

"DUPLICATE COPY"**STANDARD CHARGE TERMS**

Filed By: British Columbia Hydro and Power Authority and TELUS Communications Inc.

BACKGROUND:

- A. Each of B.C. Hydro and TELUS wish to obtain from the Owner a statutory right of way for certain rights on, over and under the Land.
- B. The Owner has agreed to grant to each of B.C. Hydro and TELUS a statutory right of way in respect of the Land.
- C. A statutory right of way is necessary for the operation and maintenance of the undertakings of each of B.C. Hydro and TELUS.

AGREEMENTS:

In consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

INTERPRETATION**1.1 In this Agreement:**

"Agreement" means the General Instrument Part 1 and these Standard Charge Terms;

"Area of the Works" means the Area of the Works as defined in the General Instrument Part 1, provided that if the General Instrument Part 1 contains no such definition the term "Area of the Works" shall mean that portion of the Land located within 6 metres of either side of the centre of the alignment of the Works;

"B.C. Hydro" means British Columbia Hydro and Power Authority named in Item 6 of the General Instrument Part 1 as the Transferee and all Persons authorized by B.C. Hydro;

"General Instrument Part 1" means Part 1 of the General Instrument as prescribed by the Land Title (Transfer Forms) Regulation, as amended or replaced;

"Hazardous Substance" means any substance which is defined as a hazardous substance or special waste in or by any law regulation or order of any authority having jurisdiction, and which is in the environment in excess of concentrations allowed by applicable legislation;

“Land” means the land described in Item 2 of the General Instrument Part 1;

“Owner” means the Person named in Item 5 of the General Instrument Part 1 as the Transferor;

“Person” means any association, society, corporation, individual, joint stock company, joint venture, partnership, trust, unincorporated organization, or any federal, provincial, regional, municipal, or other government or authorized agency, department or ministry thereof;

“TELUS” means TELUS Communications Inc. named in Item 6 of the General Instrument Part 1 as the Transferee and all persons authorized by TELUS;

“Underground Civil Works” means all Works which are installed in the ground on the Land including all ducts, conduits, transformer pads, and pull boxes, with the exception of padmounted transformers and cables, including any primary and secondary cables, and cables used for telecommunications, power or grounding; and

“Works” means the Works as defined in the General Instrument Part 1, provided that if the General Instrument Part 1 contains no such definition the term “Works” shall mean:

- (a) as it relates to the rights and responsibilities of B.C. Hydro, all things and components, in any combination and using any type of technology or means, necessary or convenient for the purposes of transmitting and distributing electricity and for the purpose of telecommunications, including: poles, guy wires, brackets, crossarms, insulators, above ground or underground transformers, anchors, attachments, overhead or underground lines and cables, underground conduits and pipes of every kind, together with access nodes, cabinets, all ancillary appliances and fittings, including any associated protective installations, and related works; and
- (b) as it relates to the rights and responsibilities of TELUS, all things and components, in any combination and using any type of technology or means, necessary or convenient for the purpose of telecommunications, including: poles, guy wires, brackets, crossarms, insulators, above ground or underground transformers, anchors, attachments, overhead or underground lines and cables, underground conduits and pipes of every kind, together with access nodes, cabinets, all ancillary appliances and fittings, including any associated protective installations, and related works.

- 1.2 This Agreement will be governed by, construed and enforced in accordance with the laws in force in British Columbia.
- 1.3 If the singular, masculine or neuter is used in this Agreement the same will be deemed to include reference to the plural, feminine, or body corporate or politic according to the context in which it is used.
- 1.4 The word “including” when following any general statement, term, or matter is not to be construed to limit such general statement, term, or matter to the specific items set forth immediately following such word or to similar items but rather such general statement, term, or matter is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

GRANT OF STATUTORY RIGHT OF WAY

- 2.1 The Owner grants separately to each of B.C. Hydro and TELUS, forever, the right, and statutory right of way to:
- (a) excavate for, construct, install, replace, upgrade, operate, maintain, remove and repair the Works on, in, under, through, over or across the Land;
 - (b) clear the Area of the Works and to keep it cleared (including pruning or removal) of any trees or growth;
 - (c) clear the Area of the Works and to keep it cleared of all or any part of any obstruction, structure, building, improvement or other matter which, in the reasonable opinion of B.C. Hydro or TELUS might:
 - (i) interfere with the exercise of its rights; or
 - (ii) create or increase any danger or hazard to the Works or to Persons or property in relation to the Works;
 - (d) enter, work, pass and repass on, and along the Area of the Works;
 - (e) have reasonable unobstructed access over the Land to and from the Area of the Works for all purposes relating to this Agreement;
 - (f) install service lines as required, for the transmission and distribution of electricity or for telecommunication purposes, over the Land from the Area of the Works to buildings and structures on the Land or on immediately adjacent land, or to street lights on public roads adjacent to the Land;
 - (g) prune or remove trees on the Land that in the reasonable opinion of B.C. Hydro or TELUS, might create or increase any danger or hazard to the Works or to Persons or property in relation to the Works;
 - (h) have exclusive use and occupation of all Underground Civil Works, whether the property of the Owner, B.C. Hydro or TELUS, on the Land that are from time to time used or installed for use by B.C. Hydro or TELUS; and
 - (i) do all things necessary or incidental to the undertakings of B.C. Hydro or TELUS in connection with the above.

COVENANTS OF B.C. HYDRO AND TELUS

- 3.1 B.C. Hydro covenants with the Owner that if it damages any structures, buildings or improvements outside the Area of the Works, or cuts or damages any crops or merchantable timber owned by the Owner anywhere on the Land, and such damage is not caused as a result of the Owner's breach of the terms of this Agreement or the negligence or willful act of the Owner, TELUS or their respective contractors, or those Persons for whom the Owner or TELUS are responsible at law, that it will:
- (a) compensate the Owner for such damages to structures, buildings, improvements, crops or merchantable timber; or

- (b) within a reasonable period of time, repair in a good and workmanlike manner any damaged structure, building or improvement, as closely as is practicable to its condition immediately prior to the damage.
- 3.2 TELUS covenants with the Owner that if it damages any structures, buildings or improvements outside the Area of the Works, or cuts or damages any crops or merchantable timber owned by the Owner anywhere on the Land, and such damage is not caused as a result of the Owner's breach of the terms of this Agreement or the negligence or willful act of the Owner, B.C. Hydro or their respective contractors, or those Persons for whom the Owner or B.C. Hydro are responsible at law, that it will:
 - (a) compensate the Owner for such damages to structures, buildings, improvements, crops or merchantable timber; or
 - (b) within a reasonable period of time, repair in a good and workmanlike manner any damaged structure, building or improvement, as closely as is practicable to its condition immediately prior to the damage.
- 3.3 B.C. Hydro and TELUS each covenant separately with the Owner to :
 - (a) take reasonable steps not to interfere unduly with the drainage of the Land in the exercise of their respective rights; and
 - (b) indemnify the Owner against all liability incurred by the Owner out of any claim made by any Person for injury or harm to Persons or property caused by the negligence or willful act of B.C. Hydro or TELUS, in the exercise of their respective rights under this Agreement or caused by the use or placement of Hazardous Substances on the Land by B.C. Hydro or TELUS, on the following conditions:
 - (i) the Owner will immediately provide written notice of the claim to B.C. Hydro and TELUS and resist that claim if and to the extent required by B.C. Hydro and TELUS. B.C. Hydro and TELUS will reimburse the Owner for all reasonable and necessary costs incurred by the Owner in resisting such claim;
 - (ii) B.C. Hydro and TELUS will not indemnify the Owner in respect of any claim for injury or harm to Persons or property caused by the Owner's breach of this Agreement or by the negligence or willful act of the Owner, its contractors or those Persons for whom the Owner is responsible at law; and
 - (iii) B.C. Hydro and TELUS will not indemnify the Owner in respect of claims arising out of, or in connection with, the negligence or willful act of the other.

COVENANTS AND AUTHORIZATIONS OF OWNER

- 4.1 The Owner covenants with each of B.C. Hydro and TELUS that, unless B.C. Hydro and TELUS both give their prior written permission (which permission may be given subject to terms and conditions), the Owner will not do or knowingly permit to be done, any act or thing which, in the reasonable opinion of B.C. Hydro or TELUS, might:

- (a) interfere with the exercise of any rights granted to B.C. Hydro or TELUS;
 - (b) impair the operating efficiency of any part of the Works;
 - (c) obstruct the access of B.C. Hydro or TELUS to any part of the Works; or
 - (d) create or increase any danger to the Works or to Persons or property in relation to the Works.
- 4.2 Without limiting the generality of section 4.1 the Owner covenants with each of B.C. Hydro and TELUS that, unless both B.C. Hydro and TELUS give their prior written permission (which permission may be given subject to terms and conditions), the Owner will not:
- (a) diminish or increase the ground elevation in the Area of the Works by any method including, piling any material or creating any excavation, drain or ditch in the Area of the Works;
 - (b) carry out blasting or logging operations on or near any portion of the Area of the Works; or
 - (c) make, place, erect, operate, use, maintain or permit any obstruction, structure, building, or improvement on, under or over the Area of the Works.
- 4.3 The Owner authorizes B.C. Hydro and TELUS or their agents to insert the number assigned by the relevant Land Title Office to the Plan, if any, described in Item 2 of the General Instrument Part 1.

MUTUAL COVENANTS

- 5.1 The Owner, B.C. Hydro and TELUS mutually covenant and agree among them that:
- (a) if either B.C. Hydro or TELUS elect to pay compensation pursuant to section 3.1(a) or 3.2(a), and the Owner and whichever of B.C. Hydro or TELUS that made the election cannot agree on the amount of compensation to be paid, then the matter in dispute shall be settled by arbitration by a single arbitrator under the *Commercial Arbitration Act* of British Columbia;
 - (b) unless otherwise agreed by the parties any merchantable timber on the Land which is owned by the Owner and cut by B.C. Hydro or TELUS in the exercise of their rights under this Agreement will become the property of the party that cut the timber;
 - (c) if either B.C. Hydro or TELUS cut timber on the Land which is owned by the Crown, then the party that cut the timber will pay all royalties, scaling fees and other charges which are properly levied by the Crown against such timber;
 - (d) nothing in this Agreement will in any way abrogate from or affect any rights, powers, exemptions or privileges, including any powers of expropriation, which B.C. Hydro or TELUS may have under any private or public statutes, by-laws, orders, regulations or any other laws, or agreements it has with the Owner or which are registered against title to the Land;

- (e) failure to enforce any covenant or restriction contained in this Agreement for a breach or violation of any covenant or right contained in this Agreement will not in any way constitute a waiver, in whole or in part, of any of the injured party's rights or remedies;
- (f) to be effective and binding between the parties a waiver must:
 - (i) be in writing; and
 - (ii) specifically identify the affected party;
- (g) a waiver only relates to a particular violation or breach and does not extend to any further or subsequent breach or violation, notwithstanding any rule of law or equity;
- (h) the Works installed will remain the property of B.C. Hydro and TELUS except to the extent specified in this Agreement;
- (i) if all or a portion of the Works are no longer required by B.C. Hydro, then B.C. Hydro will, at its cost, remove such Works (with the exception of Underground Civil Works) from the Land, unless the Owner otherwise agrees in writing, and after such removal the Underground Civil Works, to the extent that they are not already owned by the Owner, shall become the property of the Owner; and
- (j) if all or a portion of the Works are no longer required by TELUS, then TELUS will, at its cost, remove such Works (with the exception of Underground Civil Works) from the Land, unless the Owner otherwise agrees in writing, and after such removal the Underground Civil Works, to the extent that they are not already owned by the Owner, shall become the property of the Owner.

GENERAL

- 6.1 The terms "Owner", "B.C. Hydro" and "TELUS" include their respective heirs, executors, administrators, successors and assigns.
- 6.2 If the Owner is more than one Person, every covenant and agreement by the Owner in this Agreement will be joint and several.
- 6.3 This Agreement will run with the Land and will run with each part into which the Land may at any time be subdivided and each parcel into which it may at any time be consolidated, and will bind all present and subsequent owners of the Land, including their respective heirs, executors, administrators, successors, and assigns.

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