

MARKETING AND ACCESS AGREEMENT

THIS MARKETING AND ACCESS AGREEMENT is made as of June 26, 2002.

BETWEEN: **BELL CANADA**, a corporation incorporated under the *Business Corporations Act* (Canada) located at 483 Bay Street, Toronto, Ontario, M5G 2E1 ("**Bell Canada**")

- and -

BELL EXPRESSVU LIMITED PARTNERSHIP, a limited partnership formed under the laws of Ontario, having its chief executive offices at 115 Scarsdale Road, Toronto, Ontario, M3B 2R2 ("**Bell ExpressVu**")

- and -

METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 1128 ("**Owner**")

RECITALS

A. Bell Canada and Bell ExpressVu, and their respective agents, contractors and sub-contractors (each a "**Bell Entity**" and collectively, "**Bell**") wish to gain access to the multi-unit dwelling building commonly known as MTCC 1128 and municipally known as 106 Redpath Avenue, in Toronto, as further described on Schedule A (the "**MDU**") for the purpose of (1) installing the infrastructure equipment necessary for the delivery of Bell Services (as such term is defined below) to tenants, owners or residents of the MDU ("**Residents**") including, without limitation, equipment required to deliver such Bell Services to Residents using technology solutions such as very high rate digital subscriber line technology ("**VDSL**") in the MDU, (2) promotions and marketing of the Bell Services, and (3) the delivery of the Bell Services to Residents, Bell ExpressVu's television and audio service (the "**ExpressVu Service**"), the Bell Sympatico High Speed Edition Internet service ("**Sympatico High Speed Service**") and certain telephone services offered by Bell Canada (the "**Bell Canada Services**") being referred to collectively as the "**Bell Services**").

B. Subject to the terms and conditions of this Marketing and Access Agreement (the "**Agreement**"), the Owner of the MDU is prepared to grant to Bell a right to access the MDU for the purposes outlined above.

FOR VALUE RECEIVED, the parties hereby agrees as follows:

SECTION 1-TERM

1.1 Term. This Agreement shall become effective on the later of (i) the date of execution hereof by Owner; and (ii) the latest date of execution hereof by a Bell Entity and shall continue to run for a period not to exceed five (5) years from the date that all Bell Services can be activated in the MDU in compliance with all customary standards and service levels associated with each of the Bell Services (the "**Term**"). Unless a party notifies the other parties hereto with written notice of its intention not

to renew this Agreement at least one hundred and eighty (180) days prior to the expiration of the Term or any Renewal Term (as such term is defined below), as the case may be, this Agreement shall automatically renew for successive one (1) year renewal terms (each, a “Renewal Term”) on the same terms and conditions as contained herein.

1.2 Subject to Change. The Owner acknowledges that each Bell Entity may, at any time during the Term of this Agreement, but subject to any order, ruling or decision of the CRTC (as defined in Section 11.12), elect at its sole option and discretion, without liability, (i) to discontinue offering any or all of its respective Bell Services using VDSL technology in favour of delivery of the applicable Bell Service through alternate delivery techniques and equipment commonly utilized at such time by the Bell Entities and/or (ii) terminate this Agreement as it relates to the delivery of any of its respective Bell Services through VDSL technology.

SECTION 2-ACCESS

2.1 Access to MDU. Owner hereby grants to all employees, contractors, sub-contractors and other agents of each of the Bell Entities throughout the Term a non-exclusive right and license to enter on and gain access over or under the MDU, including the CCU (as defined in Section 6.1(b)) and any other equipment and/or telecommunications room, the roof, existing cabling owned by the Owner, if any, which connects central riser wiring to individual units within the MDU, the common elements and other common areas of the MDU to:

- (a) conduct marketing campaigns for Bell Services, , including conducting one or more information meetings to inform Residents of the availability of Bell Services (whether through VDSL technology or otherwise), the distribution by the Owner or the Bell Entities, with the consent of the Owner, of information packages to Residents and the posting of notices of available Bell Services on bulletin boards located within the MDU;
- (b) conduct pre-installation tours and inspections of the MDU in order to determine the technical, operational and economic feasibility of installing Equipment (as defined in Section 2.1(d) below) in the MDU for the purpose of delivering the Bell Services to Residents;
- (c) install, at no cost to the Owner: (1) all equipment necessary and incidental to VDSL technology including, without limitation, USAMs, switches, routers, racking, backboards, cabling, wiring and other networking and fibre optic equipment used to enable and distribute Bell Services to Residents of the MDU (“**VDSL Equipment**”), and (2) in the event that one or more of the Bell Entities wish to provide the applicable Bell Services to Residents using technology other than the VDSL technology, all equipment necessary and incidental to the provision of the Bell Services to Residents using any such alternate technology (“**Alternate Equipment**”) including, without limitation, switches, routers, racking, backboards, cabling, wiring and other networking and fibre optic equipment;
- (d) operate, maintain, repair or replace any component forming a part of the VDSL Equipment or the Alternate Equipment (collectively, the “**Equipment**”), and any

other item of equipment necessary or incidental to perform its obligations under this Agreement and/or to enjoy the rights granted herein; and

- (e) subject to Section 3.2 below, make the Bell Services generally available to Residents, including the installation, maintenance and repair of set-top receiver/decoders, set-top boxes and other equipment to be furnished to those Residents who agree to subscribe to the applicable Bell Services.

2.2 Equipment Space. The Owner will also provide to Bell, at no charge, access to and use of, one or more rooms or other segregated, enclosed spaces (the “**Equipment Space**”), as needed and mutually agreed upon by the parties, acting in good faith, which is suitable in all respects for the purpose of housing or storing the applicable Equipment. The Owner agrees that the access rights granted pursuant to Section 2.1 includes a right to access the Equipment Space in the MDU. Each Bell Entity and their respective affiliates, employees, agents, contractors and sub-contractors, as the case may be, shall have reasonable and continuous access into the MDU and to the Equipment Space subject to giving reasonable notice to the MDU’s building manager, property manager or superintendent, as applicable, of its intention to enter the MDU in order to install, operate, maintain, repair or replace the Equipment, provided that entry will be made during normal business hours except in the case of emergency.

2.3 Power Supply and Ventilation. . Bell acknowledges that the Equipment Space has an adequate power supply and adequate natural or artificial ventilation for the proper operation of the Equipment. If the power supply or ventilation changes such that it is no longer adequate for the proper operation of the Equipment, due to a change to the Equipment Space made by the Owner or with the knowledge and consent of the Owner, the Owner shall be responsible for rectifying the power supply and/or ventilation so that it is adequate for the proper ventilation of the Equipment. If the power supply or ventilation changes such that it is no longer adequate for the proper operation of the Equipment and it is not due to a change to the Equipment Space made by the Owner or with the knowledge and consent of the Owner, Bell shall be responsible for rectifying the power supply and/or ventilation so that it is adequate for the proper ventilation of the Equipment.

2.4 Electrical Outlet. For the purpose of consumption of electricity by the Equipment, Bell agrees to retain and pay for a qualified electrician to install a 110 volt A.C. outlet in the Equipment Space.

2.5 Compliance. Bell agrees to comply with all applicable provisions of the *Condominium Act*, and the declaration, by-laws and reasonable rules and regulations of the Owner that are provided to Bell from time to time.

SECTION 3-INSTALLATION OF EQUIPMENT

3.1 Installation of Equipment. With respect to the MDU, prior to installing any Equipment, Bell shall provide the Owner with an Installation Site Plan for its approval, which approval shall not be unreasonably withheld. The installation of the Equipment shall not interfere with any other installation thereon or adversely affect any portion of the common elements. Bell shall ensure that all Equipment is installed in accordance with all relevant government requirements, including fire and building code requirements, and shall use commercially reasonable efforts to ensure that the installation of Equipment is aesthetically acceptable to the Owner, acting reasonably.

3.2 Maintenance and Repair. Bell shall, at no cost to Owner, be responsible for the maintenance and repair of the Equipment installed by Bell during the Term, although each individual Resident may incur charges (at Bell's then applicable rates) relating to post-installation activities specific to such Resident's in-suite requirements. The Equipment will remain the property of the applicable Bell Entity at all times, and will not become a fixture despite any legal principle to the contrary. Owner agrees that it has no legal or equitable ownership interest in the Equipment nor any of the items specified or reasonably contemplated by Section 2.1(e), and shall not make any claim to the contrary.

3.3 Easement. To the extent applicable, Owner agrees to grant to the applicable Bell Entity a non-exclusive easement and statutory right of way and/or a path to the property line over the MDU if it is determined that a fibre optic cable must be installed to the MDU from a Bell Canada Central Office for the purpose of enabling the Equipment in the MDU. The Owner and such Bell Entity shall agree in advance upon a suitable location to install the fibre optic cable on the property of the Owner. The Owner agrees to allow such Bell Entity to register the easement and right of way, and/or notice of this Agreement. The parties hereby incorporate into this Agreement the following provisions contained in Section 22 of the *Condominium Act*, 1998 as if the Owner had been incorporated after May 5, 2001, including, specifically, the provision of a non exclusive easement in favour of the Bell Entities for the purposes of installing and using its telecommunications (as such term is defined in the Act) system, the duty of each Bell Entity to ensure that its telecommunications system does not interfere with the existing telecommunications system installed by Rogers Communications Inc., the ability of each Bell Entity to remove its Equipment within thirty (30) days after the termination of this Agreement, and the potential abandonment of its Equipment, all as set forth in Subsections 22(5), (6), (7), (8), (11), (12) and (13) of the *Condominium Act*, 1998.

3.4 Relocation. If repairs or replacement to the common elements are required to be carried out by the Owner and such repairs may reasonably be expected to affect or to be affected by the existence of and or location of the Equipment, the Parties shall enter into good faith discussions for the purpose of agreeing to a maintenance plan and schedule that will ensure that the Owner may carry out its required repairs and/or replacement while ensuring the integrity of the Equipment and a minimal amount of service disruption (the Parties shall endeavour to ensure that there is no service disruption, if possible).

SECTION 4—MARKETING PROGRAMS

4.1 MARKETING PROGRAMS. The Bell Entities will develop and implement reasonable introductory marketing programs to promote and market their respective Bell Services (which may include, in Bell's sole discretion, a description of the VDSL Technology) to Residents (the “Marketing Programs”). Such introductory Marketing Program(s) must be approved in advance by MTCC 1128’s board of directors and are limited to the following activities:

(a) Entry onto the MDU by the Bell Entities and their respective affiliates, employees, agents, contractors and sub-contractors, as the case may be, for the purpose of providing

information, demonstrations or any other information to Residents regarding the Bell Services, as set out below and all in accordance with this Agreement;

- (b) One time introductory demonstration of the offering to Residents at the MDU;
- (c) Reasonable follow-up with Residents who indicate their interest to be contacted as a result of the introductory demonstration. This follow-up will not exceed three attempts after which time the follow-up will be abandoned. The follow-up may include letters, telephone calls, and or email but will exclude door-to-door visits;
- (d) Display of information and/or advertising material regarding the Bell Services on MDU bulletin boards during the initial launch period for a period of one month and then from time to time after that at the discretion of MTCC 1128's board of directors;
- (e) Inclusion of marketing material in MTCC 1128 new Resident welcome packs (this does not exclude the inclusion of similar materials from other communication providers); and
- (f) Provision of promotional information regarding their respective Bell Services to superintendents and other employees or agents active in the MDU;
- (g) The marketing rights afforded to Bell in this Section 4.1 apply in the event of new offerings.
- (h) This Section 4.1 is not intended to restrict Bell's standard marketing practices to the general public which would be directed to Residents notwithstanding the existence of this Agreement or that is directed to all customers or potential customers as part of its standard marketing practices to the general public.

4.2 Compliance. Subject to the terms of this Agreement, the Marketing Programs shall at all times comply with Owner's standards, acting reasonably. Bell shall use commercially reasonable efforts to establish the date, frequency, location and time of access and use of MDU for the Marketing Programs in advance.

SECTION 5-REPRESENTATIONS AND WARRANTIES

5.1 The Owner represents and warrants to Bell as follows:

- (a) There is no current agreement, arrangement or enforceable contract, and agrees that it will not enter into any agreement, arrangement or enforceable contract, with any television or audio service provider, satellite television company, broadcast distribution unit, SMATV operator, internet access service provider or telecommunications service provider which would prevent or interfere with its grants to, and covenants with, the Bell Entities under this Agreement, and the Owner acknowledges and understands that cable television and internet services offered by third parties may not be technologically available to those Residents who decide to subscribe to the ExpressVu Service through VDSL technology due to the use by Bell of the home-run coaxial wiring to distribute the ExpressVu Service within the subscribing Resident's condominium unit.
- (b) The Owner represents and warrants that it has full right, power and authority to enter into and perform its covenants and other obligations set forth in this Agreement, and

that it is under no obligation to a property manager, any Resident or any other third party, whether statutory, contractual or otherwise, which might in any way interfere with the full and complete performance of its covenants and other obligations set forth in this Agreement. The Owner represents and warrants that it is validly organized and existing under the name indicated on this Agreement.

- (c) Owner further represents and warrants that no rule or by-law is in force in the MDU that would prevent or limit the Bell Entities from providing the Bell Services or conducting the related Marketing Programs in accordance with the provisions of this Agreement including, without limitation, Sections 2.1(a) and 4.1 hereof.

5.2 Interference. Bell represents and warrants to Owner that the installation of Equipment and the provision of the Bell Services contemplated in the Agreement will not interfere with the existing telecommunications system installed in the MDU as of the date of this Agreement.

SECTION 6-COVENANTS

6.1 Access to the MDU. The Owner hereby agrees that it has all of the necessary rights of access set forth in this Agreement, and in particular, those rights specified in Section 2 and Section 3.3 hereof, or has obtained all of the necessary consents and/or approvals to grant such rights of access. To the extent that the Owner does not have the necessary rights of access or has not obtained the necessary consents and/or approvals as of the date of this Agreement, the Owner hereby agrees that it shall obtain such rights, consents and/or approval from the appropriate persons forthwith. Without restricting the generality of the foregoing, to the extent applicable, the Owner has or shall obtain, at its own expense, the necessary rights, required consents and approvals (the “**Required Consents**”) from:

(a) the owner (if different than the Owner) of the telecommunications wiring, fibre, cable and related equipment located in the MDU including, without limitation, in the main terminal room and/or communications control unit (the “**CCU**”); and

(b) all other applicable third parties, in order to ensure that the Bell Entities are provided with access to the MDU (including the Equipment Space).

6.2 General. During the Term of this Agreement, the Owner, in addition to its obligations described in Section 6.1 above, (a) covenants that it will not allow more than two (2) providers of television or audio service, including Bell ExpressVu, being granted access to the MDU, (b) shall not enter into any arrangement, agreement or other contractual relationship with another Internet service provider which would result in more than two (2) providers of Internet access service, including Bell Canada, being granted access to the MDU for the purpose of marketing their respective Internet access services and (c) will take all reasonable steps to assist Bell with its efforts to market and deliver the Bell Services to Residents.

SECTION 7-CONFIDENTIALITY

7.1 The Owner hereby agrees that this Agreement and any information provided by or on behalf of any Bell Entity to the Owner pursuant to this Agreement including, without limitation, any information relating to third parties obtained through Bell, shall remain the confidential information of Bell and the Owner shall not disclose such confidential information without the prior written consent of Bell, or unless disclosure of such confidential information is compelled by judicial or regulatory process or otherwise by law or if the confidential information has been made public without any action by the Owner. For greater certainty, this provision shall not be construed to prevent the Owner from disclosing any of the terms of this Agreement to its auditors, financial and legal advisors, or as may otherwise be required by law. Any public announcements regarding this Agreement shall be subject to the prior written approval of the parties, such approval not to be unreasonably withheld.

SECTION 8-INDEMNITY AND LIMITATION OF LIABILITY

8.1 Bell Indemnity.

- a) The Bell Entities agree to perform their work in a good and workmanlike manner, and further agree to indemnify and save the Owner, its directors, officers, servants, agents and employees harmless, on a several basis only, from any and all liability, damages, costs, including legal expenses (as between a solicitor and his own client), injuries to persons or property arising now or in the future occasioned by, arising from or any manner whatsoever related to the installation, maintenance, repair and operation of the Equipment. The foregoing indemnity shall survive termination of this Agreement. Each Bell Entity maintains a policy of general liability insurance including protection against personal injury or property damage arising from the installation, operation and maintenance of the Equipment.
- b) Except to the extent caused by or resulting from the negligence or misconduct of the Owner or its directors, officer, servants, agents and employees, or a breach of, or failure to perform, any of the Owner's representations, warranties, obligations or covenants contained herein, the Bell Entities hereby indemnify and save the Owner, its directors, officers, servants, agents and employees harmless, on a several basis only, from and against any and all liability, damages, costs (including legal cost as between the solicitor and its own client) and claims arising or resulting from (whether now or in the future) any dispute between a Resident and any Bell Entity in respect of the Bell Services.

8.2 Limitation of Liability. In no event shall any party be liable to any other party for any consequential economic loss, loss of profits, any indirect damages, or for punitive, special or exemplary damages of any kind whatsoever.

8.3 Force Majeure. In the event that a Force Majeure Event prevents a party from performing any of its obligations under this Agreement, then such party shall not be liable to any other party for any damages caused by such non-performance for so long as such contingency continues; provided that, in the event such contingency continues to prevent such party from performing the obligation for a period of at least sixty (60) days and the obligation is a material part of this Agreement, then any party shall have the right to terminate the Agreement by written notice to the others, effective as

of the date that written notice thereof is given to the other party. A “**Force Majeure Event**” shall mean any cause reasonably beyond the control of any party including but not limited to fire, tempest, earthquake, inclement weather, act of God, power interruption, failure of satellite or other transmission facilities or equipment, fuel shortage, strike, lockout or other labour dispute, default or delays by suppliers, riot or civil commotion, act of public enemy or enactment, rule, order or act of government or governmental agency (including delays or failures to acquire any regulatory approval, provided however that commercially reasonable efforts have been used to obtain same).

SECTION 9-TERMINATION

9.1 If any party breaches any material term or condition of this Agreement and is so notified by any 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 parties may terminate this Agreement by giving written notice to the defaulting party specifying the effective date of termination.

9.2 Each party may terminate this Agreement upon written notice to the other if the other party 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.

9.3 At the expiry or earlier termination of this Agreement, Bell shall be allowed a sixty (60) day period to remove the Equipment. Bell shall be responsible for repairing any material damage to the MDU caused by the installation, maintenance, repair or removal of the Equipment.

SECTION 10-NOTICE

10.1 Notice. Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail or by facsimile transmission addressed to the recipient. Any demand, notice or other communication to the parties shall be sent to the addresses marked on the front page of this Agreement, or to such other address, individual or facsimile number as may be designated by notice given by a party to the other parties. Any demand, notice or other communication given by personal delivery or registered mail shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by facsimile, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by facsimile.

SECTION 11—GENERAL PROVISIONS

11.1 Headings and References. The division of this Agreement into sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

11.2 Extended Meanings. Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. “Including” means “including without limitation”. “Include” and “includes” have corresponding meanings.

11.3 Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable in Ontario. Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario.

11.4 Severability. If any term of this Agreement is or becomes illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of that term will not affect the legality, validity or enforceability of the remaining terms of this Agreement.

11.5 Time of the Essence. For every term of this Agreement, time is of the essence.

11.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties respecting the subject matter of this Agreement. This Agreement supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or verbal. Each of the parties confirms that there are no agreements, negotiations, discussions, undertakings, representations, warranties or understandings between any of the parties respecting the subject matter of this Agreement, except as expressly set out in this Agreement.

11.7 Amendments. This Agreement may only be amended, modified or supplemented by a written agreement signed by each of the parties.

11.8 Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

11.9 Incorporation of Schedules. The schedules attached hereto shall for all purposes hereof form an integral part of this Agreement.

11.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

11.11 Assignment. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. The parties agree not to assign this Agreement or otherwise transfer any right or obligation hereunder, in whole or in part and any such purported assignment or transfer shall be void and of no effect. Notwithstanding the foregoing, each of the Bell Entities shall be entitled to assign this Agreement to an affiliate (as such term is defined in the *Canada Business Corporations Act*) without the Owner's consent.

11.12 Regulatory Requirements. The Owner acknowledges that this Agreement, Bell Canada and Bell ExpressVu and their respective Bell Services are subject to regulation by the Canadian-Radio and Telecommunications Commission (“**CRTC**”). The Owner also acknowledges that Bell may not be able to offer all or a part of Bell Services due to changes that may arise in the regulatory environment or with respect to Bell ExpressVu’s current license with the CRTC. In the event that there are changes in the regulatory environment that would impact on this Agreement, the Equipment and any of Bell Services, other than linkage or other programming requirements imposed by the CRTC, the applicable Bell Entity shall notify the Owner of such regulatory change.

11.13 Language. The parties each acknowledge having specifically requested that this Agreement as well as all other documents relating thereto be drawn up in the English language only. Les parties reconnaissent avoir spécifiquement exigées que ce contrat de même que tous les documents s'y rattachant soient rédigés en langue anglaise uniquement.

IN WITNESS WHEREOF each of the parties hereto has duly executed this Agreement under the hands of its proper officers duly authorized in that behalf as of the day and year first written above.

BELL CANADA

**METROPOLITAN TORONTO
CONDOMINIUM CORPORATION NO.
1128**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Date:

Date:

**BELL EXPRESSVU LIMITED
PARTNERSHIP, by its general
partner Bell ExpressVu Inc.**

**METROPOLITAN TORONTO
CONDOMINIUM CORPORATION NO.
1128**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Date:

Date:

SCHEDULE A
MARKETING AND ACCESS AGREEMENT
DESCRIPTION OF MDU

Municipal Address:

123 Eglinton Avenue East

Toronto, Ontario

M4P 1J2

Legal Description:

Metropolitan Toronto Condominium Plan 1128