

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE OF PAGES

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Deduct LTSA Fees? Yes

STC? YES

3. NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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4. **TERMS:** Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms D.F. No.	(b) Express Charge Terms Annexed as Part 2
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A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

7. ADDITIONAL OR MODIFIED TERMS:

8. **EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Transferor(s) Signature(s)

Execution Date		
Y	M	D

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

EXECUTIONS CONTINUED**Execution Date**

Transferor / Borrower / Party Signature(s)

[illegible]

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

STATUTORY RIGHT OF WAY FEE AGREEMENT

This Agreement is made on this 1st day of May, 2020.

BETWEEN: **Regional District of East Kootenay**, maintaining a place of business at 28 - 11th Avenue South, Cranbrook, BC V1C 2P1.

(the “**Grantor**”)

AND: **TELUS Communications Inc.** (Registration No. B1101218)

(“**TELUS**”)

WHEREAS:

- A. The Grantor and TELUS have entered into a statutory right of way (the “**Statutory Right of Way**”) in respect of a TELUS telecommunications Site (TELUS Site No. BC106282) dated May 1st, 2020;
- B. Under Section 3 of the Statutory Right of Way, TELUS agrees to pay the Grantor a one-time fee of Ten Dollars (\$10.00); and
- C. The parties hereto (the “**Parties**”) wish to determine more specifically the actual fee payable under the Statutory Right of Way.

THEREFORE the Parties agree as follows:

1. **Effective Date.** The Effective Date of this Agreement (the “**Effective Date**”) is the Commencement Date as such term is defined in the Statutory Right of Way.
2. **Fee.**
 - (a) **Fee during Initial Term.** Notwithstanding section 3(a) of the Statutory Right of Way, for the rights granted by the Grantor to TELUS under the Statutory Right of Way, TELUS shall pay to the Grantor a fee in the amount of \$8,000.00 per annum (the “**Fee**”) plus any applicable provincial sales tax and goods and services tax or harmonized sales tax provided that the Grantor has properly obtained a registration number for GST/HST purposes and has communicated same to TELUS, which Fee and taxes shall during the initial term be the Fee for all purposes of the Statutory Right of Way including, as required, determining the Fee to be in effect during any extension under section 2 of the Statutory Right of Way.
 - (b) The Fee during the Initial Term shall be paid in equal monthly installments of \$666.67 starting on the Commencement Date. Where the Commencement Date is the first day of a month, the subsequent monthly installments of Fee shall be paid on the first day of each and every month thereafter during the Term. If the Commencement Date is not the first day of a month then the first monthly installment of Fee will be prorated from the Commencement Date to the first day of the month immediately following the Commencement Date and thereafter monthly installments of Fee shall be paid on the first day of each and every month during the Term except for the last monthly installment which shall be prorated to the end of the Term.

- (c) Notwithstanding subsections 2(a) and 2(b) of this Statutory Right of Way Fee Agreement, from the Commencement Date to the earlier of: (i) the last day of the month in which construction of the Site starts, and (ii) the last day of the month in which the third anniversary of the Commencement Date occurs (the “**Reduced Fee End Date**”), the Fee shall be fifty dollars (\$50.00) per annum prorated accordingly, and such reduced Fee shall be paid on or before the Reduced Fee End Date. Starting on the day after the Reduced Fee End Date, the monthly payments set out in subsection 2(b) of this Statutory Right of Way Fee Agreement shall commence.
- (d) **Fee during Extension Terms.** The third sentence of section 2 of the Statutory Right of Way is deleted and replaced with the following:

Each such extension term will be subject to the same terms and conditions that apply during the initial term except that the Fee (defined herein) in each such extension term shall be equal to the Fee prevailing in the year immediately preceding the beginning of such extension term, changed by an amount equal to the change in the Consumer Price Index Canada (all items), not seasonally adjusted, from start of the immediately preceding term to the start of the current extension term (using the same month for each start).

3. **Registration.** The Parties agree that the Statutory Right of Way but not this Agreement will be registered in a Land Title Office.
4. **Statutory Right of Way Remains In Effect.** Save and except as amended by this Agreement, the Statutory Right of Way shall remain in full force and effect.
5. **Confidentiality.** The provisions set out in the Statutory Right of Way with respect to confidentiality shall also apply to this Agreement.
6. **Interpretation.** Capitalized terms and expressions in this Agreement shall have the respective meanings set out in the Statutory Right of Way, unless the context otherwise requires.
7. **Signing and Notices.** This Agreement may be executed in counterparts and transmitted by facsimile or other electronic means of transmission, and all such counterparts together will constitute one agreement. Any notice required or authorized by this Agreement shall be deemed to have been properly given if given by the manner set out in the Statutory Right of Way.
8. **Successors and Assigns.** This Agreement may only be assigned with a permitted assignment of the Statutory Right of Way and the provisions governing an assignment of the Statutory Right of Way shall also apply to an assignment of this Agreement. This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of the Grantor and the successors and permitted assigns of TELUS.

IN WITNESS WHEREOF this Agreement has been executed as of the day and month first above written.

Address of Grantor:

28 - 11th Avenue South

Cranbrook, BC V1C 2P1

Attention: Shawn Tomlin
Facsimile: 250-489-3498
Email: stomlin@rdek.bc.ca
Telephone: 250-489-2791

Address of TELUS:

200 Consilium Place Suite 1600
Scarborough, Ontario M1H 3J3
Attention: Real Estate Department
Facsimile: 1-800-788-6622
Telephone: 1-800-815-5715
Emergency 24 hour #: 1-800-391-1391

Regional District of East Kootenay

Shawn Tomlin
Chief Administrative Officer

TELUS Communications Inc.

Marc Parras
Manager, Technology Strategy

TERMS OF INSTRUMENT - PART 2

STATUTORY RIGHT OF WAY

This Agreement is made on this 1st day of May, 2020.

BETWEEN:

Regional District of East Kootenay (Registration No. N/A), maintaining a place of business at 28 - 11th Avenue South, Cranbrook, BC V1C 2P1

(the “**Grantor**”)

AND:

TELUS Communications Inc. (Registration No. B1101218)

(“**TELUS**”)

WITNESSES THAT WHEREAS:

A. In these Terms of Instrument - Part 2, the Transferor is known as the “Grantor” and the Transferee is known as “TELUS”;

B. The Grantor is the owner or lessee of the real property(ies) including any buildings and structures situated thereon described in Schedule “A” (the “**Premises**”);

C. The Grantor has agreed to grant to TELUS a statutory right of way over the Premises to construct, operate and maintain certain works;

D. Without limiting any of the rights granted to TELUS in this Agreement, the general intent of this Agreement is to permit TELUS to use the Premises mainly as a telecommunications:

☒ Tower site

☐ Rooftop/building exterior site

☐ In building site; and

E. The statutory right of way granted in this Agreement is necessary for the operation and maintenance of TELUS’ undertaking.

NOW THEREFORE in consideration of the Fee payable by TELUS to the Grantor and other valuable consideration the receipt and sufficiency of which is acknowledged by the parties hereto (the “**Parties**”), pursuant to section 218 of the *Land Title Act (BC)* and any amendments and substitutions thereto, the Grantor hereby grants to TELUS, a statutory right of way over the Premises, for the purposes and in accordance with the terms and conditions hereinafter set out and in the Schedules attached hereto, the whole forming the agreement between the Parties (the “**Agreement**”).

1. **Term and Commencement Date.** The term of this Agreement shall be for a period of ten (10) years commencing on May 1st, 2020 (the “**Commencement Date**”) and any extension terms(s) as provided for in this Agreement (collectively the “**Term**”).

2. **Rights of Extension.** The Grantor hereby grants to TELUS the right to extend the initial term of this Agreement for two (2) further and consecutive period(s) of ten (10) year(s) each. Such extensions shall take effect automatically and without further notice, unless TELUS gives notice to the Grantor, at least ninety (90) days prior to the end of the current term of this Agreement, that it shall not exercise such right of extension. Each extension term will be subject to the same terms and conditions that apply during the initial term.

3. **Fee.**

- (a) For the rights granted by the Grantor to TELUS, TELUS shall pay to the Grantor a onetime fee of \$10 (the “**Fee**”) plus applicable sales tax, goods and services tax or harmonized tax on or before the Commencement Date, provided that the Grantor has properly obtained a registration number for GST/HST purposes and has communicated same to TELUS, which Fee and taxes shall be paid on or before the Commencement Date.
- (b) The Fee and any other amount payable by TELUS to the Grantor under the terms of this Agreement shall be tendered at the address of the Grantor specified in this Agreement, or at such other address as may be duly notified to TELUS in writing by the Grantor. If requested by TELUS, TELUS shall have the right to pay the Fee and any other payments to the Grantor, by way of an Electronic Fund Transfer system (“**EFT**”) and for this purpose the Grantor agrees to complete and deliver to TELUS, all reasonable authorizations required by the Grantor’s bank and TELUS to enable payments by way of EFT. In the event of any termination of this Agreement for whatsoever reason, the Grantor shall refund to TELUS on a prorated basis any Fee or other amount paid in advance for any period of time following the effective date of termination. The Fee may be changed in accordance with any other agreement executed by the Parties Agreement.

4. **Uses.**

- (a) **Rights Generally** - In this Agreement, TELUS shall have certain rights to use those parts or areas of the Premises described in Schedule B attached to this Agreement (the “**Site**”) and certain rights over the rest of the Premises, except the Site (the “**Rest of the Premises**”).
- (b) **Equipment and Equipment Space at the Site** - TELUS shall have the right to:
 - (i) construct (including staging), install, use, operate, repair, replace, modify, expand, relocate and remove equipment (including antennas and microwave dishes), devices, utility and communications cabling (including fibre), poles and other support structures, risers, conduits, ducts, vertical and/or horizontal cable pathways and facilities, as required from time to time by TELUS (collectively the “**Equipment**”), and such

enclosed structures and interior spaces as required from time to time for the purpose of housing the Equipment or any part thereof (the “**Equipment Space**”) on the Site;

- (ii) make other alterations and improvements at the Site as deemed necessary by TELUS; and
- (iii) if applicable, install concrete moorings above and below grade at the Site as required in order to ensure the stability of certain exterior Equipment.

(c) **Access and Utilities at the Rest of the Premises** - TELUS shall have the right to:

- (i) access the Site on, over, under and through the Rest of the Premises with personnel and vehicles; and
- (ii) construct (including staging), install, use, operate, repair, replace, modify, expand, relocate and remove all required power and communications cabling and related Equipment on, over, under and through the Rest of the Premises as may be needed to bring utilities to the Site.

(d) **Purposes** - TELUS’ rights in this Agreement are for the purpose of carrying on the business of TELUS as a telecommunications service provider and may be exercised by TELUS, its employees, agents, contractors and licensees (and their respective employees) on a 24 hour/7 days a week basis.

5. Termination by TELUS. If, at any time during the Term, TELUS determines, in its sole discretion, that operating the Site for the purposes declared in this Agreement is, or has become, commercially impractical, for any reason whatsoever, TELUS may terminate this Agreement without damages or penalty upon thirty (30) days prior written notice to the Grantor.

6. Covenants of TELUS.

- (a) **Safety and Maintenance** - TELUS shall install, operate and maintain its Equipment and the Equipment Space in a good, safe, and workmanlike manner which may include grounding.
- (b) **Electricity Charges** - TELUS shall pay for the electricity charges attributable to the operation of the Equipment at the Site, either by having installed a separately metered electrical service or, in circumstances where the local utility will not install a separate meter, by installing a submeter to the Grantor’s service and reimbursing the Grantor for electricity consumed by TELUS’ operations hereunder based on the submeter readings and the actual tolls of the local utility. The Grantor is responsible for reading the submeter once every three months and invoicing TELUS accordingly, but in any event no less frequently than on an annual basis failing which TELUS may fully discharge its obligation to compensate the Grantor for electricity consumption by tendering payment of a reasonable estimate of the electricity charges for usage in the previous year. No claim may be made by the Grantor for electricity charges arising from usage that has occurred more than one year in the past. In circumstances where TELUS’ electricity consumption is expected to be insignificant or where measurement of TELUS’ electricity consumption is impractical, the Parties may agree on a mutually agreed annual payment for electricity consumption. In the event that TELUS installs a submeter as described above and the Grantor’s service requires upgrading, TELUS shall have the right to install any such upgrade.
- (c) **3rd Party Utility Providers** - If portions of the Premises are used for buried or overhead utility cables or wires or if for other bona fide reasons, TELUS requires one or more local utilities to provide services (e.g. electricity) to the Site, then at the request of each utility and

at the request of TELUS, the Grantor shall, at no cost to TELUS and within 30 days of receiving the request, grant to the utility a right of way for purposes of providing such services, including all necessary infrastructure and equipment (e.g. poles, cables, pipes etc.), in the form of the utility's standard document, subject to approval by the Grantor, such approval not to be unreasonably withheld, conditioned or delayed. The Grantor shall not be obliged to pay for any costs of such right of way and necessary infrastructure and equipment.

- (d) **Removal of Equipment** - TELUS shall quit and cease using the Premises within ninety (90) days after the termination of this Agreement, weather permitting, and unless the Parties agree in writing otherwise, TELUS shall remove its above ground Equipment and any related housing structures (where applicable) from the Premises, cut off all foundations and moorings (where applicable) to no less than one meter below grade, and restore the surface of the Site to approximately the state it was in as of the Commencement Date, reasonable wear and tear excepted.
- (e) **TELUS Interference** - TELUS covenants that TELUS' operation of its radio system(s) shall not cause material interference with, or degradation of, any other wireless signals existing as of the Commencement Date, which are lawfully transmitted or received by third party licensees within or on the Premises. TELUS shall use all reasonable efforts to correct such interference or degradation caused by TELUS, where reasonably demonstrated, upon receiving written notice thereof from the Grantor.

7. **Covenants of the Grantor.**

- (a) **Grantor Interference** - The Grantor shall, subject to subsection 7(b) not do, or permit to be done, any act or thing including any change to the Premises and its appurtenances, that could materially affect TELUS' operation of its radio system(s) or affect access to or use of the Premises including utilities by TELUS in accordance with this Agreement.
- (b) **Third Party Equipment** - The Grantor may at any time grant rights to third parties to install other or additional telecommunications transmission equipment on the Premises, provided that the operation of such other or additional equipment does not interfere with the operation of the Equipment or Equipment Space. The Grantor shall provide TELUS with sixty (60) days prior written notice of the proposed new installation, and TELUS shall thereafter work with the installer and operator of the new equipment to ensure that the proposed new installation does not interfere with the operation of the Equipment. The Grantor shall, as a condition of the grant of any rights to third parties to install other or additional telecommunications transmission equipment, stipulate that such party must collaborate with TELUS as described above and must refrain from installing and operating any such equipment until TELUS has determined, acting reasonably, that no material interference with the operation of the Equipment will result. The Grantor shall include the stipulations set out in the preceding sentence in any instrument used to grant rights to third parties to install other or additional telecommunications equipment on the Premises. For a Site containing a tower or similar free standing structure, this subsection shall not apply to the Site, but shall apply to the Rest of the Premises.
- (c) **Emergency Power** - The Grantor shall allow TELUS to install hard wire electrical connections to the Grantor's emergency power generator on the Premises for emergency use by TELUS in case of any failure of public electrical service to the Site. TELUS shall also have the right to install and operate, at TELUS' expense, its own permanent or portable emergency power generator on the Premises, including cabling and other facilities as may be required to connect TELUS' generator to the Equipment.

- (d) **Premises Maintenance** - The Grantor agrees to provide not less than thirty (30) days prior written notice to TELUS of any repairs, additions or maintenance (collectively the “**Work**”) to take place at the Premises, which may have an impact on the Equipment Space or the operation of the Equipment. The Grantor further agrees to meet on-site with TELUS and to make available the contractor(s) involved with the Work, not less than fifteen (15) business days prior to the commencement of the Work to review the Work and the related impact on the Equipment Space or the Equipment, except in the case of an emergency situation requiring immediate intervention to preserve the structural integrity of the Premises. The Grantor further agrees to make a reasonable effort to inform TELUS as soon as possible of an emergency situation that may have an adverse effect on the Equipment Space or the Equipment.
- (e) **Trees, Vegetation** - The Grantor shall not plant, install or maintain any trees or vegetation in the Site or any portion of the Premises which may interfere with the Equipment without the prior written consent of TELUS. TELUS shall have the right to trim or cut trees or other vegetation which may be interfering with or obstructing the installation, operation, maintenance or repair of the Equipment or restricting access to the Site or any parts thereof. When trimming or cutting trees or other vegetation, TELUS shall comply with all applicable laws and regulations.

8. TELUS’ Equipment. The Equipment and any related housing structures shall remain at all times the personal and moveable property of TELUS, and shall not become fixtures, notwithstanding the attachment to any degree or in any manner of any part of the Equipment or such housing structures to the Premises.

9. Insurance. TELUS shall at all times throughout the Term maintain insurance coverage for: (i) all-risk property loss covering the full insurable replacement cost of the Equipment and (if applicable) TELUS owned Equipment Space and (ii) commercial general liability in an amount not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury and property damage (“**Commercial General Liability**”). At the request of the Grantor, the Grantor shall be included as an additional insured in the Commercial General Liability policy, but solely with respect to liability arising out of the operations of TELUS at the Premises. At the Grantor’s request, TELUS shall provide a memorandum or other written evidence of insurance confirming that policies as required in this Agreement are in force. The Commercial General Liability policy shall contain a provision whereby the insurers will endeavour to provide thirty (30) days’ notice of cancellation to the Grantor. It is acknowledged and agreed that TELUS may satisfy all or part of this property insurance requirement through self-insurance.

10. Indemnities. Each of the Grantor and TELUS shall indemnify and hold the other harmless from and against any and all costs and expenses (including legal costs), claims, damages, liabilities, actions, causes of action and losses including any and all loss of or damage to property and any and all injuries and loss of life, which in each case arise out of or are caused by, any breach of this Agreement or any unlawful act or any negligent act or omission, by such indemnifying party in connection with this Agreement. Neither party shall be required to indemnify the other party to the extent any such damage or losses arise out of or are caused by a breach of this Agreement or any unlawful act or any negligent act or omission by the other party or any third party. This section shall survive the termination of this Agreement.

11. TELUS’ Financing Arrangements. The Grantor acknowledges that TELUS has entered into, and will from time to time be entering into, certain financing arrangements which may require an assignment or hypothecation of, or other creation of a security interest in, TELUS’ rights and obligations under this Agreement, or the creation of a security interest in the personal property of TELUS located at the Premises (including the filing of a fixtures notice against title to the Premises) whether that personal property is movable or has become a fixture at law. The Grantor consents to any such assignment, hypothecation or

other creation of a security interest, and to any further assignment or transfer which may occur on the enforcement of same. The Grantor shall, at the request of TELUS, acknowledge in writing the foregoing and shall execute and deliver all such priority agreements, consents, disclaimers of interest and other documents as the relevant financier may require. For the purposes of this section, TELUS is executing this Agreement for itself and as agent for the financiers with whom TELUS may be entering into financing arrangements from time to time, as acknowledged in this Agreement

12. No Lease. This Agreement shall not constitute a lease between the Grantor and TELUS, nor create in favour of TELUS any estate in the Premises. Any locking or segregation or fencing of the Equipment is for security purposes only and, subject to TELUS' reasonable security and safety requirements, the Grantor shall at all times be allowed access to the Site. The Grantor covenants that should it ever transfer, sell or otherwise dispose of its interest in the Premises, the Grantor will use its best efforts to cause the transferee or purchaser to take an assignment of and assume the obligations of, the Grantor under this Agreement. The Grantor agrees to use its best efforts to obtain a non-disturbance agreement from any mortgagee(s) of the Premises in such form as TELUS may, from time to time, reasonably require.

13. Assignment. Except as otherwise permitted in this Agreement, this Agreement shall not be assigned by TELUS without the prior written consent of the Grantor, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, TELUS may, without consent: (i) assign its rights and obligations under this Agreement to any related or affiliated entity including a partnership; and (ii) license use of a portion or all of the Site and its appurtenances together with TELUS' rights to the Rest of the Premises to any related or affiliated entity including a partnership or to a third party. Whenever the Grantor's consent is required by virtue of these provisions, such consent is deemed granted if Grantor does not respond within fifteen (15) days to the written request of TELUS for such consent. The Grantor agrees that it will not transfer or assign the whole or any part of this Agreement or any interest therein or arising thereunder, except to a bona fide purchaser or mortgagee for value and transferee of the entirety of the Grantor's remaining interest in the Premises.

14. Governing Law. The provisions of this Agreement shall be governed by, and interpreted in accordance with, the applicable laws of Canada and of the province of British Columbia. The Parties hereby attorn to the exclusive jurisdiction of the courts of that province, and the venue shall be the capital of that province.

15. Government Regulation. TELUS shall, at all times, ensure that the installation, operation and maintenance of its Equipment and the Equipment Space comply with all applicable laws, directions, rules and regulations of governmental authorities having jurisdiction over TELUS' operations, including all applicable building codes, and Industry Canada and Transport Canada requirements (as are in effect from time to time). The Grantor shall, at all times, ensure that the operation, including repair and maintenance of the Premises complies with all applicable laws, directions, rules and regulations of such governmental authorities (as are in effect from time to time).

16. Continued Use. In the event that TELUS continues to use the Site after the expiration of the Term (except for activities pursuant to subsection 6(d) hereof), TELUS shall be deemed to be occupying the Site as a licensee from month to month at a monthly at the current monthly fee of one twelfth (1/12) of the annual Fee. The fee shall thereafter be payable monthly in advance on the first day of each month following the expiration of the Term, with all other rights and obligations of this Agreement remaining in force, to the extent they may apply to a month to month licence, subject to the proviso that neither party may terminate the month to month licence except by giving ninety (90) days written notice to the other party.

17. Withholding. TELUS shall withhold from amounts payable to the Grantor under this Agreement, any applicable non-resident withholding taxes and shall remit such taxes to the Canadian taxing authorities.

When such amounts are remitted by TELUS, they will be deemed in satisfaction of the same amounts payable to the Grantor under this Agreement and TELUS shall have no further responsibility for any amounts so remitted.

18. Expropriation. If during the Term, the whole or any part of the Premises is expropriated, the Grantor shall not accept any award for compensation without TELUS' prior written consent. TELUS shall be entitled to receive such part of the award as compensation for the loss of its interest in the Site.

19. Environmental. The Grantor represents and warrants that there are not contained, on, within or under the Premises, any toxic material or hazardous substances or any other contaminants as defined under all applicable provincial or federal legislation, regulation or orders of any kind (collectively "**Hazardous Substances**"). The Grantor shall indemnify and hold TELUS harmless from and against any cost, claims or liability (including statutory) arising from the presence of Hazardous Substances on, within or under the Premises existing as at the Commencement Date and during the Term. Should Hazardous Substances be found or come to the knowledge of the Grantor during the Term, it shall immediately advise TELUS in writing of their existence. TELUS shall have the right to conduct environmental testing at the Premises at any time during the Term and to terminate this Agreement immediately without damages or penalty should the results of such environmental testing demonstrate the presence of Hazardous Substances at levels not acceptable to TELUS, acting reasonably. TELUS shall comply with all applicable provincial or federal environmental legislation, regulation or orders of any kind relating to the Equipment and the Equipment Space.

20. Transmissions; Counterparts; Notices. This Agreement may be executed in counterparts and transmitted by facsimile or other electronic means of transmission, and all such counterparts together will constitute one agreement. Any notice required or authorized by this Agreement shall be deemed to have been properly given if by personal delivery, registered mail, courier, confirmed fax transmission, or other electronic transmission to the address, fax number or e-mail address (if applicable) specified in this Agreement or to any other address, fax number or e-mail address duly notified by one party to the other.

21. Severability. Any provision of this Agreement that is determined to be void or unenforceable in whole or in part shall be deemed unwritten and shall not affect or impair the validity or enforceability of any other provision of this Agreement, which shall all remain binding on the Parties.

22. Co-operation and Authorization. The Grantor shall, at TELUS' expense, assist and co-operate with TELUS in obtaining government approvals for TELUS to exercise its rights under this Agreement including obtaining from any person, corporation or government authority, relevant information regarding the Premises and the Grantor agrees to execute, from time to time, authorization letters and any additional documents that TELUS may reasonably require for the purposes of exercising its rights under this Agreement.

23. Confidentiality. Each party (the "**Receiving Party**") shall treat the details of this Agreement and any information acquired as a result of this Agreement from the other party concerning the other party's plans, businesses, technology, products, processes, work or services (the "**Confidential Information**") as strictly confidential. The Receiving Party shall use the Confidential Information solely for the purpose of establishing and operating the business arrangements contemplated in this Agreement (the "**Purpose**") and shall not disclose the Confidential Information to third parties, except (i) to the Receiving Party's related or affiliated entities including partnerships and to the Receiving Party's contractors, licensees, advisors and agents who have a need to know the Confidential Information for the Purpose and who have agreed to maintain the confidentiality of such information, or (ii) as required by law, provided the Receiving Party provides prior written notice of such legal disclosure requirement to the other party. The forgoing restrictions shall not apply to information that is rightfully obtained by the Receiving Party from a third

party, that is in the public domain through no fault of the Receiving Party, or that is independently known or developed by the Receiving Party. This provision shall survive any termination of this Agreement.

24. Schedules. Schedules and other documents attached or referred to in this Agreement, including the following Schedules, are an integral part of this Agreement:

Schedule “A” – Description of Premises

Schedule “B” – Identification of Site

Schedule “C” – Amendments to Terms and Conditions (if applicable)

If any conflict should arise between a term or condition in a Schedule and in the main part of this Agreement, the term or condition in the Schedule shall govern.

25. Detailed Drawing/Plan and Changes to Site

- (a) **Detailed Drawing/Plan** - TELUS may and without the consent of the Grantor, replace Schedule “B” with a new or amended Schedule “B”, in order to show the Site and/or the Equipment in further detail, including, at TELUS’ discretion a survey of the Premises and/or the Site which TELUS may register in the applicable B.C. Land Title Office (“**Land Title Office**”).
- (b) **Changes to Site** - TELUS may change the areas comprising the Site (including relocate and add to such areas), and:
 - (i) if the change is significant the consent of the Grantor shall be required, which consent the Grantor agrees not to unreasonably withhold, delay or condition; and
 - (ii) if the change is not significant no consent of the Grantor shall be required.

Changes to the Site shall be shown on either a new or amended Schedule “B”.

26. Interpretation. Wherever the expression “including” is used in this Agreement, it shall mean “including without limitation”.

27. Recitals and Authority. The Parties agree that, as of the Commencement Date, the recitals set forth on page one of this Agreement are true and correct and are to be considered representations and warranties. The Grantor and/or its agent represent and warrant that it has full authority to enter into and sign this Agreement and bind the Grantor accordingly.

28. Registration. TELUS shall be permitted to register the statutory right of way granted in this Agreement on title to the Premises at TELUS’s expense in the applicable Land Title Office. Grantor shall co-operate with TELUS in initialling any minor modifications to this Agreement that may be necessary in the future, for this Agreement to be in registerable form satisfactory to the Land Title Office.

29. Encumbrances. TELUS may, at its option, pay or discharge any arrears owing under any encumbrance upon the Premises which has priority over the interests of TELUS under this Agreement, or any arrears of any property taxes, local improvement charges and any other rates, duties, levies and assessments levied or assessed by any competent government authority upon or in respect of the Premises or that affect the Premises in any way, in which event TELUS shall be subrogated to the rights of the creditors of such discharged obligations and may, at its option, apply the Fee or any other amounts owing to the Grantor under this Lease to the repayment of any arrears so paid or discharged. The Grantor agrees to promptly provide TELUS with a copy of any notice it receives of any arrears described in this section.

30. Entire Agreement. This Agreement cancels and replaces all prior agreements between the parties with respect to the Site, and expressly excludes all prior representations and discussions, either oral or written, between the parties other than those set forth in this Agreement. Each party acknowledges having obtained adequate explanation of the nature and scope of each of the clauses of this Agreement, and having had the opportunity to consult legal counsel with respect thereto. Except as otherwise provided in this Agreement, this Agreement may not be amended or modified except by written agreement executed by both Parties.

31. Successors and Assigns. This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of the Grantor and the successors and permitted assigns of TELUS, and no permitted assignee or successor of the Grantor (including any transferee of or successor in title to the Premises) shall challenge the validity or enforceability of any aspect of this Agreement. The Grantor shall cause every assignee or successor of the Grantor to agree in writing to be bound by all obligations of the Grantor hereunder. Prior to a conveyance or assignment of its interest in the Premises, the Grantor shall provide TELUS with written notice of the identity of the successor or assignee and the address at which the amounts payable to the Grantor hereunder shall be tendered and notices given pursuant to the conveyance or assignment.

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first above written.

**MAILING/COURIER ADDRESS OF
GRANTOR:**

28 - 11th Avenue South
Cranbrook, BC V1C 2P1

Attention: Shawn Tomlin
Telephone: 250-489-2791
Facsimile: 250-489-3498
E-mail (if applicable): stomlin@rdek.bc.ca

**REGIONAL DISTRICT OF EAST
KOOTENAY**

By: _____
Name: Shawn Tomlin
Title: Chief Administrative Officer

GST/HST _____
Registration No: _____
PST Registration _____
No: _____

200 Consilium Place Suite 1600
Scarborough, Ontario M1H 3J3
Attention: Real Estate Manager
Telephone: 1-800-815-5715
Facsimile: 1-416-279-3181
Emergency 24 Hour #: 1-800-391-1391
E-mail wireless.re@telus.com

TELUS Communications Inc.

By: _____
Name: Marc Parras
Title: Manager, Technology Strategy

SCHEDULE “A”

DESCRIPTION OF PREMISES

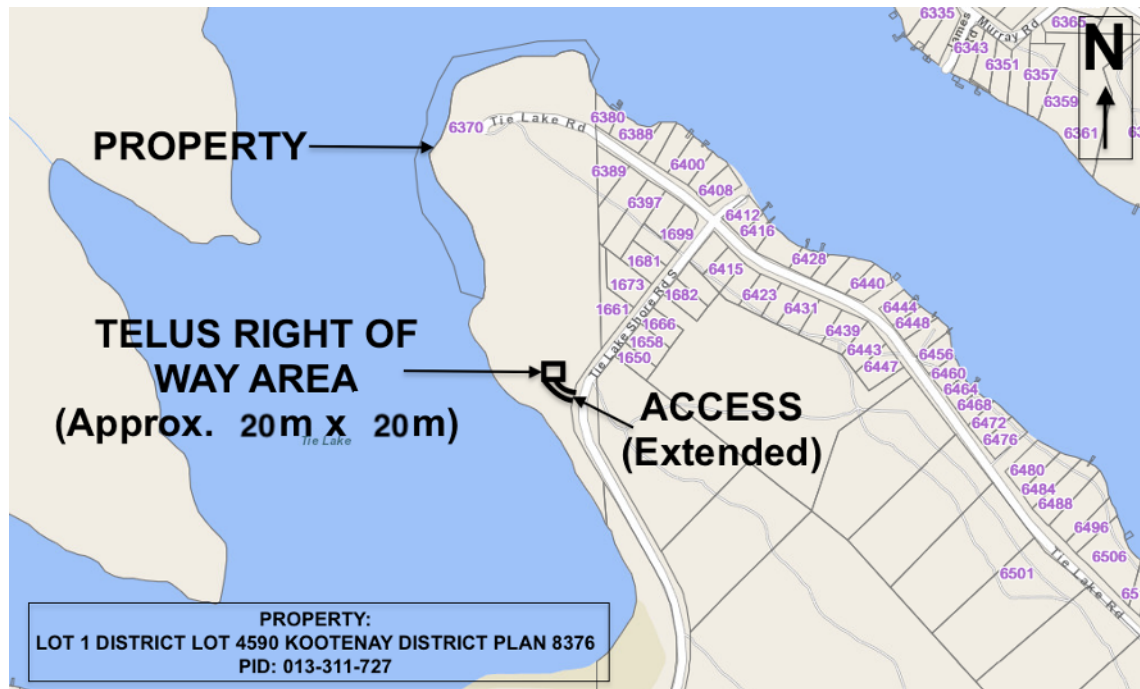
Real property located in the Regional District of East Kootenay, in the Province of British Columbia, known municipally as 6370 Tie Lake Road, Tie Lake, BC (Tie Lake Regional Park) and with the following legal description:

LOT 1 DISTRICT LOT 4590 KOOTENAY DISTRICT PLAN 8376

PID: 013-311-727

SCHEDULE “B”

IDENTIFICATION OF SITE



SCHEDULE “C”

AMENDMENTS TO TERMS AND CONDITIONS

1. Subsection 4(a) is amended as follows:

Rights Generally - In this Agreement, TELUS shall have certain rights to use those parts or areas of the Premises described in Schedule B attached to this Agreement (the “**Site**”) and certain rights over the rest of the Premises, except the Site (the “**Rest of the Premises**”). Notwithstanding the foregoing, this Agreement is subject to the condition that the Grantor shall, acting reasonably, reserve the right to approve the Grantee’s construction drawings prior to the commencement of any construction in the Right of Way Area.