

Telecommunications Access Agreement

Effective Date: November 30, 2004

Agreement between Bell Canada ("Bell") and Metropolitan Toronto Condominium Corporation No. 1328 (the "Corporation") Authorizing Bell to Install and Operate Telecommunications Equipment and use In-Building Wire At Building Locations Specified in Schedule "A"

Bell and the Corporation jointly recognize that, in order to provide the unit owners and other building occupants with the high quality telecommunications services which such unit owners and occupants expect in buildings owned or controlled by the Corporation, Equipment ("the Equipment") may be required to be installed by Bell in the Main Terminal Room ("MTR"), Point-of-presence ("POP") or elsewhere in the Buildings subject to the prior authorization and consent of the Corporation or as otherwise designated thereby (which consent or authorization shall not be unreasonably withheld or delayed), as the case may be, by the Corporation. Therefore, the Corporation hereby grants to Bell non-exclusive access to the Buildings to install, maintain, repair and remove Bell's Equipment specified in detail on Schedule "A" attached hereto at no cost to the Corporation and to use such In-Building Wire as may be owned or controlled by the Corporation and/or Bell to provide Bell's telecommunications or other communication Services specified on Schedule "B" attached hereto (the "Services"), to the unit owners and other occupants of the Buildings. For greater clarity, the Corporation shall not object to Bell's use of a third party's In-Building Wire to deliver Services if lawfully permitted to do so. However, in reliance upon and subject to the Corporation's representation, warranty and covenant in Section 1(d) (without which Bell would not have entered into this Agreement without such term), Bell's agrees that its use of In-Building Wire shall not cause the Corporation to breach any contractual or other obligation the Corporation has to any such third party. The addresses of the buildings and common elements managed by the Corporation ("the Building(s)") and a list of the Equipment and the In-Building wire and its location in each of the Buildings is provided in Schedule "A" attached hereto.

The MTR shall be suitable in all respects for the purpose of housing or storing the applicable Equipment, subject to all reasonable policies and requirements regarding the access to and use of such space as stipulated or required by the CRTC, and if applicable, such reasonable and generally applicable policies and requirements of the Corporation with respect to the MTR or the Buildings as may be in effect from time to time and communicated to Bell through written notice. Bell shall share the MTR with the Corporation and any other providers permitted by the Corporation, free of interference, impediment, nuisance or damage to the Equipment, property or telecommunications signal of any other provider or the Corporation. The MTR shall have a shared power supply (15 amp service) and natural or artificial ventilation, as is, for the operation of the Equipment Bell shall be responsible for any electric power costs exceeding the existing 15 amp service. Bell shall bear any reasonable expenses for any further work, equipment or materials to provide additional air conditioning or ventilation where necessary arising from Bell's installation or use of its Equipment or power consumption in addition to existing equipment and power consumption, as reasonably determined by the Corporation.

The parties agree that nothing in this Agreement will be construed or interpreted to restrict the provision by Bell of Services to unit owners and other occupants in the Building, if such Services are not provided in breach of any provision of this Agreement. Notwithstanding the foregoing, the parties hereto acknowledge and agree that this Agreement does not permit any additional Equipment to be installed, operated or maintained by Bell in the Building, beyond the Equipment specified in Schedule "A" as may be revised from time to time by mutual agreement.

In the event Bell intends to install additional Equipment in any of the Buildings, Bell shall provide the Corporation with advance notification in writing of any such additional Equipment Bell may require to install in the Building. Each time Bell contemplates the installation of additional Equipment, it will submit a written request to add such new Equipment which will include the location of the Building, a description of the additional Equipment and will specifically identify its location within the Building, for approval by the Corporation in the form of an amended

Telecommunications Access Agreement

Schedule "A". Upon approval, the Corporation will return an executed copy for Bell's records, at which time the process described in item 2 below can proceed. Bell shall provide to the Corporation schematics showing the nature and location of any such installation. Where Bell is installing Equipment and is required to create new conduit pathways or equipment space, Bell shall, upon request by the Corporation, designate any such installations upon the Corporation's building plans to an "as built" standard.

The parties hereto acknowledge and agree that this agreement is effective as of the Effective Date shown above and expires on November 30, 2014. In the event any party wishes to renew this Agreement on the same terms and conditions as are contained herein, such party shall give a renewal notice to the other party together with a copy of this provision, at least One Hundred and Eighty (180) days prior to the expiration of the term or any Renewal Term (as defined below) as the case may be, whereupon this Agreement shall automatically renew for a successive one (1) year renewal term (each, a "Renewal Term") on the same terms and conditions as are contained therein, unless the other party shall give written notice of its intention not to renew this Agreement to the party who gave notice of renewal, at least ninety (90) days before expiration of the term or any Renewal Term.

1. (a) The Corporation authorizes Bell
 - (i) To operate, maintain, replace, remove, and subject to section 2, below, install at Bell's sole expense and risk, the Equipment, located in the MTR of the Buildings and, if applicable, the POP Area (as specified by the Corporation) for the purpose of providing the Services to unit owners or other occupants.
 - (ii) For the term of this agreement and any extension thereof, to have access to and use at no charge In-Building wiring owned and/or controlled by the corporation and/or Bell that runs from the Main Terminal Room to each unit or other space in the Building for the purpose of providing Services to the unit owners and other occupants; and
 - (iii) For the term of this agreement and any extension thereof, to market and promote the Services in the Building to unit owners and other occupants. Bell shall have the option to market its Services to the owners and occupants of the Building on an individual basis. Notwithstanding the generality of the foregoing, representatives or employees of Bell shall not attend at the Buildings for such marketing purposes other than by prior invitation by an owner or occupant or with prior approval from the Corporation which approval shall not be unreasonably withheld or delayed provided Bell shall not market its services on a door-to-door basis. Nothing in this agreement limits Bell's right to market or advertise Bell's Services in a manner that is not specific to the Building (including, without limitation, telemarketing, mail campaigns, and email/online marketing).
- (b) The Corporation hereby reserves the sole right to grant, renew or extend similar rights to other parties;
- (c) Despite the rights granted to Bell and uses permitted in Section 1 (a) above, nothing in this agreement limits the Corporation's right to repair any common elements of the Building; provided that where any such repair may affect Ben's Equipment, the Corporation shall provide Bell with reasonable advance written notice to request Bell to adjust and/or move its Equipment before the repairs are made;
- (d) Despite anything in this Agreement to the contrary, the Corporation represents, warrants and covenants to Bell that (i) this Agreement, and/or (ii) Bell's use of any In-Building Wire pursuant to the terms of this Agreement, does not violate, interfere with, contravene, offend, trigger or

Telecommunications Access Agreement

breach any contractual or other commitments the Corporation has or may have with any third party.

2. (a) Bell will supervise, provide any required equipment, comply with, and require its employees, agents and contractors to comply with all aspects of the *Occupational Health and Safety Act*, the *Workplace Safety and Insurance Act*, the *Telecommunications Act*, the *Environmental Protection Act*, and all legislation, regulations, by-laws, edicts or requirements of any government, governmental authority or the CRTC arising in connection with the operation, installation, removal, substitution, replacement, maintenance and repair of Bell's Equipment and provision of the Services in the Building under this Agreement Bell agrees to comply with all reasonable rules and regulations as adopted and amended by the Corporation from time to time, and policies generally applicable to licensees and other contractors in the Buildings, provided that should the Corporation or its owners adopt or pass any new or amended rule, regulation or policy that will impact Bell under this Agreement (the "New Rule"), the Corporation shall provide Bell with written notice of the New Rule and its impact to Bell. Bell shall have sixty (60) days following receipt of written notice (and a copy) of the New Rule to comply with its terms. Where Bell determines in its sole, reasonable discretion that the New Rule impairs or limits Bell's ability to provide Bell Services in an economical and technically practical fashion, Bell may terminate this Agreement upon thirty (30) days prior written notice to the Corporation. Bell will ensure that no lien arising with respect to work pertaining to the Equipment or Services under this Agreement is registered against the Building and shall forthwith discharge and remove any such Certificate of Lien or Certificate of Action from title at its own expense and Bell hereby indemnifies and saves harmless the Owner Indemnities with respect thereto in accordance with the terms of Section 4.
- (b) Bell agrees to perform and cause its work to be performed in a good and worker-like manner, using good quality, safe materials, in accordance with all applicable standards and requirements, and shall install, operate, maintain, repair and remove the Equipment avoiding any nuisance. All of Bells work shall be completed in a clean and tidy condition and any damage caused solely by Bell, its subcontractors and those for whom it is in law responsible shall be maintained and repaired expeditiously to its pre-existing conditions and abutting finishes. The property shall be left in a clean, tidy and broom-swept condition during the progress of any such work. All construction materials, waste and debris created solely by Bell shall be removed by it from the Corporation's premises using the Corporation's service elevator, garbage removal room and subject to any applicable garbage removal rules or policies of the Corporation. Bell and its personnel shall exercise care, diligence and skill to ensure no damage, interference, disruption or loss is caused by them to the MTR, any equipment, facilities, systems, the common elements, units or property of the Corporation, or any contractor or service provider of the Corporation.
- (c) Nothing pertaining to the installation, use, operation, maintenance, repair, replacement or removal of Bell's Equipment shall interfere, impede, disrupt or damage the installation, use, operation, maintenance, repair, replacement or removal of any distribution system, equipment or service or another service provider to the Corporation. In the event that Bell's Equipment does or would interfere with, impede, disrupt or damage any communications signal, service, equipment, facilities, cable or installation required or owned by any other service provider, the Corporation or any owner or occupant, Bell will, to the extent it is the sole or a contributing cause, rectify any such interference, impedance, disruption or damage within forty-eight (48) hours and shall take all necessary steps that are reasonable to accommodate any such other communications signal, service, equipment facilities, cable or installation. In the event that any other service provider or the Corporation's equipment does or would interfere with, impede, disrupt or damage any communications signal, service, equipment, facilities, cable or installation required or owned by Bell, the Corporation will, to the extent it can control or controls such interference, rectify any

such interference, impedance, disruption or damage within forty-eight (48) hours and shall take all necessary steps that are reasonable to accommodate any Bell communications signal, service, Equipment facilities, cable or installation.

- (d) During the Term, Bell shall, at no cost to the Corporation, be responsible for the maintenance and repair of the Equipment including any In-Building Wire or Cable installed by Bell in the Building or on the common elements for the provision of its Services. Bell shall, at its own expense, using commercially reasonable efforts, respond to a repair request from the Corporation with a technical assessment within 24 hours (excluding Saturday, Sunday or statutory holidays). In the event that Bell is unable to resolve any such problem within that twenty four (24) hour period, Bell shall, in good faith, use commercially reasonable efforts to resolve the problem as soon as possible thereafter.
 - (e) Bell shall make all Services available to the owners and occupants, including those specified on Schedule "B" attached hereto, together with modem improvements to the Equipment (as required and determined by Bell) and Services as they become generally available unless restricted by any technological or geographical limitations. Prior to execution of this Agreement and from time to time thereafter as Bell's Services may change, Bell shall provide to the Corporation a comprehensive and detailed list of all Services and features available to owners and occupants to be provided at the Corporation's Buildings.
3. (a) Bell shall, subject to the Corporation's reasonable rules and regulations, have access to the Buildings to install, operate, test, modify, repair, upgrade, replace, supplement and maintain the Equipment as necessary to provide the Services. Access to the Corporation's common elements or to any owner or occupant's unit shall be enjoyed only by bonded agents, contractors and employees of Bell. Bell personnel shall not access units or portions of the common elements except as are required to provide authorized services. Entry into any common elements, exclusive use common elements or any unit shall be subject to the Corporation's rules of general application and usual unit entry procedures, and where applicable, upon the consent of the occupant of the unit Bell personnel shall log in and log out with the concierge each time they access the Building. Any key or access card provided by the Corporation or any owner or occupant to any Bell personnel shall be held in trust only for use with respect to Bell's Services and shall be returned promptly on each occasion of use. Bell and its personnel shall exercise care, diligence and skill to ensure no damage, interference, disruption or loss is caused by its negligence to any equipment, facilities, systems, the common elements, units or property of the Corporation, the owners or occupants or any contractor thereof. The Equipment or a portion thereof is, or will be located in the MTR or a space otherwise designated by the Corporation, and Bell shall have access to the Equipment Space 24 hours a day, seven days a week, subject to compliance with the Corporation's reasonable policies regarding use of such space. The Company shall share the MTR with the Corporation and any other service providers permitted by the Corporation.
- (b) All Bell personnel shall wear or display insignia clearly identifying them as Bell personnel. All Bell personnel shall be duly qualified by training and experience and where required, licensed to perform all work to a high quality standard, Bell personnel shall comply with all Rules applicable to Corporation and shall conduct themselves while on the Corporation's property in a professional, skilful, diligent, safe, respectful and honest manner.
4. Despite anything contained herein to the contrary, Bell Canada will be liable for and will indemnify and save harmless the Owner, its directors, officers, owners (only in the context of their interest in the common elements), employees, and contractors, and those for whom it is responsible in law (collectively, the "Owner Indemnitees"), from and against any and all losses, suits, actions, causes of action, proceedings,

damages, costs, claims and expenses (collectively, the "Losses") arising from physical damage to any tangible property or bodily injury, including death, to any person caused by or arising out of any negligent act or omission relating to Bell Canada's use and occupation of the Equipment Space or the Building(s), including the common elements, provided that Bell Canada will not be required to indemnify the Owner Indemnitees to the extent any such Losses are caused by any negligent or willful act or omission of any of the Owner Indemnitees. Notwithstanding the foregoing, in no event will Bell Canada be liable for or indemnify and save harmless any of the Owner Indemnitees from and against any indirect, special, incidental or consequential damages, including loss of revenue, loss or profits, loss of business opportunity or loss of use of any facilities or property, even if advised of the possibility of such damages. This Section shall survive the expiration or termination of this License.

5. The parties hereto acknowledge and agree that Bell and its operations are subject to compliance with the orders, decisions, rules, regulations, license and directions (collectively "the Order") of the Canadian Radio-Television and Telecommunications Commission ("CRTC") and its successors as they exist or are created from time to time during the term of this Agreement, and any other regulatory bodies having jurisdiction. In the event an Order is issued which appears, in Bell's reasonable opinion, to impinge upon Bell's ability to comply with the terms of this Agreement, Bell may at its option, propose revisions to give effect to such Order, upon thirty (30) days written notice, but in the event the parties fail to agree upon such revision within that time, either party may terminate this agreement upon one hundred and twenty (120) days' notice given to the other.

In the event of termination of this Agreement upon notice by Bell, the parties agree that prior to the expiration of the one hundred and twenty (120) day period they will use their reasonable best efforts to reach an agreement with respect to the removal of Equipment by Bell in the Buildings for the purposes of providing the Services to Bell's customers contemplated by this Agreement, on such terms and conditions as the parties may mutually agree upon.

6. This Agreement shall not be assigned by Bell without the prior consent of the Corporation which consent shall not be unreasonably withheld in the case of assignment by Bell to an affiliate of Bell, provided such affiliate is actively carrying on business rendering the applicable Bell Services in the normal course, is appropriately financed and is capable of delivering the Services and performing the obligations provided in this Agreement, failing which Bell shall remain liable to comply with all of the provisions of this Agreement for the balance of the term or any renewal thereof. This agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
7.
 - (a) If Bell defaults in any of its material obligations contained herein including its obligations to ensure that the Bell Equipment does not interfere with any existing telecommunication systems in the Building, and such default is not corrected within ten (10) days after written notice to Bell, the Corporation shall have the right to terminate this Agreement without further notice or compensation to Bell. Upon termination, either at Bell's discretion or at the Corporation's option, Bell shall be required to remove its Equipment from the Building and common elements and restore the affected parts of the Building and common elements to their original condition, to the reasonable satisfaction of the Corporation.
 - (b) In addition to the foregoing, the Corporation may terminate this Agreement forthwith if, by no act of the Corporation, Bell fails to rectify a material Service disruption in the Building within four (4) business days after receiving written notice by the Corporation unless such disruption was caused by a Force Majeure event; provided, however, that, the Corporation shall not be entitled to terminate this Agreement where Bell, in good faith, is using commercially reasonable efforts to rectify the material Service disruption as soon as is reasonably practicable. Subject only to the foregoing

sentence and for reasons of Force Majeure, if either party breaches any other material term or condition of this Agreement and is so notified by the other party in writing, the party so notified will have thirty (30) days from the receipt of such notice to cure the alleged breach or to demonstrate that no breach has occurred. If, at the conclusion of such thirty (30) day period, the defaulting party has not effected a cure or satisfactorily demonstrated that no breach has occurred, then the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party specifying the effective date of termination. Either party may terminate this Agreement forthwith upon written notice to the other if the other party winds up, ceases to carry on business, becomes insolvent or is the subject of a bankruptcy or insolvency proceeding, or applies for or consents to the appointment of or the taking of possession by a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, or makes a general assignment for the benefit of creditors, or makes a bulk sale of its assets.

- (c) Except as required by any switch-over as described below, upon expiry or earlier termination of this Agreement, Bell shall be allowed up to ninety (90) days to remove its Equipment (except for copper wire), during which time Bell shall continue to provide its usual Bell Services and Equipment and Bell shall, at no additional cost to Bell, work with the Corporation to coordinate a switch-over with the Corporation's new communications provider during this time. The removal of Bell's Equipment shall commence on a targeted switch-over date as agreed to by all parties and coordinated with the Corporation's new communications provider, provided further that at the reasonable request of the Corporation, Bell shall continue to provide its usual Services through its Equipment after the termination of this Agreement or any written renewal or extension thereof upon the same terms and payments for an additional period not to exceed ninety (90) days or such longer period as may be agreed but provided no past due receivable is owed to Bell Canada by the Corporation; in the event any owner, tenant or resident of the Building is past due in paying its account to Bell, Bell may terminate Services to any such person. In any event, termination of the Services and removal of Bell's Equipment shall be undertaken in a manner which coordinates the removal of Bell's Equipment with the installation of the new provider's distribution system and equipment. Subject to the foregoing, the removal of Bell's Equipment shall be completed by Bell, the Corporation and any new provider, as the case may be on an expeditious, diligent, continuing, co-operative and co-ordinated basis during normal business hours in a manner intended to cause the least disruption and immediate switch-over in the delivery of the Services and any new service provider's communications services to the owners and occupants. Notwithstanding the foregoing, a substitute communications provider shall be entitled to elect to use all or any part of Bell's In Building Wire (subject to the payment of rent and such other terms as regulated and permitted by the CRTC from time to time).
- (d) In the event Bell fails to remove the Equipment within one hundred and twenty (120) days after termination of this Agreement or any renewal or extension thereof, the Corporation shall be entitled to retain Bell's Equipment for use by the Corporation or its substitute communications provider without charge to provide communications services to the units in the Corporation's Building thereafter.
- (e) In the event Bell's Equipment (i) remains unused after termination of this Agreement or any renewal or extension thereof and interferes with the operation of the Building's other services or equipment (including, without restriction, equipment or cable of a substitute communications provider located or to be located in the same equipment areas or cable runs), or (ii) ceases to be capable of providing the Corporation's required communications services in accordance with industry standards, Bell shall remove its Equipment within sixty (60) days after receipt of written notice given by the Corporation to Bell.

- (t) During the initial term of this Agreement and all renewals or extensions thereof, Bell will have the right to cease use of and remove portions of the Equipment not required by it to provide the Services.

8. INSURANCE

Throughout the Term of this Agreement, Bell, at its sole cost and expense, shall take out and keep in full force and effect comprehensive general liability insurance, including but not limited to personal injury liability, contractual liability and owners' and contractors' protective insurance coverage with respect to Bell's use of the Building or any portion thereof; such coverage shall include the activities and operations conducted by Bell and any other person(s) performing work on behalf of Bell or on whose behalf Bell is in law responsible. Such policy shall be written with inclusive limits of not less than Five Million Dollars (\$5,000,000.00) for each occurrence involving bodily injury, death or property damage, and name the Corporation as an additional insured limited to the negligence of Bell and those for whom it is responsible in law. A Certificate of Insurance shall be furnished to the Corporation at the time of execution of this Agreement and promptly at any time thereafter upon request, provided that no such policy shall be cancelled and not simultaneously replaced with a policy providing equivalent or better coverage without 60 days prior written notice to the Corporation.

9. NOTICE

Any notice required or permitted to be given hereunder or any tender of delivery of documents may be sufficiently given by the personal delivery or by facsimile transmission, to Bell to the following address:

To Bell Canada:

Bell Canada
1 Dundas St W., 29
Toronto, Ontario
M5G 1Z3

Attention: VP, VDSL Sales

Facsimile:

with a copy to Bell Canada's Law Department at, Attn: VP, General Counsel

And to the Corporation at the following: address:

993 Queen Street West
Toronto, Ontario
M6J 1H2

Attention: Property Manager

Facsimile:

Any such notice shall be deemed to have been received by the Corporation or Bell, as the case may be, on the fifth (5) business day after the date on which it shall have been so mailed. Such notice, if hand delivered, shall be conclusively deemed to have been given and received at the time of such delivery. Such notice, if sent by facsimile, shall be deemed to have been given and received by the addressee when actually transmitted by the sender, provided that such transmission was made during normal business hours, with receipts or other verifications of such transmission.

10. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings whether written or oral relative to the subject matter hereof. Except as otherwise specifically set forth in this Agreement, neither party makes any representation or warranty express or implied, statutory or otherwise to the other. This Agreement may not be amended or modified except by a written instrument executed by both parties.

11. GOVERNING LAW

This Agreement shall be governed by the laws of the province where the Buildings are located or if applicable, the laws of Canada.

12. FURTHER ASSURANCES

Each of the parties agrees from time to time hereafter and upon any reasonable request of any other party, to make or cause to be made all such further acts, deeds, assurances and things as may be required to more effectually implement the true intent of this Agreement. Corporation shall not use Bell's logo, trademarks, tradenames or any other intellectual property without the prior written consent of Bell.

13. NO EXCLUSIVITY

Bell acknowledges and agrees that nothing in this Agreement shall be construed or interpreted as granting to Bell any exclusive rights or privileges in the Buildings to the exclusion of any other third parties.

14. PRIVACY

- (a) Having regard to the requirements of the *Personal Information Protection and Electronic Documents Act* ("PIPEDA") and any current Privacy Policy of the Corporation as may exist, the names, addresses, phone numbers and any other personal information pertaining to any owner or occupant shall not be disclosed by the Corporation to Bell unless express written consent for the disclosure of same has been received by the owner or occupant to whom such information relates. Any personal information of its owners, occupants and employees disclosed to Bell shall be used strictly for the purposes of this Agreement or as required by law and for no other purpose, only by persons having a need to know in accordance with Bell's privacy policy available at www.bell.ca

15. CONDOMINIUM ACT

This Agreement is subject to the terms of the *Condominium Act, 1998* including, but not limited to Section 22 thereof.

16. FORCE MAJEURE

If the performance of this Agreement is interfered with, in whole or in part, by circumstances beyond the reasonable control of either party ("Force Majeure") including, without limitation: fire, explosion, power failure, acts of God, war, revolution, civil commotion, acts of public enemies, law, order, regulation, ordinance or requirement of any government or its representative or legal body having jurisdiction, or labour unrest such as strikes, slowdowns, picketing or boycotts, then the party affected shall be excused from such performance on a day-by-day basis to the extent that such party's obligations relate to the performance so interfered with; provided that the party so affected shall use commercially reasonable efforts to expeditiously remove such causes of non-performance.

Telecommunications Access Agreement

The terms and conditions of this Agreement are hereby accepted by the parties

M.T.C.C. No 1328

Per: _____
Name:
Title: Director Director
Authorized Signing Officer

BELL CANADA

Per: _____
Name:
Title: VP VDSL SALES
Authorized Signing Officer