



TELECOMMUNICATION AND BUILDING ACCESS AGREEMENT - EXISTING BUILDINGS

This Agreement is made as of the 23rd day of Dec, 2004 (the "Effective Date").

In consideration of the mutual rights and obligations herein expressed and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) Bell Canada and Metropolitan Toronto Condominium Corporation No. 1239 (the "Corporation") agree as follows:

1. Corporation hereby grants to Bell Canada and the affiliates of BCE Inc. (as defined in the *Canada Business Corporations Act*, as amended) (hereinafter, collectively referred to as "Bell") a non-exclusive right, at no risk to the Corporation other than as provided in this Agreement, to (i) enter on and gain access in, over or under the existing multi-unit dwelling building described in Schedule "A" (the "Building") and the common elements and other common areas of the Building, (ii) use in-building wire or cabling owned or controlled by Bell, the Corporation or any third party where possible and to the extent permitted by law, on a "where is/as-is" basis on a no liability basis to the Corporation as a result of any malfunction or difficulty with the wiring that may cause any disruption to the Bell Services (except to the extent such disruption is caused by the negligence or willful misconduct of the Corporation), and (iii) make available and provide quality telecommunications and other communication services (collectively the "Bell Services") to local exchange carriers, prospective purchasers and the owners, tenants, invitees or residents of the Building (the "Occupant(s)") as permitted by and in accordance with all the Canadian Radio-Television and Telecommunications Commission (the "CRTC") regulations. Nothing in this Agreement shall be construed or interpreted as granting Bell any exclusive rights or privileges in or to the Building relating to access or installation' rights, to the exclusion of any other third parties.
2. The rights in Section 1 include Bell's right to construct, install, test, operate, maintain, repair, service, upgrade, modify, remove and replace its Equipment (as defined below) in the Building. "Equipment" includes but is not limited to any Bell equipment, in-building wire (as defined by the CRTC in Decision 99-10), infrastructure or otherwise, which is necessary and incidental to enable and deliver Bell Services to the Occupants. A list of the Equipment and the in-building wire to be installed by Bell and its location in the Building is further described in Schedule "B" attached hereto. Nothing herein limits Bell's ability to change, alter or replace the Equipment with new or different equipment to provide the Bell Services. Notwithstanding the foregoing, the parties hereto acknowledge and agree that this Agreement does not permit any additional types of Equipment to be installed, operated or maintained in the Building other than the types of Equipment specified in Schedule "B", unless revised, in writing, from time to time by mutual agreement. Equipment excludes: conduit, individual receiver - decoders ("IRD"), whether VDSL or otherwise, or any other equipment that can be individually addressed either electronically or manually by Bell (each an "IRD"), which will be sold or rented to Occupants by Bell or any other authorized sales agent. Corporation shall allow Bell to gain access to the Building, but not the residential unit(s) for the purpose of picking up any IRD no longer required by an Occupant. Bell agrees to keep the Equipment in a state of repair in accordance with Bell standards which include without limitation, using good quality, safe and durable materials in accordance with all relevant manufacturer and industry requirements, specifications and standards.
3. Bell and those for whom it is responsible for in law shall be permitted to use and access all portions of the Building necessary for the provision of Bell Services and for the matters as provided in Section 1 in accordance with the Declaration, By-Laws and Rules of the Corporation. Except in the case of emergencies, all rights of access granted and uses permitted herein shall be available to Bell during normal business hours, three-hundred and sixty-five (365) days per year subject to Bell providing reasonable notice to the Corporation or its agent of its intention to enter the Building for the purposes of this Agreement and subject to the Corporation's reasonable security requirements.
4. The term of this Agreement is effective as of the date last signed by both parties below and shall continue to run for a period of ten (10) years from the Effective Date (the "Term") subject to the provisions of Section 10 hereof.
5. Bell shall, at its own cost and risk (i) ensure that all Equipment is installed in accordance with all relevant fire and building code requirements in force at the time of installation; (ii) correct, repair or remediate any damage caused to the Building at any time by any of its employees, contractors, agents, representatives or anyone else for whom Bell is in law responsible; (iii) be responsible for the provision, installation, maintenance and repair of the Equipment installed by Bell during the Term, although each individual Occupant may incur charges (at Bell's then applicable rates) relating to post-installation activities specific to such Occupant's in-suite requirements; and (iv) upon expiration or termination of the Agreement by either party restore the affected parts of the Building to its original condition to the reasonable satisfaction of the Corporation (reasonable wear and tear excepted) within thirty (30) days from the effective date of termination or expiration. Subject to Section 10, and except as otherwise provided in Section 22 of the *Condominium Act*, 1998, the Equipment will remain the property of Bell at all times, and will not become a fixture despite any legal principle to the contrary. Corporation agrees that it has no legal or equitable ownership interest in the Equipment nor any of the items reasonably contemplated by Section 2 above and shall not make any claim to the contrary.
6. Corporation agrees to provide to Bell, at no charge to Bell, access to and use of, one or more rooms or other segregated, enclosed spaces in the Building (the "Equipment Space(s)") as needed and mutually agreed upon by the parties, acting in good faith, which is suitable to house or store the Equipment. Notwithstanding the previous sentence, the parties acknowledge and agree that Bell has inspected the Equipment Space (which is the telephone room previously inspected by Bell) and found it acceptable and adequate for the purposes of fulfilling this agreement and supplying the Bell Services, Bell agrees that if any additional room(s) or other segregated, enclosed space(s) is required in the Building, then such will only be provided upon the written approval of the Corporation and only if and as available. Corporation agrees that the access rights herein include a right to access the Equipment Space in the Building. All costs incurred by Bell or the Corporation, where such costs are incurred at the request of Bell, for constructing the Equipment Spaces(s) or equipping it to have adequate power supply and adequate natural or artificial ventilation for the proper operation of the Equipment after the Effective Date shall be at the sole cost and expense of Bell. 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 Bell's Equipment, the Corporation, except in the case of an emergency, shall provide Bell with four (4) months written notice to request Bell to adjust and/or move its Equipment before the repairs are made. Where the repairs contemplated by this Section require Bell to move, relocate or adjust any Equipment from its original location, Bell may terminate this Agreement by providing the Corporation with four (4) months written notice without incurring any charges, liabilities or penalties other than as provided in this Agreement. Where the Corporation is unable to provide Bell with four (4) months written notice due to the occurrence of an emergency, Bell shall have the right to terminate this Agreement with immediate effect.

7. The parties acknowledge and agree that the Corporation shall not provide to Bell any personal information of any Occupants of the Building. Bell may only display, distribute or post promotional information or information packages about Bell Services in and around the Building with the prior written consent of the Corporation. No door-to-door solicitation is allowed. All Bell marketing, solicitation and promotion in the Building is subject to the prior approval by the Corporation. 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). If any personal information is obtained by Bell then it shall at all times be collected, used, disclosed and retained by Bell in accordance with all applicable privacy laws, the *Personal Information Protection and Electronic Documents Act*, and Bell's privacy policy at [www.bell.ca](http://www.bell.ca)

8. Each party represents and warrants that: (i) it has full right, power and authority to enter into and perform its covenants and obligations in this Agreement; (ii) it is under no obligation, statutory, contractual or otherwise, which could prevent or interfere with the complete performance of its covenants and obligations herein; and (iii) it is validly organized and existing under the name indicated on this Agreement.

9. Despite anything contained herein to the contrary, Bell Canada will be liable for and will indemnify and save harmless the Corporation, its directors, officers, employees, owners and Occupants and contractors, and those for whom it is responsible in law (collectively, the "Corporation 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 or willful misconduct relating to Bell Canada's use and occupation of the Equipment Space or the Building, provided that Bell Canada will not be required to indemnify the Corporation Indemnitees to the extent any such Losses are caused by any negligent or willful act or omission of any of the Corporation Indemnitees. Notwithstanding the foregoing, in no event will Bell Canada be liable for or indemnify and save harmless any of the Corporation 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 Agreement.

10. Unless a Party provides the other Party hereto with written notice of its intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Term or Renewal Term (as defined below), this Agreement shall automatically renew for successive one (1) year renewal terms (the "Renewal Term") on the terms and conditions herein. Either Party may also terminate this Agreement: i) for a material breach hereof, where such breach is not cured within thirty (30) days of receipt of written notice by the other party of such breach, or ii) immediately, in the event of bankruptcy, reorganization, assignment, petition or appointment of a trustee or such other act of insolvency of the other party. Upon expiry or termination of this Agreement, in addition to the other obligations contained in Section 5(iv), Bell shall be allowed thirty (30) days to remove the Equipment, failing which, the Equipment shall be deemed to have been abandoned in accordance with Section 22(13) of the *Condominium Act, 1998*.

11. This Agreement is subject to all applicable federal, provincial and local laws, and regulations, rulings and orders of governmental agencies, including, but not limited to, the *Telecommunications Act*, the *Broadcasting Act*, as amended or the CRTC and its successors as they exist or are created from time to time. If the action of a governmental agency requires modification of Bell's Services or the terms in which they are provided which is inconsistent with the terms of this Agreement or impairs Bell's ability to provide Bell's Services in a economical and technically practical fashion, Bell may terminate this Agreement upon thirty (30) days' written notice to the Corporation.

12. Any notice required or permitted to be given hereunder or any tender of delivery of documents may be sufficiently given by regular mail, personal delivery or by facsimile transmission to each party at the addresses listed below:

To Bell Canada:

1 Dundas St. West, 29  
Toronto, Ontario  
M5G 1Z3

Fax:

Attn: VP VDSL Sales

with a copy to Bell Canada's Legal  
Department

To Corporation:

3 Pemberton Avenue Toronto,  
ON M2M 4M1  
Attention: Management Office

Notices shall be deemed to have been received by the Corporation or Bell, as the case may be, on (i) the fifth (5) business day after the date on which it shall have been so mailed, (ii) at the time of delivery in the case of hand delivery, (iii) the date and time of transmission in the case of facsimile, provided that such transmission was made (between Monday and Friday from 9:00am to 5:00pm EST), with receipts or other verifications of such transmission.

13. Where a provision of this Agreement conflicts with a Schedule attached hereto, the provision of this Agreement shall prevail. This Agreement and Schedules will be governed by the laws of the Province of Ontario and the applicable laws of Canada therein, excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction. None of the rights and obligations contained herein may be assigned or transferred by either Party without the prior written consent of the other, which consent shall not be unreasonably

withheld conditioned or delayed, except that a Party may assign or transfer this Agreement to any affiliate without the other Party's consent.

14. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings on the subject matter hereof. Except as provided in Section 8, neither party makes any representation or warranty express or implied, statutory or otherwise to the other. If any provision of this Agreement is found to be invalid, illegal or unenforceable, the other provisions of this Agreement shall not be affected or impaired, and the offending provision shall automatically be modified to the least extent necessary in order to be valid, legal and enforceable. This Agreement may not be amended or modified except by written instrument executed by both Parties.

15. 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 covering its legal liability for physical damage to tangible property and bodily injury including death, contractual liability, non-owned automobile liability, tenants' legal liability, and owners' and contractors' protective liability with respect to Bell's use of the Building or any portion thereof and including 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 insurance shall be written with an insured limit of not less than Five Million Dollars (\$5,000,000.00) for each occurrence and in the aggregate annually for products liability and completed operations, and name the Corporation as an additional insured. The required insured limit shall be composed of any combination of primary and excess (umbrella) insurance policies. Upon request of the Corporation, Bell will provide the Corporation with current certificates of insurance evidencing that the required coverage is in full force.

16. Bell agrees that it shall have sole responsibility for all Hazardous Substances (as hereinafter defined) which are caused by Bell to be on, in or under the Building to deliver the Bell Services after the date of this Agreement including without limitation any direct cleanup costs, removal costs, liability costs, expenses and damages, resulting therefrom, which arise out of the actions or omissions of Bell or any person for whom Bell is in law responsible.

"Hazardous Substance" means a Contaminant, pollutant, toxic material, toxic substance or toxic waste contemplated under WHMIS including but not limited to urea formaldehyde foam insulation, asbestos and PCBs.

"Contaminant" means any solid, liquid, gas, odour, heat, sound, vibration or radiation contemplated under WHMIS that results directly or indirectly from human activities that may cause an adverse effect.

17. The parties acknowledge and agree that: (i) the Bell Equipment and the equipment of those for whom Bell controls and is responsible for at law shall not interfere with or degrade other existing signals lawfully transmitted or received in the Building. If such interference shall occur, the Corporation shall give Bell written notice thereof and Bell shall use commercially reasonable efforts to correct the same within ten (10) days after receipt of such notice. If such default is not corrected within (10) days after written notice to Bell, the Corporation shall have the right to terminate this Agreement without further notice or obligation to Bell; (ii) the Corporation's Building systems or any of the Occupants in the Building for whom the Corporation controls and is responsible at law shall not interfere with the provision of the Bell Services. If such interference shall occur then Bell shall give Corporation written notice thereof and the Corporation shall use commercially reasonable efforts to correct same forthwith after receipt of such notice within the time frame as dictated by the nature of the interference. In the event the Corporation fails to correct such interference after using reasonable commercial efforts after written notice, the Corporation shall use its best efforts to correct such interference forthwith. If such default is not corrected within ten (10) days after written notice to the Corporation, Bell shall have the right to terminate this Agreement without further notice or obligation to the Corporation.

In witness thereof the parties through their duly authorized representatives have executed this Agreement as of the date first written above.

METROPOLITAN TORONTO CONDOMINIUM  
CORPORATION NO. 1239

BELL CANADA

\_\_\_\_\_  
I/We have the authority to bind the Corporation  
Name:

\_\_\_\_\_  
I have authority to bind the Corporation  
Name:

Title: President

Title: VP VDSL Sales

Date: Dec 22 – 2004

Date: Dec 22, 2004

\_\_\_\_\_  
\_\_\_\_\_  
Treasurer MTCC 1239

Schedule "A"

Address and Description of Building

A. For the Building:

This Agreement applies to the following Building:

*3 Pemberton Avenue, Toronto, Ontario M2M 4M1 and*

***UNIT 4, LEVEL 1, METRO TORONTO CONDOMINIUM PLAN NO. 1239 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: CONSOLIDATION OF VARIOUS PROPERTIES PTS OF PEMBERTON A VE; PT LOTS 33,34, 35,36, 37,94,203,204,205,PT BLK A ON PL 2233; PT LOT 21 CON 1 EYS, BEING PTS 1 TO 13 INCL. & PT 28 ON PL 66R-18183. PL BA 371 CONFIRMS THE LIMIT OF PEMBERTON AVE REG AS PL 9315 AS NY 626552. S/T AS SET OUT IN SCHEDULE "A" OF DECLARATION NO.D-649053. CITY OF TORONTO. , CITY OF TORONTO***

*The Building does not include any of the residential units contained in the Building.*