on the Ministry under this Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Ministry under this Agreement, any other agreement, at law or in equity and the exercise by the Ministry of any right, power or remedy will not preclude the simultaneous or later exercise by the Ministry of any other right, power or remedy.
- 17.4 No failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such act or failure to act will continue, will constitute a waiver by such party of its rights hereunder.
18. **TERMINATION**
- 18.1 Notwithstanding any other term of this Agreement or a Site Permit, the Ministry may terminate this Agreement and each Site Permit on 180 days' written notice to the Company and the Company releases and discharges the Ministry from all costs, expenses, claims, losses or damages arising directly or indirectly from any such termination.
- 18.2 On the expiration of the Term or on the termination of a Site Permit during the Term, the Company will:
- a) peaceably quit and deliver possession of every Site (or the Site described in the Site Permit that

is terminated during the Term) to the Ministry in a safe, clean and sanitary condition;

- b) remove the Equipment, and all other apparatus, improvements or fixtures of the Company, located both above and below ground, at every Site (or the Site described in the Site Permit that is terminated during the Term); and,
- c) repair all damage to every Site (or the Site described in the Site Permit that is terminated during the Term) and to the Ministry Structures caused by or on behalf of the Company and restore every Site (or the Site described in the Site Permit that is terminated during the Term) and the Ministry Structures to a state of repair and condition at least equivalent to the state of repair and condition of the Site and the Ministry Structures at the commencement of the Term, reasonable wear and tear excepted.

18.3 All Equipment, apparatus, improvements and fixtures of the Company remaining at a Site 90 days after the expiration of the Term or after the termination of Site Permit during the Term:

- a) will be absolutely forfeited to and become the property of the Ministry; and,
- b) may be removed from the Site by the Ministry and the Company will pay to the Ministry, on demand, all expenses incurred by the Ministry, including, but not limited to, the costs of removal and the Company will not be entitled to a credit against other existing or subsequently issued Site Permit in an amount equal to the value of the Equipment, apparatus, improvements or fixtures or any other value.

18.4 Despite section 18.1, the Company may terminate a Site Permit on 90 days' written notice to the Ministry and the Fee paid by the Company to the Ministry for the remainder of the term of that Site Permit shall be repaid to the Company by the Ministry.

18.5 To the extent necessary the provisions in this Article will survive the expiration of the Term.

18.6 Upon the expiration of the Term or on the termination of a Site Permit during the Term, all sublicensees and other interests in respect of a Site and the rights of all persons claiming thereunder will be extinguished, and the Company accepts all liability and responsibility for notification to, and extinguishment of the rights of all sublicensees and other interests.

19. INDEMNITY

19.1 The Company covenants with the Ministry that the Company will indemnify and save harmless the Ministry

- a) against all losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of, or from all:
 - i) breach, violation or non-performance by the Company or the servants, agents, invitees, employees, or sublicensee of the Company of any covenant, condition or agreement in this Agreement or the Site Permit, or
 - ii) personal and bodily injury, death or property damage occurring or happening on or off, or in or about the Highway, or a Site by virtue of the use or occupation of the Site by the Company, or the servants, agents, invitees and employees, or sublicensee of the

Company; and,

- b) from all fines, penalties or expenses levied or charged against the Ministry or the Company or a sublicensee of the Company by a governmental authority, court or board pursuant to any law, bylaw or regulation for the protection of the environment as a result of the use or occupation of and the activities of the Company or the servants, agents, invitees, employees, or sublicensee of the Company in connection with each Site during the Term.

19.2 The indemnity contained in this Article will survive the expiration of the Term.

20. INSURANCE

20.1 The Company shall obtain and maintain during the Term, and at the sole expense of the Company,

- a) Comprehensive (Commercial) General Liability Insurance including non-owned automobile and contractual liability insurance with inclusive limits of not less than \$5,000,000.00 for bodily injury, death, and property damage arising from any one accident or occurrence. The insurance policy shall indemnify the named insureds under the policy for any sum or sums which the insured may become liable to pay or shall pay for bodily injury, death or property damage or for loss of use thereof, arising out of or resulting from the work of the Company, or the Ministry, under this Agreement, anywhere within Canada and the United States of America. In addition to the above limits, such liability insurance shall also pay all costs, charges, and expenses in connection with any claims that may require to be contested by the insureds anywhere within Canada and the United States of America;
- b) if any licenced vehicles are owned, leased, rented or used by the Company in the performance of this Agreement, automobile liability coverage with inclusive limits of not less than \$5,000,000.00 providing third party liability and accident benefits insurance for all such vehicles; and
- c) if aircraft (including helicopters) are owned, rented, leased or used by the Company in the performance of this Agreement, third party liability coverage with inclusive limits of not less than \$5,000,000.00.

20.2 The maximum deductible that will be allowed for property damage is \$100,000. No deductible is allowed for bodily injury.

20.3 The insurance policy shall be endorsed as follows:

It is understood and agreed that Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation, together with the employees, agents, and servants of the Minister, hereinafter referred to as the Additional Named Insured, is added as an Additional Named Insured, in respect of liability arising from the work or operations of the insured and the Additional Named insured, in connection with contracts entered into between the insured and the Additional Named Insured.

The Insurance as is afforded by this policy shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of the policy by any insured shall not affect the protection given by this policy to any other insured. The inclusion herein of more than one insured shall not operate to increase the limit of liability under this policy.

20.4 The Company will deliver to the Ministry Representative on execution of this Agreement evidence of insurance issued to comply with the insurance requirements outlined in this Article, by way of:

- a) a duly completed and executed Ministry Certificate of Insurance (H-111); and,
- b) evidence of Automobile Liability Insurance in the form of a duly executed Insurance Corporation of British Columbia APV47 or APV250 forms or a copy of the vehicle registration/insurance certificate.

20.5 The Company will deliver to the Ministry Representative:

- a) evidence of renewal of the insurance, by way of duly completed and executed Ministry certificate of Insurance and a duly executed Insurance Corporation of British Columbia APV47 or APV250 forms; and,
- b) upon the request of the Ministry, evidence that the insurance remains in force and effect by way of the originals or duly executed certified copies of all current insurance policies and endorsements to comply with the insurance requirements outlined in this Article.

20.6 The Company will ensure that the insurance described in this Article may not be canceled, reduced, altered, or materially changed in any way whatsoever without the insurer or insurers giving not less than 30 days' prior written notice to the Ministry Representative by registered mail.

20.7 In the event of damage or any physical loss or damage to equipment, apparatus, improvements or fixtures of the Company, the settlement or payment of the subsequent claim shall be made without the right of subrogation against Her Majesty the Queen as represented by the Minister or any employees, servants or agents of the Minister.

21. DESIGNATED REPRESENTATIVES

21.1 The Company designates the **Manager, Real Estate** as the Company's representative under this Agreement.

21.2 The Ministry hereby designates the **Manager, Utility Services** as the Ministry Representative under this Agreement.

22. ASSIGNMENT

22.1 This Agreement and the applicable Site Permit in no way restrict or limit the rights and discretion of the Ministry, if it so desires or determines, to sell, transfer, assign or otherwise dispose of a Site to any person.

22.2 The Ministry may, in its sole discretion and without the prior consent, written or otherwise, of the Company, assign this Agreement and any Site Permit, and all of the rights, title, benefits, interest and privileges of the Ministry in, to and under this Agreement and the applicable Site Permit to a person.

22.3 The Company hereby agrees that any assignment by the Ministry of this Agreement or a Site Permit to a person and all of the rights, title, benefits, interest and privileges of the Ministry in, to and under this

Agreement and the applicable Site Permit, will not constitute a breach of the obligations of the Ministry under this Agreement or the applicable Site Permit and the Company releases and discharges the Ministry:

- a) of and from all covenants, conditions and terms required to be observed and performed by the Ministry under this Agreement and the applicable Site Permit; and,
- b) of and from all claims, actions, or demands of any sort whatsoever which may be brought or may arise in connection with the assignment of this Agreement and the applicable Site Permit by the Ministry pursuant to this Article.

23. DISCLOSURE

- 23.1 The Company will treat as confidential and will not, without the prior written consent of the Ministry, publish, or disclose or permit to be published, or disclosed either before or after the expiration of the Term, all information supplied to, obtained by, or which comes to the knowledge of the Company as a result of this Agreement except insofar as such publication, or disclosure is required by law or is necessary to enable the Company to fulfill the obligations of the Company under this Agreement.
- 23.2 Public disclosure of this Agreement and all documents or other records pertaining to this Agreement will be governed by the *Freedom of Information and Protection of Privacy Act*.

24. NOTICE

- 24.1. Any notice, document or communication required or permitted to be given under this Agreement must be in writing and will be deemed to have been given if delivered by hand, courier, or registered mail to the party to whom it is to be given as follows:

to the Ministry:

Ministry of Transportation
4th Floor - 940 Blanshard Street
Victoria, British Columbia V8W 9T5
Attention: Manager, Utility Services

to the Company:

TELUS Communications Company.
Real Estate Department
3030 2nd Avenue SE
Calgary, Alberta T2A 5N7
Attention: Manager, Real Estate

Either party may, from time to time, advise the other by notice in writing of any change of address of the party giving such notice and, from and after the giving of such notice, the address therein specified will, for purposes of this Agreement, be deemed to be the address of the party giving such notice.

25. GENERAL PROVISIONS

25.1 The Company acknowledges and agrees with the Ministry that:

- a) the Ministry is under no obligation, express or implied, to provide access or services, of whatsoever nature or kind, including electricity, gas, water, and waste disposal services to any Site;
- b) the Ministry is under no obligation, express or implied, to provide any financial assistance or contribution toward the cost of servicing, creating or developing any Site or the Equipment and that the Company is solely responsible for all costs and expenses associated with its use of each Site and the Equipment under this Agreement; and,
- c) nothing in this Agreement constitutes the Company as the agent, joint venturer or partner of the Ministry or gives the Company any authority or power to bind the Ministry in any way.

25.2 The Company and the Ministry hereby acknowledge and agree that the Company may not cause any utility connection, including telephone or electrical services, to be installed at a Site without the prior consent of the Ministry.

26. MISCELLANEOUS

26.1 In this Agreement and each Site Permit a reference to a party includes that party's heirs, executors, administrators, successors and assigns.

26.2 It is expressly agreed that all grants, covenants, conditions, provisos, rights, powers, privileges and liabilities contained in this Agreement and each Site Permit will enure to the benefit of and be binding upon the Ministry and its assigns, and the Company and its successors and permitted assigns, and sublicensees.

26.3 No term, condition, covenant or other provision of this Agreement or a Site Permit will be considered to have been waived by the Ministry unless the waiver is expressed in writing by the Ministry. The waiver by the Ministry of any breach by the Company of any term, condition, covenant or other provision of this Agreement and the Site Permit will not be construed as or constitute a waiver of any further or other breach of the same or any other term, condition, covenant or other provision and the consent or approval of the Ministry to any act by the Company requiring the consent or approval of the Ministry will not be considered to waive or render unnecessary the consent or approval of the Ministry to any subsequent same or similar act by the Company.

26.4 If any provision of this Agreement or a Site Permit or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and that Site Permit and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.

26.5 This Agreement and each Site Permit may only be amended by subsequent agreement in writing between the parties.

26.6 No remedy conferred upon or reserved to the Ministry is exclusive of any other remedy in this Agreement or a Site Permit or provided by law, but that remedy will be in addition to all other remedies in this Agreement and each Site Permit or any other remedy then existing at law, in equity, or by statute.

26.7 Time is of the essence of this Agreement and each Site Permit.

27. **INTERPRETATION**

- 27.1 In this Agreement and each Site Permit, "person" includes a corporation, firm, association and any other legal entity and wherever the singular or masculine is used it will be construed as if the plural, the feminine or the neuter, and wherever the plural or the feminine or the neuter is used it will be construed as the singular or masculine, as the case may be, had been used where the context or the parties so require.
- 27.2 The captions and headings contained in this Agreement and each Site Permit are for convenience only and do not form part of this Agreement or a Site Permit and in no way define, limit, alter or enlarge the scope, meaning or intent of any provision of this Agreement or a Site Permit.
- 27.3 In this Agreement and each Site Permit, the words "including" and "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.
- 27.4 This Agreement and each Site Permit will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.
- 27.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement and the Site Permit, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement and the Site Permit are enactments of the Province of British Columbia.
- 27.6 If any section of this Agreement or a Site Permit, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remaining section or part of a section, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.
- 27.7 Each schedule attached to this Agreement and a Site Permit is an integral part of this Agreement and that Site Permit as if set out at length in the body of this Agreement and that Site Permit.
- 27.8 This Agreement and each Site Permit constitutes the entire agreement between the parties in respect of the subject matter of this Agreement and each Site Permit and no understandings, representations or agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement and each Site Permit except as expressly set out in this Agreement or the Site Permit.
- 27.9 Unless the context otherwise requires, any reference to "this Agreement" means this instrument and all of the schedules attached to it and a reference to an article, section, subsection or paragraph by number is a reference to the appropriate article, section, subsection or paragraph in this Agreement.
- 27.10 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms of this Agreement and each Site Permit.

APPENDIX 2

1.1 GENERAL TERMS

- 1.1 The parties agree that the Fee (the components thereof) will be renegotiated every five years during the Term and the parties agree that the Fee payable during the negotiation period, if the negotiation period extends into the five year period being negotiated shall not be less than the last calendar year of the Term.
- 1.2 If the Company and Ministry cannot mutually agree on the amount of the Fee payable for the next five years of the Term on or before the date that is 60 days prior to the date on which the renegotiated Fee is to take effect, then the determination of the Fee payable will be referred to and finally resolved by arbitration pursuant to the *Commercial Arbitration Act* and the Fee payable until the Fee has been determined as provided herein, shall be the amount not less than the Fee payable pursuant to this Agreement during the last calendar year of the Term.
- 1.3 The Fee payable to the Ministry will be paid on the first day of April in each year of the Term. If the annual Fee payable to the Ministry has not been paid in full within thirty days of the date it is due, the Ministry may without further notice to the Company terminate this Agreement and each Site Permit.
- 1.4 The Fee required for any portion of the month will be treated as a fee for 1/12 of the Fee.
- 1.5 The Fee for a Site will be prorated for the first year and be payable within 14 days of the Site Permit being issued by the Ministry to the Company.

2. FEE CALCULATION

- 2.1 The Company shall pay to the Ministry a Fee for the use of each Site that is subject to a Site Permit. The Fee for a Site will be based on the following three factors: (1) geographic location, (2) the Equipment that comprises the Wireless Communications Facility at the Site; and, (3) if the Wireless Communications Facility is attached, mounted or installed in or upon a Ministry Structure.
- 2.2 The Province shall be divided into the following zones for the purposes of calculating the Fee:
 - a) Zone 1 is comprised of all Highways under the jurisdiction of the Ministry within the boundaries of the Capital Regional District (CRD), Greater Vancouver Regional District (GVRD), and the Fraser Valley Regional District (FVRD);
 - b) Zone 2 is comprised of all Highways under the jurisdiction of the Ministry within the boundaries of municipalities within the Province of British Columbia which have a population of 50,000 or more as identified in the 1996 Canadian Census; and
 - c) Zone 3 is comprised of all Highways under the jurisdiction of the Ministry which are not included in Zone 1 and 2.
- 2.3 For the purposes of calculating the Fee, it will be determined by
 - a) the total number of antennas installed at a Site; and

- b) on the basis of whether or not the Equipment is attached, mounted or installed in, or on a Ministry Structure.
- 2.4 The Fee shall be automatically increased if the number of antennas is increased at a Site to a higher category, such modifications to be carried out in accordance with the terms of this Agreement.
- 2.5 The Company may charge a fee for the use of structure space and/or building space used by a sublicensee at a Wireless Communications Facility, where the Company has obtained a Site Permit from the Ministry. Where the Company has sublicensed a Site, the Company will pay to the Ministry, in addition to the Company's own Site Permit fee, an amount equivalent to 25% of the Site Permit fee that would have been paid by the sublicensee for its own site. The additional fee to be paid by the Company to the Ministry for each sublicensee will be based on the number of antennas located at a Site by the sublicensee, and form part of the total Site Permit fee payable by the Company to the Ministry.
- 2.6 Where the Company elects to install, maintain and operate its facilities on a structure which belongs to a non-wireless communications company, and where the non-wireless communications company has been authorized by the Minister to utilize a Highway, the Company will pay the Ministry 25% of the Fee that would be normally paid to the Ministry if it was issued a Site Permit under this Agreement. The Fee paid by the Company to the Ministry will be based on the total number of antennas that the Company has located at the structure which belongs to a non-wireless communications company.
- 2.7 Based on the Fee Calculation criteria, the Company's annual Site Permit fee for 2004/05 will be the amount shown in the Site Fee Table.

SITE FEE TABLE

Site Type	1 to 2 Antennae	3 to 9 Antennae	10 + Antennae
Zone 1			
Standard Tower	\$8,000	\$10,000	\$12,000
MoT Structure	\$10,000	\$12,500	\$15,000
Zone 2			
Standard Tower	\$4,800	\$6,000	\$8,000
MoT Structure	\$6,000	\$7,500	\$10,000
Zone 3			
Standard Tower	\$1,600	\$2,000	\$3,500
MoT Structure	\$2,000	\$2,500	\$4,000

Commencing on April 1, 2005, the Fee for each Site Permit will be adjusted on an annual basis, with the adjusted amount based on the annual average British Columbia All Items Consumer Price Index. The Fee for each Site Permit for 2005-06 will be calculated as follows. The Fee for 2004-05 will represent the base year and the annual average All Items Consumer Price Index for the calendar year 2004 will be used to adjust the Fee for 2005-06. Adjustments of the Fee for each Site Permit in subsequent years will be based on the preceding year's Fee for the Site Permit and the preceding year's annual average British Columbia All Items Consumer Price Index. The adjusted Fee for each Site Permit shall not be less than that paid in the previous year of the Term.

- 2.8 A discounted rate shall be applied to the Fee for Sites located in Zones 2 and 3. The discounted rate shall be applied as follows:

- a) a discounted rate of 10% of the total value of the Fees for those Sites located in Zones 2 and 3 where the Company has 6 to 10 Sites located in Zones 2 and 3; and
- b) a discounted rate of 15% of the total value of the Fees for those Sites located in Zones 2 and 3 where the Company has 10 or more Sites located in Zones 2 and 3.