



TELECOMMUNICATION AND BUILDING ACCESS AGREEMENT

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 (Bell) and Francis Street Inc. (the "Owner") agree as follows:

1. Owner 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") at no cost or charge to Bell, a non-exclusive right to (i) enter on and gain access in, over or under the 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, (iii) use in-building wire or cabling owned or controlled by the Owner or any tenant or any third party with the Owner's prior written consent, and (iv) make available and provide telecommunications and other communication services (collectively the "Bell Services") to local exchange carriers, prospective purchasers and the owners, tenants, invitees or other occupants of the Building (collectively the "Occupant(s)"). 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 at the location specified in the drawing attached to Schedule "B". "Equipment" includes but is not limited to any Bell equipment, in-building wire (as defined by the CRTC Decision 2003-45), copper cable, infrastructure, which is necessary and incidental to enable and deliver Bell Services to Occupants though copper cable. "Equipment" specifically excludes fiber optic cable and associated equipment. Nothing herein limits Bell's ability to change, alter or replace the Equipment with new or different equipment to provision the Bell Services. Bell agrees, if applicable, to perform installations of the Equipment in the Building as further described in Schedule "B", if Schedule "B" does include such description and is duly signed and attached to this Agreement.
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 herein. The rights of access granted and uses permitted herein shall be available to Bell during normal business hours (6:00 am till 6:00 pm), three-hundred and sixty-five (365) days per year (except in case of emergency, where Bell shall be permitted to access the Building at any time), subject to Bell providing reasonable notice to the Owner or its agent of its intention to enter the Building for the purposes of this Agreement and showing corporately issued identification, always subject to the Owner's reasonable rules and conditions of access, as provided in Schedule "0" and security, including the payment of reasonable escort fees or other costs incurred by the Owner outside of normal business hours.
4. 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"). Where title to the Building is transferred prior to the expiry of the Term, the Owner shall use reasonable efforts to request that transferee shall, upon acceptance of title to the Building, agree to assume and be bound by all the rights and obligations of the Owner as set out herein. Whether or not such transferee agrees to assume the provisions of this agreement, the Owner shall be automatically released from all obligations hereunder upon transfer of title to the Building.
5. Bell shall, at its own cost (i) ensure that all Equipment is installed in accordance with all relevant fire and building code requirements in force at the time of installation, and (ii) 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 requirements. The Equipment will remain the property of Bell 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 reasonably contemplated by Section 2 above and shall not make any claim to the contrary.
6. Owner agrees to provide to Bell, at no charge to Bell, access to and use of, wall space in the main terminal room and/or other segregated, enclosed spaces in the Building to house or store the Equipment (the "Equipment Space(s)") as further described in Schedule C duly signed and attached to this Agreement. Mounting locations for Equipment must be approved by Owner or on site Owner representative. Owner agrees that the access rights herein include a right to access the Equipment Space in the Building. The Equipment Space shall have adequate power supply and adequate natural or artificial ventilation for the proper operation of the Equipment. Nothing in this Agreement limits the Owner's right to repair any common elements of the Building; provided that where any such repair may affect Bell's Equipment, the Owner shall: (i) provide Bell with reasonable advance written notice to request Bell to adjust and/or move its Equipment before the repairs are made; and (ii) reimburse Bell for all reasonable costs Bell incurs as a result of any material relocation or adjustment.

7. Each party represents and warrants that: (1) it has full right, power and authority to enter into and perform its covenants and obligations in this Agreement; (2) it is under no obligation, statutory, contractual or otherwise, which could prevent or interfere with the complete performance of its covenants and obligations herein; (3) it is validly organized and existing under the name indicated on this Agreement; and (4) no by-law is in force that would prevent or limit Bell from entering into this Agreement. Bell further covenants to repair, at its sole expense, any damage to the Building or the Equipment Space where the damage is caused by Bell and those for whom it is responsible in law.

8. Bell will be liable for and will indemnify and save harmless the Owner, its directors, officers, employees, and contractors (collectively, the "Owner Indemnitees"), from and against any and all losses, suits, actions, causes of action, damages, costs, claims and expenses (collectively, the "Losses") arising from physical damage to any tangible property or bodily injury, including death caused by negligent or willful act of Bell, its employees and subcontractor in the use or occupation of the Equipment Space or the Building, provided that Bell 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 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 Agreement.

9. Either Party may 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, Bell shall be allowed ninety (90) days to remove the Equipment.

10. This Agreement is subject to all applicable federal, provincial and local laws, and regulations, ruling and orders of governmental agencies, including, but not limited to, the Telecommunications Act, the Broadcasting Act, as amended or the Canadian Radio-Television and Telecommunications Commission (the "CRTC"). 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 an economical and technically practical fashion, Bell may terminate this Agreement upon thirty (30) days' written notice to Owner.

11. 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:
Nexacor Realty Management Inc.
87 Ontario Street 2nd Floor
Montreal Quebec H2X 1Y8
Attention: Director Lease Administration
Fax:

To Owner:
Francis Street Inc.
156 Duncan Mill Road, Unit 12
Toronto, Ontario, M3B 3N2
Fax:

Attn: Manager – Building Access

Attn:

with a copy to Bell Canada's
Legal Department

Notices shall be deemed to have been received by the Owner 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 during normal business hours, with receipts or other verifications of such transmission.

12. 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. Except as provided for Section 4 above, none of the rights and obligations contained herein may be assigned or transferred by Owner, without the prior written consent of Bell. Bell shall not have the right to partially assign, sublet, license to, or otherwise share space with other parties, including affiliates of Bell, without the prior written consent of the Owner which consent may be conditional upon the payment of additional fees to the Owner. In order for an assignment of this agreement by Bell to be effective, Bell shall be required to give written notice of any assignment of this agreement and Bell shall not be released from its obligations to the Owner in this agreement.

13. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings on the subject matter hereof. 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.

14. Insurance

- (a) Bell shall maintain in force, at its expense, during the term of this Agreement, a policy of commercial general liability insurance including blanket contractual liability coverage issued by a company maintaining a minimum A.M. Best "A-" Rating or otherwise reasonably acceptable to the Licensor with a combined single limit of at least Five million dollars (\$5,000,000) for bodily or personal injury or death or property damage. This limit of liability can be satisfied by umbrella and/or excess liability policies. Bell shall maintain all risk property insurance including the perils of fire, flood and earthquake on Bell's equipment in sufficient amounts to cover the replacement cost thereof. The Owner and any additional parties that the Owner may reasonably designate by written notice shall be added as additional insureds under the commercial general liability and umbrella/excess insurance policies limited to the extent of negligence of Licensee, its employees, its agents and/or its contractors
- (b) Bell's insurance shall contain provisions providing that such insurance shall be primary insurance insofar as the Owner and Bell are concerned, with any other insurance maintained by Licensor being excess and non-contributing with the insurance of Bell required hereunder to the extent of the Owners rights as an additional insured. Bell shall provide proof of such insurance to the Owner through issuance of an insurance certificate at the building office (Owner to advise of e-mail address) prior to commencement of any construction and to notify the Owner, in writing, that a policy is due to be cancelled and not be renewed to the detriment of the Owner at least 30 days prior to such cancellation.

15. To the extent required by Bell, Owner agrees to grant to Bell a non-exclusive servitude to the property line from the Building, as the case may be and in or through the Equipment Space and the Building, if it is determined that Equipment must be installed into the Building and/or in the Equipment Space. Owner and Bell shall in advance, agree upon a suitable location to install the Equipment. Owner agrees to allow Bell to register, at Bell's expense, the servitude and/or notice of this Agreement.

16. This Agreement was drawn up in English at the express request of the parties. Cette entente a été rédigée en anglais à la demande expresse des parties.

In witness thereof the parties through their duly authorized representatives have executed this Agreement as of the date indicated below.

FRANCIS STREET INC., signed at Kitchener
Ontario

BELL CANADA, signed at

I/We have the authority to bind the Corporation

I have authority to bind the Corporation

Name:

Name:

Title: Vice President

Title:

Date:

Date:

Schedule "A"
Address and Description of Building

A. For the Building:

This Agreement applies to the following Building:

121 Charles Street West, Kitchener, Ontario, N2G 1H6