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**MORGUARD REAL ESTATE INVESTMENT TRUST**

(the "Licensor")

- and -

**BELL INTRIGNA INC.**

(the "Licensee")

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**TELECOMMUNICATIONS POP ROOM LICENSE AGREEMENT**

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**PROJECT:** 505 3<sup>rd</sup> Street S.W.  
Calgary, Alberta  
T2P 3E6

V# 1433060

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## TELECOMMUNICATIONS POP ROOM LICENSE AGREEMENT

This Agreement is dated the 6<sup>th</sup> day of October, 2000, and is made

**B E T W E E N:**

**MORGUARD REAL ESTATE INVESTMENT TRUST**

(the "Licensor")

- and -

**BELL INTRIGNA INC.**

(the "Licensee")

### Recitals

A. The Licensor owns or manages the commercial office building municipally known as **505 3<sup>rd</sup> Street S.W.**, in the City of Calgary, in the Province of Alberta, and the tenants and occupants of that building require telecommunication services;

B. The Licensee wishes to gain access to the building mentioned above for the sole purpose of installing, maintaining and operating equipment to provide telecommunication services to the tenants and occupants of that building utilizing cables and wires owned by the Licensor and situated in conduit, ducts and risers within that building.

**THEREFORE**, the Licensor and Licensee agree as follows:

### ARTICLE 1 - DEFINITIONS

#### 1.01 Definitions

In this Agreement the following definitions apply:

"Additional Fees": the fees referred to in Sections 4.02 and 3.04.

"Affiliate": a company that is affiliated with another within the meaning of the Canada Business Corporations Act.

"Agreement": this agreement and its Exhibits and Schedules.

"Application": an application by the Licensee submitted in accordance with Schedule "B" of this Agreement, requesting permission from the Licensor for the installation or modification of the Licensee's Equipment.

"Authorized Individual" has the meaning set out in Section 5.03.

"Broadcasting": any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of any device.

"Building": the building described above in Recital A.

"Business Taxes": all taxes, rates, duties, levies and assessments that are levied, rated, charged or assessed with respect to any and every business carried on by the Licensee in the Licensed Area, or in exercising the access privileges granted under this Agreement.

"Cabling": cable (whether copper, fibre optical or coaxial), wires, cords and connecting hardware and any combination of those items.

"Carrier": a Telecommunications common carrier that is subject to the legislative authority of Parliament.

"Commencement Date": the Commencement Date specified in Section 2.01.

"Conduit": protective pipe containing, or intended to contain Cabling.

"Cross Connection": the connection of one wire or cable under the management and control, or ownership of a Carrier to a wire or cable under the management and control or ownership of another Carrier by anchoring each wire to a connecting block and placing a third wire between the two, or by any other means, and whether at the Demarcation Point or elsewhere; and any other connection of the Telecommunication system or any of its components, that is under the management, control or ownership of a Carrier, to a Telecommunication system, or any of its components that is under the management, control or ownership of another Carrier will also be considered as a Cross Connection.

"CRTC": the Canadian Radio-television Telecommunication Commission, or any other governmental body with jurisdiction over matters within, or formerly within, the jurisdiction of that last mentioned Commission.

"Customer": a tenant or occupant of premises in the Building who purchases Services from the Licensee.

"Demarcation Point": the physical location (typically in the meter room) where the wires and facilities on one side of the point are under the responsibility and control of the Licensee and the wires and facilities on the other side of the point may be under the responsibility and control of a different party, which location is depicted in Schedule "C". (The Demarcation Point and the POP Room may be in the same location or located in separate locations within the Building.)

"Duct": a pipe, tube or conduit through which Cabling is passed and includes, where applicable, the Entrance Duct and Risers.

"Entrance Duct": a Duct, the whole or a portion of which is designated for use by the Licensor for use by the Licensee, that runs from the property line of the Lands to the Building and terminates in the POP Room.

"Exclusive Use Area": the part, or parts, if any, of the Licensed Area designated on the Schedule "C" as an "Exclusive Use Area".

"Fees": the fees and charges payable by the Licensee to the Licensor under this Agreement.

"G.S.T.": Goods and Services Tax as levied and assessed under lawful authority by the Federal Government of Canada.

"In-Building Wire": Cabling that runs from the Demarcation Point to the telephone closet on a floor of the Building and from there to the Customer's premises.

"Lands": those lands identified in Schedule "C".

"Licensee": the "Licensee" identified above, and any permitted successor or assignee, and the directors, officers, employees, contractors, agents of the Licensee and those persons for whom the Licensee is, at law, responsible.

"Licensor": the "Licensor" identified above and its successors and assigns.

"Licensee's Equipment": the Cabling and POP Room Equipment.

"Licensed Area": (a) the Pop Room, (b) that portion of the Entrance Ducts shown on Schedule "C", and (c) the parts of the Risers and other parts of the Building, the location, dimensions and area of which are as shown on Schedule "C".

"Licensor's Premises": the Building and the Lands.

"Plans" has the meaning ascribed to that term in Article 6.01.

"POP Room": the room or area (often referred to in the Telecommunications industry as a "point of presence room") where the Licensee's Cabling terminates within the Building, and the location and dimensions of which are shown on Schedule "C".

"POP Room Equipment": the equipment, Cabling, apparatus, fixtures and ancillary attachments that are installed or are to be installed by the Licensee in the POP Room.

"Province": the Province of Canada in which the Building is situated.

"Realty Taxes": all real property taxes or charges (including local improvement, municipal or similar charges if applicable and commercial concentration taxes) from time to time imposed in respect of all or any part of the Building or the Licensed Area by a taxing authority, and any other amount that may be imposed instead of or in addition to them, whether against the Licensor, the Licensee, and whether or not similar, in existence at the Commencement Date, or within the contemplation of the parties.

"Releasee": a person or entity referred to in Section 7.01(e) as a "Releasee".

"Riser": a Duct that begins at the POP Room and travels from there to each of the floors in the Building and through which Conduits, or Cabling is passed, or is to be passed.

"Schedule": a schedule to this Agreement.

"Services": the provision of Telecommunications to Customers within the Building.

"Signals": signs, signals, writing, images, sounds or intelligence of any nature including, without limitation, Telecommunications and Broadcasting.

"Telecommunications": any transmission, emission or reception of Signals by wire, visual, fibre optic or other system, excluding microwave and Broadcasting receiving apparatus.

"Term": the initial term described in Section 2.01.

"Use": the use of the Licensed Area and other parts of the Building for the purposes permitted pursuant to Article 5.

## **ARTICLE 2 - GRANT OF LICENSE**

### **2.01 License and Term**

The Licenser grants to the Licensee a limited, non-exclusive right to access solely for the Use, the Licensed Area, and the right of exclusive use of the Exclusive Use Areas (if any) subject to the Licenser's rights set out in this Agreement during the period of **Three (3) years**, beginning on the **1st day of November, 2000** (the Commencement Date") and ending on the **31st day of October, 2003**.

## **ARTICLE 3 - IN-BUILDING WIRE**

### **3.01 Responsibility for In-Building Wire**

The Licensee acknowledges that although the Licenser owns the In-Building Wire it has not performed an investigation, audit, or obtained any report concerning its condition, locations, or suitability for any particular purpose and it does not have the benefit of any representations, warranties, guarantees, or other performance assurances from any third party in connection with the In-Building Wire. The Licensee represents and warrants to the Licenser that it has made sufficient examination and investigations pertaining to the In-Building Wire and all other facilities within the building to satisfy itself concerning their suitability and acknowledges that the Licenser assumes no responsibility or obligation relating to any malfunctioning, disruption, or other disturbance or interference with the In-Building Wire's operation, so long as such malfunction, disruption, or other disturbance or interference with the In-Building Wire is not a result of any negligence on the part of the Licenser, and assumes no responsibility for supervision, maintenance, control of the In-Building Wire. The License Fees provided for in this agreement reflect that understanding.

### **3.02 Troubleshooting**

Should any problems occur in connection with the In-Building Wire which interfere with a provision of Services by the Licensee to its Customers in the building, the Licensee will be permitted access, subject to the provisions of Article 5, and the other provisions of this agreement for the purpose of identifying and preparing a report indicating the proposed method of remediation of the problem. The Licenser will give due consideration to the report and will permit the Licensee, at its expense, to effect any repairs or alterations that the report recommends and the Licenser approves. The Licenser's approval or revisions for remediation shall be given within five (5) business days. If an emergency occurs involving the In-Building Wiring or the Licensee's equipment or the POP Room in which the Licensee is located, the Licensee shall provide as much notice as possible to the Licenser, but will effect any repairs as necessary to correct the problem. As soon as reasonably possible, and in any event, within thirty (30) days, the Licensee shall submit a report concerning the nature of the emergency and the steps taken to correct it. The Licensee shall be responsible for all repair costs together with an administration fee of 15% of those costs, payable to the Licenser. The Licenser will act reasonably in giving due consideration to any proposed remedial action that may be requested by the Licensee but all costs and expenses of the Licenser in that regard will be paid by the Licensee. An administration fee of 15% will be payable in addition to any of the costs and expenses required by the Licensee to be reimbursed to the Licenser as provided above. Should it be determined that access for routine maintenance is required in connection with the In-Building Wire which needs to be performed in order to permit the Licensee to provide Service to its Customers the Licensee will be permitted to perform that routine maintenance, at its cost, subject to the provisions of this agreement, including but not limited to Article 5.

### **3.03 Licenser's Assumption of Responsibility For In-Building Wire**

The Licenser may at any time, on at least thirty (30) days' prior written notice to the Licensee, assume responsibility and control of all or part of the In-Building Wire. This responsibility and control may also include, but not be limited, to administrative responsibility, and the right to assign Cabling for the use of the Licensee, or other Carriers and occupants of the Building. If the Licenser so assumes responsibility and control, it will maintain, repair, replace

and operate the In-Building Wire and all associated Conduits, and other equipment in order to maintain appropriate service standards, and it will act expeditiously to repair or correct any problems that the Licensee may report with respect to the Licensee's use of the In-Building Wire.

### **3.04 Licensors Operating Costs For In-Building Wire**

If the Licensor assumes responsibility and control of the In-Building Wire, all of the costs and expenses of the Licensor associated with maintenance, repair, replacement insurance, management and operation of the In-Building Wire will be recoverable from the Licensee and other Licensees that are telecommunication providers in the Building as Additional Fees, determined on a reasonable, allocated proportionate share basis by the Licensor, based on current market rates. These costs and expenses will include any amounts paid by the Licensor to a facilities management, riser management, or similar company to manage and administer the In-Building Wire and, should the Licensor elect to provide the management administration and operating services relating to the infrastructure directly, instead of retaining a facilities management or riser management company for that purpose, it will be entitled to charge a reasonable fee equal to its actual costs, plus an administration fee of 15% of those costs. The Additional Fees payable by the Licensee under this Section will be paid based on periodic estimates and will be adjusted at reasonable intervals based on actual amounts. These Additional Fees may also be paid, at the Licensor's option in monthly instalments in advance.

## **ARTICLE 4 - LICENSE FEES**

### **4.01 Annual Basic Fees**

The Licensee shall pay to the Licensor a fee equal to **TWO AND ONE-HALF CENTS (\$0.025)** per square foot of the "Rentable Area" of the Building, which as of the date of this Agreement is 135,062 square feet (the "Annual Basic Fee") plus G.S.T. The Annual Basic Fee, which is calculated to be **THREE THOUSAND, THREE HUNDRED AND SEVENTY-SIX DOLLARS AND FIFTY-FIVE CENTS (\$3,376.55)**, is payable yearly in advance without any deduction, set-off, or abatement with the first being due on the Commencement Date.

### **4.02 Additional Fees**

The Licensee will also pay any Additional Fees specified on Schedule "A" and will pay them in the manner and on the basis stated in that Schedule.

## **ARTICLE 5 - LICENSE TERMS**

### **5.01 Access Privileges**

Subject to the provisions of this Agreement, the Licensor grants to the Licensee a non-exclusive and limited right to enter the Licensor's Premises, to use the Licensed Area (and to have exclusive use of any Exclusive Use Area) for the following purposes only (the "Use"):

- (a) to install Cabling into the Entrance Duct, or the part of it, that is designated by the Licensor pursuant to this Agreement, commencing at the property line of the Lands and terminating at the POP Room or the Demarcation Point and to operate, maintain and repair that Cabling;
- (b) to install the POP Room Equipment and to operate, maintain and repair it;
- (c) connect Licensees Cabling from the POP Room or the Demarcation Point to the In-Building Wire;
- (d) to make the improvements required, and approved by the Licensor in accordance with Article 6, to provide Services to the Customers. These improvements may include, but shall not be limited to heating, air conditioning, walls, ventilation and electrical wiring in conduits;
- (e) subject to the Licensor's security procedures, including the availability of a representative of the Licensor to access the Licensed Area, twenty-four (24) hours a day seven (7) days a week to perform any installation, operation or maintenance, as may be approved by the Licensor, of the Licensee's Equipment including access to those portions of the Building that are from time to time designated by the Licensor as being available for common access and egress for occupants of the Building such as driveways, walkways, hallways and exits and entrances. Access keys and combinations shall be provided by the Licensor to the Licensee at the Licensee's expense if and when they are necessary and the Licensee shall return them to the Licensor at the end of the Term or any renewal of it;
- (f) to use the Licensed Area only for the purpose of providing Services to the Customers at their respective premises in the Building; and
- (g) to protect the POP Room Equipment and other improvements permitted under this Section 5.01 against damage, in such manner as the Licensor may reasonably require,

all at the sole cost and expense of the Licensee.

The location, installation, alteration and modification of the Licensee's Equipment and other improvements shall be subject to such conditions and covenants as the Licensor requires as outlined in Article 6.

The Licensor may at any time require the Licensee to modify or relocate the POP Room and the Licensee's Equipment, or any part of it. The Licensor will pay the reasonable direct costs (which exclude, without limitation, costs and compensation for disruption of service) of relocating the POP Room and POP Room Equipment and the Licensee will pay for all other costs of relocation and modification, the direct costs shall include those costs associated with installing a standard cutover to ensure minimal loss of service to the Licensee's customers. The Licensor shall use commercially reasonable efforts to minimize the period of disruption. If there is such a relocation, the "Licensed Area" will be construed accordingly. The Licensor will give the Licensee reasonable prior written notice (but in no case will more than one hundred and twenty (120) days' written notice be required) of the required relocation or modification.

#### **5.02 Conditions of Access**

- (a) The Licensee's rights under this Agreement are non-exclusive. This Agreement does not grant to the Licensee an exclusive right to offer or provide Services in the Building. The Licensee is an invitee only and the Licensee's rights are restricted to those that are expressly set out in this Agreement.
- (b) The Licensor may, in its sole discretion, limit all and any of the type, size and configuration of the POP Room and the Licensee's Equipment so that the Licensee's Equipment is not a safety hazard, and complies with all environmental and other applicable laws, and does not interfere with the use or equipment of other occupants of the Building.
- (c) The Licensee shall not use the Licensee's Equipment for purposes other than those that are expressly provided for in this Agreement.
- (d) The Licensee shall not permit any other person to share or use the Licensee's Equipment, or access the Licensed Area without the express written consent of the Licensor, such consent not to be unreasonably withheld.
- (e) The Licensee shall not Cross Connect or permit the Cross Connection of its Cabling to that of any other Carrier without the express written consent of the Licensor, such consent not to be unreasonably withheld.
- (f) The Licensee is only permitted to use the Licensed Area for the purposes that are expressly provided for in this Agreement. The Licensee must not use the Licensed Area for a Network HUB, switching system, or switch hotel or for installing any public communications system or public cordless telecommunications system as those terms are defined by the CRTC, or as those terms are otherwise commonly used in the Telecommunications industry in Canada.
- (g) The Licensee is prohibited from installing, modifying, adding to or removing any part of the Licensee's Equipment without first:
  - (i) obtaining the Licensor's approval in writing for all Plans;
  - (ii) obtaining the Licensor's approval concerning the start date and completion date of whatever work is involved; and
  - (iii) complying with the requirements of Schedule "B".
- (h) The Licensee accepts the Building, including all Ducts and In-Building Wire "as is" and "where is". The Licensor does not, through the provisions of this Agreement, or otherwise, guarantee or warrant that any part of the Building, including the Ducts, and In-Building Wire is or will be fit or adequate for the Licensee's purposes even though the Licensee may have indicated the nature of its intended use, or provided Plans to the Licensor for its review and approval. The Licensor's review and approval of any Plans is limited to satisfying the Licensor that the installation will not generally compromise the integrity or value of the Licensor's Premises.
- (i) The Licensee is solely responsible for obtaining and negotiating any and all required municipal access agreements.
- (j) The Licensee shall not interfere with any tenants or occupants of the Building or conduct any sales or promotional campaign specifically directed to any tenants or occupants of the Building that in the Landlord's opinion is an unreasonable interference with their quiet enjoyment.
- (k) The Licensee shall maintain at all times, as-built drawings identifying all Cabling and other improvements that it installs in the Building and, shall ensure that each item of the Licensee's Equipment, and in particular Cabling, is physically labelled in a manner and in locations, approved by the Licensor.
- (l) Security services and security requirements imposed by the Licensor are provided solely for the benefit of the Licensor and not for the Licensee. The Licensee is not entitled to rely upon any security services, supervision services, or similar services provided by the Licensor for protection and should any damage to



the Licensee's property or to the Licensee occur in connection with the conduct of its activities under this Agreement, it will make no claim against the Licensor or the provider of the security services.

#### **5.03 Access Procedure**

- (a) Prior to requesting access to the Licensed Area for any purpose whatsoever, the Licensee shall identify those of its employees, contractors and contractors' employees who require access to the Licensor's Premises. Only an individual who has been so identified and approved by the Licensor for access to the Licensor's Premises (the "Authorized Individual") will be permitted access to the Licensor's Premises.
- (b) When access to the Licensor's Premises is required, the Licensee shall ensure that any Authorized Individual, while on the Licensor's Premises, abides by the Licensor's building rules and regulations as well as all other applicable laws, rules and regulations and security measures in effect. The Licensor reserves the right, except in the case of an emergency, in its sole discretion, to deny access to or expel any Authorized Individual from the Licensor's Premises.
- (c) Where access to the Licensor's Premises is requested, the Licensor will permit the Authorized Individual to access the Licensed Area only in accordance with the provisions of this Agreement. While the Authorized Individual is within the Licensor's Premises, the Authorized Individual shall display identification.
- (d) While in the Licensor's Premises the Licensor may, at its sole discretion, require that the Authorized Individual be escorted in the following instances:
  - (i) where the Authorized Individual wishes to install Cabling into any Duct, whether or not the Duct is used by any other Carrier;
  - (ii) where the Authorized Individual requires access to the Demarcation Point, or to any telephone closet on any floor of the Building; or
  - (iii) where the Authorized Individual requires access to other areas within the Building to which the Licensor requires the Authorized Individual to be escorted.
- (e) Where the Authorized Individuals may require to be escorted such access will be permitted "by appointment only". The Authorized Individual shall contact the Licensor to arrange the appointment, which will be a minimum of 24 hours notice.
- (f) Except in the case of an emergency, where emergency repair or maintenance of the Licensee's Equipment is required, and the Licensor will use commercially reasonable efforts upon request by the Authorized Individual to allow escorted access without delay.
- (g) The Licensor reserves the right to enter for the purpose of performing periodic inspections and, except in the case of an emergency, to limit access to the Licensed Area and the Licensee's Equipment. The Licensor will notify the Licensee in advance of the Licensor's intention to inspect the Licensee's Equipment and the Licensee shall attend such inspections.
- (h) Where any of the Licensee's Equipment is determined by the Licensor not to comply with the provisions of this Agreement, the Licensee shall, upon ten (10) business days notice (as to which equipment must be modified), modify the installation or operation of the non-conforming equipment (examples of non-compliance refer to safety, environmental concerns, non-compliance with applicable laws or interference with other parties equipment). Where compliance is not achieved within the specified period of time, the Licensor may, without further notice to the Licensee, take such action as the Licensor determines necessary to remove or remedy such non-compliance at the Licensee's sole cost and expense, plus 15% administration fee, without limiting any of the other remedies that may be available to the Licensor at law or in equity.
- (i) Installation, modification, removal and other work in respect of the Licensee's Equipment, or the Licensed Area will only be performed during Normal Business Hours, except in the case of an emergency. "Normal Business Hours" are the hours specified by the Licensor for each Building.

#### **5.04 Licensor's Alteration**

Despite anything else in this Agreement, the Licensor may, at any time, make any changes in, additions to or relocations of any part of the Licensor's Premises; may grant, modify or terminate easements and any other agreements pertaining to the use or maintenance of all or any part of the Licensor's Premises may close all or any part of the Licensor's Premises to such extent as the Licensor considers necessary to prevent the accrual of any rights in them to any persons; and the Licensor may also make changes or additions to the pipes, Ducts, utilities and any other building services in the Building (including the Licensed Area) which serve any part of the Building. Provided, however, that such changes or additions shall not unreasonably interfere with the Licensee's equipment or the provision of services to the Licensee's customers. Except in the case of an emergency, any changes or modifications that affect the Licensee's cables will only be undertaken after 48 hours notice to the Licensee and the Licensee will be given the option to attend and observe such alterations. In so doing, the Licensor may enter upon the Licensed Area. Neither the Licensor nor any Releasee shall be liable for any damage caused to the Licensee's property, except if due to the gross negligence or wilful acts of the Licensor or the Releasee or those for whom the Licensor is at law responsible. No claim for compensation shall be made by the Licensee by reason of any

inconvenience, nuisance or discomfort arising from work done by the Licensor but the work will be done as expeditiously as is reasonably possible.

Except where the POP Room is an Exclusive Use Area, the Licensor may require the Licensee to co-occupy the POP Room to accommodate other Carriers, without any abatement in the Fees paid by the Licensee, and the Licensee may be required to move or relocate the Licensee's Equipment within the POP Room to accommodate such co-occupation, provided such relocation of the Licensee's Equipment does not render the Licensee's Equipment unsafe or unable to be serviced, and provided that the Licensor shall pay the reasonable direct costs of this relocation within the POP Room.

#### **5.05 Restoration**

At the end of the Term, and at the end of any renewal of the Term, or on early termination, the Licensee will remove any and all chattels and personal property that the Licensee has installed, and any of the Licensee's Equipment that the Licensor requires to be removed, and will either, at the Licensor's option: (i) promptly, to the extent and within the time frame reasonably specified by the Licensor, restore the Building to its condition prior to the installation of the Licensee's Equipment and other improvements, (in any case, the restoration and removal to be completed within thirty (30) days of any request by the Licensor or restoration and removal will have begun within fifteen (15) days if such restoration and removal will reasonably take longer than fifteen (15) days to complete), or (ii) pay all costs to the Licensor for the removal and restoration. The Licensor may also, in lieu of requiring or permitting the removal of the Licensee's cabling, require that any Cabling outside the POP Room be left in place at no cost to the Licensor, and may require the title to that Cabling be transferred to the Licensor without compensation to the Licensee.

### **ARTICLE 6 - INSTALLATIONS, MODIFICATIONS, REPAIRS AND MAINTENANCE**

#### **6.01 Approval of Installations**

Prior to the commencement of the installation or construction of the Licensee's Equipment on, at, or in the Licensor's Premises, the Licensee shall obtain the written approval of the Licensor of the plans, specifications, working drawings, blueprints, schedules and similar renderings for the construction and installation (the "Plans") in accordance with the procedure set forth in Schedule "B". Notwithstanding any approval of the Plans by the Licensor, the Licensor makes no warranty or representation to the Licensee that the Licensor's Premises, the Ducts or any other components are, or will remain adequate or suitable for the Licensee's purposes during the Term.

#### **6.02 Application to Amend**

Should the Licensee wish to modify the Licensee's Equipment or the Services that it provides to a Customer, the Licensee shall submit an Application, including the Plans for the proposed modification. An Application will only be approved if, in the opinion of the Licensor, acting reasonably, there are available POP Rooms, and Ducts and the Licensee is in good standing in respect to all of its obligations under this Agreement. If the Licensor approves the Application, this Agreement will be considered to be amended accordingly.

#### **6.03 Review of Plans**

The submission of the Plans shall be in accordance with Schedule "B" and shall show, in detail satisfactory to the Licensor, the design, colour, construction, technical specifications and installation of the Licensee's Equipment in the Building including the connection of the Licensee's Equipment with the electrical, structural, communication and mechanical systems of the Building. The Licensor shall have the discretion, acting reasonably, to require changes and revisions in and to the Plans and the Licensee shall (even if the Licensee is to incur additional costs to comply with the Licensor's requirements) promptly, and with due diligence, give effect to any such changes or revisions. The Licensee shall be responsible for and shall reimburse the Licensor for all costs associated with or arising from review of the Plans as provided herein.

Notwithstanding any approval of the Plans by the Licensor, the Licensor makes no warranty or representation to the Licensee that the Licensor's Premises, the Ducts or any components are, or will remain adequate or suitable for the Licensee's purposes. The Licensee shall at all times remain liable and responsible for the Plans, including any and all damages suffered by the Licensor and the tenants and occupants of the Building as a result of the installation of the Licensee's Equipment as well as the Licensee's use of the Licensor's Premises.

#### **6.04 Construction and Installation**

After the Licensor has given its written approval of the Plans, the Licensee shall at its sole risk, cost and expense commence and diligently proceed with and complete the installation, construction and connection of the Licensee's Equipment in strict accordance with the Plans as approved and to the satisfaction of the Licensor, including all work or construction which is necessary for the proper installation, construction and interconnection of the Licensee's Equipment for the Use. All construction, alteration, maintenance, repair, replacement, installation and removal shall be carried out in a good and workmanlike manner, shall comply with all applicable laws, regulations, by-laws, orders, rules and ordinances of any competent authority, shall be subject to supervision by the Licensor and shall be performed only by persons approved or designated by the Licensor. All of the Licensee's Equipment shall comply with Bellcore, CSA standards as well as such other standards as are commonly followed within the Canadian Telecommunications industry. The Licensee shall, at the request and direction of the Licensor, restore the Licensor's

Premises to its former condition if any such work or construction does not comply with Plans approved by the Licensor.

#### **6.05 Repairs and Maintenance**

The Licensee shall, at its own expense, keep the Licensed Area in a safe and properly maintained condition in compliance with all applicable laws. The Licensee shall effect any required repairs, replacement or maintenance within ten (10) days of notification by the Licensor or will begin such repair, replacement or maintenance within five (5) days and will proceed diligently with same if it will reasonably take longer than ten (10) days to complete. Should the Licensee fail to do so, the Licensor may effect any required repairs, replacements or maintenance if it gives the Licensee ten (10) days' written notice of its intention to do so. In order to preserve or protect life or property in emergency situations, the Licensor may immediately repair the Licensed Area and the Licensee's Equipment. All costs and expenses incurred by the Licensor in this regard together with an administration fee of fifteen percent (15%) of those costs and expenses must be paid by the Licensee within thirty (30) days from the receipt of an invoice therefor.

#### **6.06 No Interference with the Licensor and Building Tenants**

The Licensee, and each Authorized Individual shall make commercially reasonable efforts to co-ordinate all construction, installation, maintenance, alteration, replacement or removal of the Licensee's Equipment at, on, or near the Building with the similar activities of the Licensor or others, as may be necessary and as directed by the Licensor. All work shall be performed so that it does not interfere or conflict with any activity of the Licensor or of any tenant, occupant or other licensee in the Building. Neither the Licensee nor any Authorized Individual shall endanger any other work or facility at or near the Licensor's Premises or forming part of the Building by altering, cutting, digging or otherwise. The cost of repairing, replacing or otherwise remediating any improvements, work, or conditions made necessary by the Licensee or an Authorized Individual in breach of this Section will be paid by the Licensee on demand plus an administration fee equal to fifteen percent (15%) of the cost, without limitation to the Licensor's other remedies.

The Licensee will repair, replace or refinish any damage caused by the Licensee's equipment and installation thereof upon fifteen (15) days written notice from the Licensor or will begin to repair, replace or refinish any damage within fifteen (15) days of written notice if same will reasonably take longer than fifteen (15) days.

#### **6.07 Workers' Compensation - Construction Liens**

The Licensee will not permit any contractor or subcontractor to do any work in the Building if an up to date, valid clearance certificate issued by the applicable regulatory body for the contractor or subcontractor is not produced to the Licensor, or if the Licensor is not satisfied that the contractor or subcontractor is in good standing in respect of its obligations under the applicable "Worker Compensation" legislation.

The Licensee shall promptly pay all charges incurred by or on behalf of the Licensee for any work, materials or services furnished or supplied to the Licensee or an Authorized Individual in respect of the Licensee's Equipment. If any lien is filed or registered against the Lands or the Building or any part of them as a result of any work done or materials furnished or supplied for the account of the Licensee, its employees, agents and contractors whether used or specifically prepared with the view of being used in respect of the Licensor's Premises or any part of them or otherwise, the Licensee shall promptly cause any such lien to be discharged or commence legal proceedings to have the lien vacated or cancelled. If the Licensee fails to do so, then, in addition to any other right or remedy the Licensor may have, on ten (10) days' written notice to the Licensee, the Licensor may, but shall not be obligated to discharge the lien or obtain its removal and shall then charge the Licensee with the cost thereof, plus an administration fee equal to fifteen percent (15%) of the cost.

#### **6.08 Damage to Licensor's Premises**

The Licensee shall, at its sole cost and expense, have all damage caused by it or its contractors to the Licensor's Premises (including but not limited to the In-Building Wire) or any improvements or property of others repaired immediately. If the Licensee causes damage such as that described above, the Licensor may elect to repair the damage at the Licensee's cost and may recover that cost from the Licensee plus an administration fee equal to fifteen percent (15%) of the cost.

The Licensee will rectify, or being rectifying if same will reasonably take longer, any damage to Licensor's Premises within fifteen (15) days of notification by the Licensor.

### **ARTICLE 7 - LICENSEE'S COVENANTS**

#### **7.01 Licensee's Covenants**

Throughout the Term and any renewals of the Term the Licensee will satisfy the following obligations:

##### **(a) Fees**

The Licensee will pay the Fees as required by this Agreement.

(b) **Taxes**

The Licensee will pay Realty Taxes, Business Taxes and G.S.T. and any taxes imposed upon the Licensors by reason of the Licensee's use of the Licensed Area or the exercise of its rights under this Agreement.

(c) **Electricity**

The Licensee shall be responsible for the payment of its own electrical consumption based on the Licensee's connected load as reasonably estimated by the Licensors and in this connection the Licensee shall at the Licensors' request install a meter, or meters, at its own expense to record its power consumption, when requested by the Licensors to do so, if the Licensors, acting reasonably, determines that the Licensee's electrical consumption is sufficient to warrant the installation of such meter or meters. Alternatively, the Licensors may require the Licensee to obtain electricity directly from the electricity supplier and to install or pay for the installation of whatever separate meters, or other equipment may be required.

(d) **Indemnity**

The Licensee will indemnify and save harmless the Licensors and each Releasee from and against any and all actions, causes of action, suits, claims, damages, awards, proceedings, costs (including the Licensors' legal costs on a solicitor and his own client basis) and liabilities or claims (collectively "Claims") by any third party (including, without limitation, any Authorized Individual and the directors, officers, employees, agents, representatives or customers of the Licensee and each Releasee) arising in respect of:

- (i) the placement, installation, use (or the inability to use), operation, maintenance or removal of the Licensee's Equipment by the Licensee or an Authorized Individual in, on, or from the Licensors' Premises;
- (ii) the performance of this Agreement by the Licensee, including the installation of the Licensee's Equipment, or its use or misuse by the Licensee;
- (iii) any breach, violation, act or omission or non-performance of any condition, covenant, obligation, representation or warranty by or on the part of the Licensee;
- (iv) damage to the Licensors' Premises or any personal property (including the loss thereof) of the Licensors, or any third party, or physical injury (including death resulting therefrom) caused directly or indirectly by the Licensee, or its agents, servants or employees;
- (v) any act or omission of the Licensee in connection with the presence, installation, use, operation or maintenance of the Licensee's Equipment;
- (vi) the proximity of the Licensee's Equipment to any facilities or equipment of the Licensors, any tenant of the Licensors, whether or not a Customer, or other Carriers within the Licensors' Premises as a result of the presence, installation, use, operation or maintenance of the Licensee's Equipment;
- (vii) any act or omission of or by the Licensee in or while providing any Services to any Customer, or in respect to any service interruption, failure or impairment;
- (viii) any actual or attempted seizure or repossession of the Licensee's Equipment or any other equipment or property of the Licensee in any of the Licensors' properties by any creditor of the Licensee or by any other party;
- (ix) the infringement of patents or other intellectual property rights arising from the use of the Licensee's Equipment or the combining or using the Licensee's Equipment with other equipment or facilities of the Licensee within the Building; or
- (x) any claim of ownership, right or title by any third party in respect of the Licensee's Equipment (the Licensee represents and warrants it is the sole owner of all of the Licensee's Equipment) or any claim arising from any alleged lack of authority by the Licensee to enter into this Agreement.

The Licensors shall not be liable for the quality of transmission, or for any damages arising from omissions, interruptions, delays, errors or defects in transmissions suffered by the Licensee, or any of its Customers, caused by failures or defects within the Licensors' Premises. To the extent that any of the Licensee's Customers suffer damages arising from any of the circumstances mentioned above for which the Licensors may be at law responsible, the Licensee hereby indemnifies and holds harmless the Licensors from and against any such claims, regardless of whether the Licensors is alleged or found to be negligent.

**(e) Release and Waiver**

The Licensee does hereby release the Licensor, and each owner of the Building, the Affiliates of the Licensor and the Affiliates of each owner of the Building, as well as their respective directors, officers, servants, agents, employees, contractors and those for whom all or any of them is, or are, in law responsible (herein individually, the "Releasee" and collectively, the "Releasees"), from all actions, suits, damages, costs and liabilities for:

- (i) any damage to the Licensed Area or Licensee's Equipment;
- (ii) any injury to, or death of any person; and
- (iii) damage to any person's property or loss of use of such property,

arising out of any act or omission by any Releasee in respect of the Licensed Area or the Licensee's Equipment. This release extends to negligent but not grossly negligent acts or omissions or wilful acts of any Releasee.

The Licensee further waives any claim that it may now have or may in the future have in tort, contract law, under any other theory of law, under statute, common law or in equity and confirms that its rights, obligations, rights of indemnity and measure and type of damages are limited to those that are expressly provided for in this Agreement.

**(f) Insurance**

- (i) (A) The Licensee shall at all times during the Term and any renewals thereof maintain an insurance policy covering all of its undertaking and in particular, public liability and property damage insurance coverage in an amount not less than Five Million Dollars (\$5,000,000.00), for each occurrence involving bodily injury, death or property damage, personal injury liability, products liability, contractual liability, contingent liability, and non-owned automobile liability, such policy to be written on a comprehensive basis. Upon request, the Licensee shall provide a certificate that such insurance is in force.
- (B) The Licensee's insurance coverage shall include all risks direct damage insurance, covering the Licensee's Equipment and all of the Licensee's chattels in an amount equal to the full replacement value thereof.
- (C) In addition, the Licensee's insurance coverage shall include business interruption insurance in such amounts as will reimburse the Licensee for direct or indirect loss of earnings attributable to all perils insured against in subsections 7.01(f)(i)(A) and (B) above.
- (ii) Each insurance policy referred to herein shall add the Licensor, any owner of the Building, and any mortgagee of the Licensor as additional named insureds, as their respective interests may appear and shall contain as appropriate:
  - (A) a severability of interests and a cross liability clause;
  - (B) a waiver of subrogation in favour of the Licensor and those for whom in law it is responsible; and
  - (C) a clause stating that the Licensee's insurance policy will be considered as primary insurance and not as excess to any other insurance that may be available to the Licensor, any owner of a Building or any mortgagee of the Licensor.

The Licensee shall provide certificates of insurance to the Licensor, on or prior to the commencement of the Term. All insurance policies shall contain an undertaking by the Licensee's insurer to notify the Licensor upon not less than thirty (30) day's prior written notice of any material change to the prejudice of the Licensor in terms, cancellation or termination.

**(g) Non-Liability for Loss, Injury or Damage**

In no event will the Licensor or any Releasee be liable to the Licensee (or any other party claiming through the Licensee) for:

- (i) lost profits, loss of revenue, failure to realize expected savings, loss of data, loss of use or any other commercial or economic loss of any kind, or punitive, exemplary, indirect, incidental, consequential or special damages or third party claims arising out of the use by the Licensee of the Licensor's Premises even if the Licensor was aware of or had been advised by the Licensee of the possibility of such potential losses or damages; and the Licensee releases, holds harmless and indemnifies the Licensor in respect of the same;

- (ii) the quality, adequacy, compatibility or sufficiency of any Duct or Cabling provided to the Licensee hereunder, it being acknowledged by the Licensee that all Duct and any supplied Cabling is provided "as is" and "where is", the use of which is at the sole risk of the Licensee;
- (iii) the activities of any third party, whether or not that party is on the Licensor's Premises under the terms of another Telecommunications access license or similar agreement, whether or not the activities of the party have been supervised by the Licensor, or whether or not the party has been escorted while within the Licensor's Premises;
- (iv) any Claims resulting from lightening or other electrical current passing through the Licensor's Premises or facilities that cause any damage to the Licensee's Equipment or result in the interruption of any Service by the Licensee;
- (v) any Claims resulting from any fire, explosion or other occurrence involving the Licensor's Premises;
- (vi) the inadequacy of any utility service, or the loss of or the failure to provide any utility service; or
- (vii) any Claims resulting from any fire, explosion or other occurrence involving the Licensor's Premises; and
- (viii) the Licensor's failure to perform any of its obligations hereunder where such failure is due, directly or indirectly, to fire, flood, explosion, earthquake, other disaster, power failure, accident, civil disturbance, riot, sabotage, laws imposed after the fact, war, rationing, embargo, strike or labour problem, acts of God or acts of government.

If for any reason, despite the foregoing limitations, the Licensor or any Releasee becomes liable to the Licensee or any other third party arising out of or in any way connected to this Agreement, in no event, regardless of the form of the action, whether in contract, tort or under any other theory of law, shall the aggregate liability of the Licensor or any Releasee to the Licensee, or to any third party, exceed the amount of One Thousand Dollars (\$1,000.00).

Other than as expressly provided for in this Agreement, there are no other warranties, representations, conditions or guarantees of any kind provided by the Licensor to the Licensee, either express or implied, whether by statute, agreement, tort, product liability, other theory of law, or otherwise, regarding this Agreement or the privileges afforded to the Licensee pursuant to this Agreement.

## **7.02 Agency and Trust Provision**

Wherever an indemnity or an exculpatory provision benefits the Licensor under this Agreement, the provision will be considered also to apply to and to benefit each Releasee.

For the purposes of permitting each Releasee to enforce the benefit of the indemnity provided for in Section 7.01(d), the benefit of the release and waiver provided for in Section 7.01(e), and the benefit of each other exculpatory provision included in this Agreement (including Section 7.01(g)) which is expressed or intended to be in favour of a Releasee, or the Licensor, the Licensor acts as agent or trustee for the benefit of the Releasee.

## **7.03 Compliance with Laws**

The Licensee will comply with all applicable governmental laws, regulations, by-laws and other governmental requirements to the extent they apply to the Licensee's Equipment, each Licensed Area, each of the Licensor's Premises, and the Licensee's activities in, or in respect of all and any of them. Without limiting the Licensee's obligation stated in the preceding sentence:

### **(a) Environmental Compliance**

The Licensee will comply with all laws pertaining to protection of the natural environment, and with occupational health and safety, and laws pertaining to personal safety and protection and shall indemnify the Licensor and each Releasee in respect of every loss, cost or expense which the Licensor suffers as the result of its failure to do so.

### **(b) Occupational Health and Safety**

The Licensee represents and warrants that, it will comply with the provisions of health and safety legislation in force in the province where the Licensor's Premises are located. The Licensee acknowledges that it is solely responsible as employer for the health and safety of all its employees and workers, as well as for the continuing safe conditions in the Licensed Area and while on the Licensor's Premises to the extent it has access thereto for the purposes of installing and maintaining the Licensee's Equipment. The Licensee shall comply with and shall require all of its



employees and workers to comply with the provisions of all applicable laws, statutes, rules, regulations, notices and orders including but not limited to all federal, provincial and local laws, statutes, rules, regulations, notices, orders and amendments respecting occupational health and safety, the environment, worker's compensation and the safe condition of the Licensed Area and the Licensors' Premises. All materials and supplies used by the Licensee's personnel in the Licensed Area and in the Licensors' Premises shall be used, handled, stored, otherwise dealt with and properly labelled in accordance with the Workplace Hazardous Materials Information System.

## ARTICLE 8 - LICENSOR'S CO-OPERATION

### 8.01 Co-Operation

At the request of the Licensee and at the Licensee's cost, the Licensor will cooperate with the Licensee in obtaining all necessary consents, permits and licenses of the municipality, Industry Canada, Transport Canada and other governmental authorities having jurisdiction with respect to the construction, operation, maintenance, repair and replacement of Licensee's Equipment and to this end will, without restricting the foregoing, execute all necessary authorizations to enable the Licensee to obtain building permits and to obtain any information acceptable to the Licensor with respect to the Licensors' Premises which the Licensee may require from any such authorities and to enable the Licensee, at the Licensee's cost, to obtain plans and drawings from the municipality, or any architect or engineer. The Licensee will provide copies of all such consents, permits and licenses to the Licensor when obtained. Notwithstanding the foregoing, no authorizations will permit any organization, authority or agency whatsoever to inspect the Licensors' Premises.

## ARTICLE 9 - TERMINATION OF LICENSE

### 9.01 Interference with Signals

Should the operation of the Licensee's Equipment cause any interference with or disruption to any equipment or system of the Building or of any of its occupants, the Licensee shall immediately upon notification from the Licensor in writing, cause the interference or disruption to cease. The Licensee shall be considered in default if it fails to resolve the material interference or disruption within five (5) days after receipt of that notice from the Licensor.

### 9.02 Other Rights of Termination by the Licensor

The Licensor may elect to terminate this Agreement, in whole or in part, and as it relates to the Building, in each of the following circumstances, subject to giving at least thirty (30) days' prior written notice to the Licensee:

- (a) where the Licensor determines that the Licensors' Premises have been destroyed, or damaged to such an extent that it is not feasible to repair them within a period of one hundred and eighty (180) days after the damage;
- (b) where the Licensed Area becomes damaged and, in the Licensor's opinion, it is not feasible to restore the Licensed Area within ninety (90) days after the damage;
- (c) where the Licensors' Premises are expropriated in whole or in part by a lawful authority;
- (d) where the Licensor wishes to redevelop, or otherwise alter the Licensors' Premises in such a manner as to, in the Licensor's opinion, acting reasonably, make the relocation of any part of the Licensed Area not feasible; or
- (e) where the Licensor elects to change the primary use of the Licensors' Premises to a use other than that in effect as of the date of the applicable Building Schedule.

## ARTICLE 10 - DEFAULT

### 10.01 Default

Without limiting its other rights and remedies:

- (a) the Licensor shall be permitted to terminate this Agreement where the Licensee commits any of the following defaults:
  - (i) the Licensee fails to pay any amount due and owing to the Licensor under this Agreement; or
  - (ii) the Licensee fails to comply with any of the terms or conditions of this Agreement;

if the Licensor has provided to the Licensee written notice of the default and the Licensee has failed to cure the default within ten (10) days after the written notice of default, or begun to correct within ten (10) days if it will reasonably take longer to complete; and

- (b) regardless of any other provision of this Agreement, the Licensor shall be entitled, at its option, to terminate this Agreement immediately upon written notice to the Licensee:
- (i) where the Licensee become bankrupt or insolvent,
  - (ii) upon the filing by the Licensee of any petition, request for reorganization, readjustment or arrangement of the business of the Licensee under any laws relating to bankruptcy or insolvency;
  - (iii) upon the Licensee ceasing to carry on business in the ordinary course;
  - (iv) upon the appointment of a receiver or receiver-manager for all or substantially all of the property of the Licensee;
  - (v) upon any notice of, or actual or attempted seizure or repossession of the Licensee's Equipment or any part of it;
  - (vi) upon the making of any assignment or attempted assignment for the benefit of creditors;
  - (vii) where the Licensee fails to procure, maintain and pay for or keep in force any insurance required to be maintained by the Licensee pursuant to this Agreement;
  - (viii) the activities of the Licensee pose a direct threat to the health or safety of the Licensor or any of its tenants or other occupants of the Licensor's Premises or directly endanger the safety or integrity of the Building, and
  - (ix) the Licensee commits a default under Section 9.01,

such termination to be effective in the date specified in the notice of termination, and to be considered a termination on account of the Licensee's default.

Expiration or termination of this Agreement as provided above shall not relieve the Licensee of any of its obligation to pay any amounts due to the Licensor or to become due to the Licensor, and shall not deprive the Licensor of any of its rights or remedies or actions against the Licensee that accrue up to and including the effective date of the termination or expiration.

Notwithstanding and in addition to any other claims or actions that the Licensor may have against the Licensee, in the event of the termination of this Agreement for any of the reasons specified in this Section 10.01, any Fees pre-paid by the Licensee to the Licensor shall remain the sole property of the Licensor.

The Licensor will be entitled to recover costs on a solicitor and client basis in respect of any action, proceeding, or claim that it makes against the Licensee in respect of any breach of the Licensee's obligations under this Agreement.

## **ARTICLE 11 - EFFECT OF TERMINATION**

### **11.01 Licensee Obligations**

Upon the termination or expiration of this Agreement for any reason by either party, the Licensee shall:

- (i) pay any outstanding Fees, Taxes and other charges for which the Licensee is or may be liable;
- (ii) follow the procedures set forth in Schedule "B" before removing any of the Licensee's Equipment;
- (iii) arrange for the de-installation and removal of the Licensee's Equipment if required by the Licensor. Where the Licensor requires that the Licensee's Equipment be deinstalled, the Licensee shall continue to pay all Fees until the Licensee's Equipment has been removed and the Licensed Area restored to the Licensor's satisfaction;
- (iv) if for any reason the deinstalled Licensee's Equipment is not removed from the Licensor's Premises within thirty (30) days of the date specified for removal by the Licensor, or as arranged by the Licensee with the Licensor, the Licensee will be deemed to have abandoned it and the Licensor may, at its sole discretion, dispose of it as it sees fit. The Licensor shall not be liable to the Licensee for any proceeds of the disposition nor for any losses, costs or damages whatsoever in connection with the disposition. The Licensee shall be responsible for all costs of removal, restoration and disposition; and
- (v) indemnify and save harmless the Licensor from any and all third party claims arising from or in connection with the removal and disposition of the Licensee's Equipment.



Regardless of what is stated above, the Licensor reserves the right to remove the Licensee's Equipment on the day following the expiration or termination of this Agreement and to store it until removed by the Licensee, or until disposed of by the Licensor as provided above. In that case, Licensee shall be responsible for all costs of removal, restoration, storage and disposition, and the Licensee will have no liability to the Licensor in connection with the Licensee's Equipment.

## **ARTICLE 12 - ASSIGNMENT, SUB-LICENSING, TRANSFER AND FINANCING**

### **12.01 Assignment, Sub-Licensing, Transfers**

- (a) The Licensee shall not assign its rights under this Agreement, in whole or in part, or sub-license all or any part of the Licensed Area, or enter into any co-usage or sharing arrangement in respect of the Licensed Area or any part of it without the prior written consent of the Licensor, which may not be unreasonably withheld. The transactions referred to in the preceding sentence are referred to as "Transfers" and "Transferee" has a corresponding meaning. In determining whether to give its consent to a Transfer, it will be considered reasonable (whether or not any other reasonable ground exists) for the Licensor to withhold its consent if amounts or other value are paid or provided to the Licensee in connection with any Transfer and the amount or value reflects benefits associated with the size, nature or location, the number and types of occupants of the Building, or the volume of pedestrian traffic associated with the Building.
- (b) The following terms and conditions shall apply in respect of a consent given by the Licensor to a Transfer by the Licensee to which the Licensor may elect to consent:
  - (i) the Transferee will execute an agreement directly with the Licensor agreeing to be bound by this Agreement as if it had originally executed this Agreement as Licensee, but the Licensee will not be released from its obligations under this Agreement;
  - (ii) the consent by the Licensor shall not constitute a waiver of the requirement for consent to subsequent Transfers;
  - (iii) any request for consent shall be in writing and accompanied by a true copy of the proposed Transfer, and the Licensee shall furnish to the Licensor all information available to the Licensee and requested by the Licensor as to the responsibility, reputation, financial standing and business of the proposed Transferee; and
  - (iv) in the event of Transfer by the Licensee by virtue of which the Licensee receives a fee in the form of cash, goods or services from the Transferee which is greater than the Fees payable hereunder to the Licensor in respect of any particular Licensed Area, the Licensee will pay such excess to the Licensor in addition to the Fees payable under this License.

### **12.02 Licensee's Financing**

The Licensee may, without the consent of but on prior written notice to the Licensor, grant security by way of a mortgage, charge, general security agreement or otherwise in respect of the Licensee's Equipment (but not in respect of In-Building Wire or conduits associated with it or, nor in respect of any part of the Building, any permanent fixtures, or any improvements to the Licensor's Premises) to a bank or other financial institution. The Licensee will not cause or permit any charge, security interest, mortgage, or encumbrance, or any notice of them to be registered against title to the Licensor's Premises or any part of them except a "fixtures notice" as provided for in the personal property security legislation of the Province. Any "fixtures notice" must be approved as to form and content by the Licensor.

### **12.03 No Encumbering by Licensee**

The Licensee will not be permitted to assign its rights under this Agreement or otherwise encumber its rights under this Agreement as security for any loan, or other financial, or as a pledge in respect of any matter.

### **12.04 Assignment by Licensor**

The Licensor may, at any time assign its rights under this Agreement or assign its rights in respect of any Building. Upon assignment of this Agreement as aforesaid, the Licensor will be released from its obligations in respect of such Building.

## **ARTICLE 13 - ADDITIONAL PROVISIONS**

### **13.01 No Registration of this Agreement**

The Licensee shall not register this Agreement or any short form thereof or any notice in respect of it on title to the Building or the Lands.

### 13.02 Notice

Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission,

- (a) to the Licensee at the following address:

Bell Intrigna Inc.  
28th Floor  
Bell Tower  
10104 103 Avenue  
Edmonton, Alberta  
T5J 0H8

Attention: Patti Mann

FAX No.

- (b) and to the Licenser at the following address:

- (i) Morguard Real Estate Investment Trust  
One University Avenue  
Suite #1400  
Toronto, Ontario  
M5J 2P1

Attention: Senior Vice-President, Leasing

FAX No. (416) 369-1975

- (ii) with a copy to the address of the Landlord's Manager:  
c/o MORGUARD INVESTMENTS LIMITED  
505 3<sup>rd</sup> Street S.W.  
Suite 200  
Calgary, Alberta  
T2P 3E6

Attention: General Manager

Fax Number: (403) 265-9813

Any notice may also be given (a) by prepaid registered mail mailed within the Province in which the Licensed Area is situated and such notice shall be effective on the third day following the date of mailing, except in the event that there shall be a disruption in postal services at the date of mailing, in which case notice shall be effected by personal delivery or a facsimile transmission as stated above, or (b) by delivery using a courier such as those known as "Federal Express", "Purolator", or other comparable courier, and such notice shall be effective upon receipt. The Licenser and Licensee may change their respective addresses by notice in writing to each other.

### 13.03 Interpretation

Words importing the singular number shall include the plural and vice versa. Words importing the neuter gender shall include the masculine and feminine genders, and words importing person shall include firms and corporations, and vice versa.

### 13.04 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 agreement executed by both parties.

### 13.05 Subordination

The Licensee's rights under this Agreement are subordinate to the rights of any mortgagee, chargee, trustee for bondholders, or other encumbrance holder with a security interest, or other encumbrance on or in respect of the Licenser's Premises.

### 13.06 Amendment or Waiver

No provision of this Agreement shall be deemed amended or waived by a course of conduct unless the amendment or waiver is in writing signed by all parties and stating specifically that it was intended to modify this Agreement.

### **13.07 Successors and Assigns**

This Agreement shall be binding upon and enure to the benefit of its parties and their respective successors and assigns, heirs and personal representatives, subject in the case of the Licensee to the provisions of Article 12.

### **13.08 Governing Law**

This Agreement shall be governed by the laws of the Province in which the Building is situate.

### **13.09 Nature of Licensee's Rights**

The rights granted to the Licensee are by way of a non-exclusive License only and shall not under any circumstances constitute a right by the Licensee to have exclusive possession of any part of the Lands or the Building nor as an easement or other form of property right.

This Agreement shall not constitute or be interpreted to be either a partnership agreement, employment agreement, lease or joint venture agreement made between the parties.

The Licensee does not and shall not at any time claim any interest or estate of any kind in the Licensor's Premises or any part of them, or in any Cabling or other equipment or facilities that is, are, or may be provided to the Licensee by the Licensor. The nature of this relationship shall not be characterized as that of a "landlord" and "tenant" relationship and the Licensee waives any claim to any rights that might be afforded to tenants under any provincial legislation where the Building is located.

### **13.10 Estoppel Certificates**

The Licensee will provide to the Licensor from time to time, within ten (10) days of the Licensor's written request in each case, at no cost to the Licensor, a statement duly executed by the Licensee confirming that this Agreement is in good standing as it relates to the Buildings identified in the Licensor's request, confirming the Fees payable and the Fees actually paid to any date specified by the Licensor for the statement, in respect of each Building, confirming the Commencement Date for each Building, the Term, any renewal rights to which it claims to be entitled, and any other information that the Licensor reasonably requests pertaining to this Agreement or to all or any of the Buildings or Building Schedules.

### **13.11 Application of Funds**

No acceptance of part payment of Fees or other amounts owed to the Licensor will be considered as an accord and satisfaction; the Licensor despite any direction or restriction endorsed on any cheque or accompanying any payment, may apply any payment, in whole or in part against any amounts owed to the Licensor or owed by the Licensee in respect of the Building in its sole discretion; and no acceptance of any payment, even if it purports to be for any subsequent period, is to be construed as a waiver by the Licensor of its right of termination for pre-existing defaults.

Each payment that is made by the Licensee in accordance with the terms of this Agreement will be applied to the amount owing in respect of the Building herein and will not be transferred by the Licensor to another Building without the written consent of the Licensee.

### **13.12 Unauthorized Continued Use**

If the Licensee continues to use any part of a Licensed Area after the expiry of the Term as it applies to the particular Licensed Area without the Licensor's prior written consent, the Annual Basic Fees payable in respect of the Licensed Area will be double that which applied during the last year of the Term or renewal term, as the case may be, subject to pro-rating, however, should the unauthorized use continue for less than the full year.

### **13.13 Public Announcements**

The Licensee will not issue any press release, public notice, nor make any announcement to persons in the Building without the Licensor's prior written consent concerning the announcement and its wording.

### **13.14 Survival of Obligations**

It is acknowledged that, in addition to any other provisions that may properly be construed to continue to apply after expiration or termination of the Term, Article 7, (except Section 7.01(f)), and Article 11 will survive the expiration or termination of this Agreement.

**13.15 Limitation of Recourse**

The parties acknowledge and agree that the obligations of Morguard Real Estate Investment Trust hereunder and under all documents delivered pursuant hereto (and all documents to which this document may be pursuant) or which give effect to, or amend or supplement, the terms of this Lease are not personally binding upon any trustee hereof, any registered or beneficial holder of units (a "Unitholder") or any annuitant under a plan of which a Unitholder acts as a trustee or carrier, or any officers, employees or agents of Morguard Real Estate Investment Trust and resort shall not be had to, nor shall recourse or satisfaction be sought from, any of the foregoing or the private property of any of the foregoing, but the Project only shall be bound by such obligations and recourse or satisfaction may only be sought from the revenue of the Project.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first set forth above.

**SIGNED, SEALED AND DELIVERED**  
in the presence of:

**LICENSOR:**  
**MORGUARD REAL ESTATE INVESTMENT TRUST**

By: \_\_\_\_\_

By: \_\_\_\_\_

I/We have the authority to bind the Trust

**WITNESS to signature of Tenant:**

**LICENSEE:**  
**BELL INTRIGNA INC.**

signature: \_\_\_\_\_

By: \_\_\_\_\_

print name: \_\_\_\_\_

address: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

occupation: \_\_\_\_\_

I/We have the authority to bind the Corporation

## SCHEDULE "A"

### FEES

#### Additional Fees

Engineering:	Additional charges for engineering, review of submitted plans, specifications and drawings.	Cost +
Power Consumption Fee:	Charged on a monthly recurring basis in accordance with Licensor's usual practices.	
Construction Fee:	For any required building modifications (demising wall, rooms, architectural changes, electrical, heating, ventilation, security installation and air-conditioning).	Cost +
Power Delivery:	For rearrangement of power required by the Licensee.	Cost +
Site Preparation Fee:	For pre-conditioning of the Building, including additional Entrance Conduit to the POP Room, and Riser cable holes.	Cost +
Other Consulting:	Specialty legal, technical and consulting fees.	Cost +
Riser Management Fees:	Ongoing management fees.	Cost +

All "Cost +" charges are subject to an overhead charge of 15%.

Any charge that is not paid in advance is payable, net fourteen (14) days. Thereafter, interest on any outstanding amount payable by the Licensee to the Licensor shall accrue interest at the rate of one and one half per cent (1 ½%) per month on any outstanding amount then due and owing, both before and after any judgment for enforcement.

## SCHEDULE "B"

### APPLICATION FOR INSTALLATION OR AMENDMENT (the "APPLICATION")

The procedures specified in this Schedule apply where a Licensee wishes to install or modify any of the Licensee's Equipment covered by this License, including any amendments.

1. Only Licensee's Equipment that is satisfactory to the Licensor may be placed in the Building.

Without limiting the generality of the foregoing, the Licensor requires that the Licensee's equipment is not a safety hazard, complies with all environmental and other applicable laws and does not interfere with the use or equipment of other occupants in the Building.

2. The Licensor reserves the right to specify the type of Licensee's Equipment that may be installed in the Building including all modifications to, construction, installation, maintenance, and repair standards so as to ensure compliance with the Licensor's Building rules and regulations as well as general and safety construction standards.

3. When the Licensor specifies standards or requests changes, it will do so in writing and the Licensee shall, at its sole cost and expense, comply with such standards. If the Licensee installs any Licensee's Equipment and/or Cabling that does not comply with the Licensor's standards, the Licensee shall achieve compliance of the same within fifteen (15) working days or such other period of time as the Licensor may specify. If the Licensee fails to correct any non-compliance with such standards within the specified compliance period the Licensor may, without further notification to the Licensee, render the non-compliant Licensee's Equipment compliant through construction, installation, maintenance and/or repair standards, as the case may be, at the Licensee's sole cost and expense.

4. All Applications shall be submitted in the form specified by the Licensor and contain the information requested by the Licensor. Without limiting the generality of the foregoing, the Licensee is required to provide the following information:

- (a) Serial number(s), make, model(s), power consumption(s), heat generated, footprint(s) and value(s) calculated by the Licensee of the Licensee's Equipment;
- (b) Proposed equipment layout;
- (c) The Licensor may require the Licensee to provide copies of all Plans in a form that is satisfactory to the Licensor;
- (d) Detailed drawing of proposed Cabling (including addition or removal), proposed termination point; and
- (e) Identify the Customer and location within the Building to be served.

5. Upon receipt of the Application, the Licensor will conduct a preliminary review of the Application. If the Licensee wants the Licensor to review the Application, the Licensee shall advise the Licensor accordingly.

6. The Licensor will advise the Licensee of acceptance or rejection of the Application within fifteen (15) working days of receipt of the duly completed Application.

7. In the event that the Licensor rejects the Application, the Licensor will provide to the Licensee written reasons for the rejection. Any Application that is resubmitted by the Licensee to the Licensor will be treated as an amended Application and will be subject to a Processing Charge plus any costs of reviewing the amended Application.

8. Any request by the Applicant for amendments to any License, including additions, upgrades modifications, re-locations or rearrangements to the Licensee's Equipment must be submitted to the Licensor and will be treated as a new Application where, in the Licensor's reasonable judgment, the same will require reconfiguration or modification of the Building or will result in a change to the Licensee's power consumption or heat generation.

## **SCHEDULE "C"**

### **PLANS**

The following plans form part of this Schedule "C":

1. Plan depicting :
  - (a) configuration and location of POP Room;
  - (b) location of Demarcation Point;
  - (c) configuration and location of "Exclusive Area" (if any).
2. Plan depicting configuration and location of part of Entrance Ducts forming part of Licensed Area.
3. Plan(s) depicting Risers and other parts of the Building forming part of the Licensed Area.
4. Plan depicting boundaries of the Lands.

**SCHEDULE "D"**  
**ADDITIONAL PROVISIONS**

**Option to Renew**

If the Licensee does not default under this Agreement, the Licensee shall have the right to renew the Term for two (2) renewal periods of Three (3) years each on the terms and conditions of this Agreement, other than any further right of renewal and the amount of the Fees. To exercise an option to renew the Licensee must give written notice of its exercise of this right at least twelve (12) months, and not more than fifteen (15) months prior to the expiration of the Term, or the renewal period, as the case may be, and the right to renew, in each case, is subject to the following:

The Fees payable during each renewal period shall be equal to those prevailing in the municipality where the Building is situated, for comparable buildings in connection with comparable Services, and for areas and facilities comparable to the Licensed Area, but shall not be less than the Fees set out herein. Failing agreement by the parties as to the prevailing Fees, the Fees will be determined by a single arbitrator in the Province under the Arbitration Act of the Province.

There shall be no further renewal right following the expiry of the last renewal period provided for above.



## TELECOMMUNICATIONS LICENSE AGREEMENT

THIS-AGREEMENT is made as of the 29<sup>th</sup> day of August 2005

BETWEEN: CONSOLIDATED PROPERTIES (505 – 3RD STREET) LTD.

-and-

3RD STREET SOUTHWEST BUILDING LIMITED  
(the "Owner")

-and-

BELL CANADA  
a corporation incorporated under the laws of Canada  
(the "Licensee")

### PREAMBLE:

- (a) The Owner is the owner of the Multi-Dwelling Unit building municipally described as 505 – 3<sup>rd</sup> Street, Calgary, Alberta.
- (b) The Owner has agreed to grant to the Licensee a license to install, operate, maintain, repair and replace certain communications equipment in the Owner's building as more particularly described in this Agreement on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the Owner and the Licensee agree as follows:

### ARTICLE 1- DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions** In this Agreement, unless the context requires otherwise, the following terms shall have the following meanings, respectively:

**"Agreement"** means this Agreement and the attached Schedules and all subsequent changes, modifications and amendments to this Agreement and the attached Schedules made in accordance with the provisions of this Agreement.

**"Building"** means the building owned by the Owner and located on the Lands.

**"Building Risers"** means the electrical, mechanical or communications spaces or other pathways in the Building.

**"Business Day"** means a day other than a Saturday, Sunday and any other day on which the principal commercial banks in the Province of Alberta are not open for business during normal banking hours.

**"Commencement Date"** means the date on which the Term commences, as provided in the attached Schedule F.

**"CRTC"** means the Canadian Radio-television and Telecommunications Commission or its successor.

**"Communications Equipment"** means the communications equipment of the Licensee and its affiliates, including, without limitation, cabinets, racks, electronic equipment and other similar equipment.

**“Connecting Equipment”** means the cables, conduits, inner ducts and connecting hardware of the Licensee that is connected to the Communications Equipment, as more particularly described in the attached Schedule C.

**“Entrance Link”** means the core sleeve penetration through the foundation of the Building.

**“Equipment Room”** means the premises as shown on the floor plan attached to this agreement as Schedule B which premises shall be provided by the Owner to the Licensee for the sole exclusive use of the Licensee.

**“GST”** means the Goods and Services Tax established under the *Excise Tax Act* (Canada) or a successor tax imposed by the Government of Canada under lawful authority.

**“Lands”** means the land legally described in the attached Schedule A.

**“License Fee”** means the annual fee specified in Section 4.1 of the Agreement which is payable by the Licensee to the Owner under this Agreement.

**“Licensee’s Equipment”** means, collectively, the Communications Equipment and the Connecting Equipment.

**“MDU” or “Multi-Dwelling Unit”** means a building with at least two units and at least one unit occupied by a tenant.

**“Notice”** means any notice, request, consent or other communication provided, required or permitted under this Agreement as contemplated in Section 12.1 of this Agreement.

**“Term”** means the continuous period of five (5) years, commencing on the Commencement Date.

**“Renewal Term”** means the period after the Term for which this Agreement may be renewed and extended as described in Section 3.2 of this Agreement.

**1.2 Interpretation** For the purposes of this Agreement, except as otherwise expressly provided, the following shall apply:

- (a) Words importing the singular include the plural and vice versa, and words importing gender include all genders and firms or corporations where applicable.
- (b) Should any provision of this Agreement be unenforceable at law, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall continue in force and shall be binding as though such provision had not been included.
- (c) The headings inserted in this Agreement are for convenience of reference only and in no way define, limit or enlarge the scope or meaning of any of the provisions of this Agreement.
- (d) This Agreement shall be interpreted and governed by the laws of the Province of Alberta, and the laws of Canada applicable therein.

**1.3 Schedules** The following are the Schedules attached to and forming part of this Agreement:

Schedule A-	Legal Description of Lands
Schedule B-	Equipment Room Plan
Schedule C-	Plan for Connecting Equipment
Schedule D-	Building Rules & Regulations

Schedule E-	Building Security Regulations
Schedule F-	Term
Schedule G-	License Fee

## ARTICLE 2- LICENSE

**2.1 License** The Owner grants to the Licensee a non-exclusive license to:

- (a) install, operate, maintain, repair and replace the Communications Equipment in the Equipment Room, at the Licensee's sole expense and risk;
- (b) install, operate, maintain, repair and replace the Connecting Equipment in the Building, at the Licensee's sole expense and risk, together with the right to pull the Connecting Equipment through the Entrance Link and through the Building Risers as necessary to reach from the Entrance Link to the Equipment Room and from the Equipment Room to the Licensee's customers in the Building, as required by the Licensee's customers in the Building; and
- (c) use the Entrance Link and existing Building wiring, only to the extent that the Owner has the possession of, and authority to allow the use of, the Entrance Link and the existing Building wiring, as required by the Licensee for the purpose of connecting the Licensee's Equipment to the Licensee's customers in the Building.

**2.2 Equipment Room** The Owner shall provide the Equipment Room to the Licensee, for the sole and exclusive use of the Licensee, which Equipment Room shall be used by the Licensee for the provision of communications services to the Licensee's customers in the Building.

**2.3 Nature of Interest** The right granted to the Licensee under this Agreement is a license only, and shall not constitute a partnership, joint venture or lease between two parties.

**2.4 Non-Exclusivity** The Licensee acknowledges and agrees that the license granted to the Licensee pursuant to Section 2.1 of this Agreement is not exclusive to the Licensee, and that the Owner has the right to grant similar rights and privileges in respect of the Building to other parties.

**2.5 Rooftop Rights** The Owner shall permit the Licensee to install, operate, maintain, repair, replace and supplement certain of the Equipment on such portion of the rooftop of the Building as mutually agreed between the Owner and the Licensee in writing as to location and method of installation (it being understood that there shall be no roof penetration) for the purposes of providing services to Licensee's customers in the Building. The Licensee shall be remove such Equipment from the rooftop on the expiry or earlier termination of this Agreement and shall repair any damage caused by the installation or removal of such Equipment. The Licensee shall not use any part of the Licensee's Equipment as a network hub facility, switch hotel, switch node, or similar facility that functions as an integral part of a network to serve persons outside of the Building.

**2.6 Sublicense** Subject to the prior written consent of the Owner, the Licensee shall have the right to sublicense a portion of the Equipment Room to an affiliate as described in Section 13.3 for the purpose of permitting such affiliate to provide communications services to its customers in the Building.

## ARTICLE 3- TERM

**3.1 Term** Notwithstanding the date of its execution, this Agreement shall come into effect on the Commencement Date, as set out in attached Schedule F.

- 3.2 Option to Renew** Provided that the Licensee is not in default under this Agreement, the Licensee shall have options to renew and extend this Agreement for two (2) consecutive periods of five (5) years each (each of which is a "Renewal Term"), upon the Licensee providing at least six (6) months written notice to the Owner. Each Renewal Term shall be on the same terms and conditions as contained in this Agreement, except that the License Fee shall be agreed to by the parties in writing based on the prevailing market rates for similar Equipment Rooms in similar buildings and the second Renewal Term shall not contain any further option to renew. Where the parties are unable to agree on the License Fee payable during a Renewal Term prior to the expiration of the Term or a Renewal Term, as the case may be, the matter in dispute shall be determined by a single arbitrator appointed under provincial arbitration legislation.
- 3.3 Overholding** If the Licensee remains in occupation of the Equipment Room following the expiration of the Term or a Renewal Term and the Licensee has not exercised its option to renew pursuant to section 3.2 above, such continued occupation by the Licensee shall not have the effect of renewing or extending this Agreement for any period of time, and the Licensee shall be deemed to be occupying the Equipment Room as a licensee on a month-to-month basis upon the same terms and conditions as set out in this Agreement.

#### **ARTICLE 4- LICENSE FEE**

- 4.1** The Licensee agrees to pay the Owner the License Fee as provided in Schedule G.

#### **ARTICLE 5- USE**

- 5.1 Use of Equipment Room** The Licensee shall use the Equipment Room only for the purpose of the installation, operation, maintenance, repair and replacement of the Licensee's Equipment as required by the Licensee for the purpose of providing communications services to the Licensee's customers in the Building.
- 5.2 Title** The Owner acknowledges and agrees that title to, and ownership of, the Licensee's Equipment shall remain with the Licensee at all times notwithstanding that the Licensee's Equipment may be affixed to a part of the Building for the time being.

#### **ARTICLE 6- ACCESS AND ELECTRIC UTILITIES**

- 6.1 Access** The Licensee and its authorized representatives shall have access to the Equipment Room on a seven (7) days a week, twenty-four (24) hours per day basis for the purpose of installing, operating, maintaining, repairing and removing the Licensee's Equipment. The Licensee and its authorized representatives further shall have such access to the driveways, walkways, entrances, exits and hallways associated with the Building as may be required in order for the Licensee and its authorized representatives to access the Equipment Room. The Owner acknowledges that the nature of the Licensee's communications services requires such access for servicing purposes and in emergency situations. All entry and access to the Equipment Room and the Building, including the Building Risers and rooftop, by the Licensee and its authorized representatives shall be in accordance with the Owner's Building Rules and Regulations, as attached in Schedule D, and Building Security Regulations, as attached in Schedule E.
- 6.2 Electrical Power** The Licensee shall have the right to connect the Licensee's Equipment to the electric power distributing system within the Building at the sole cost and expense of the Licensee. If required by the Owner, the Licensee, at its sole cost and expense, shall install a separate metre to determine the Licensee's electricity consumption and the Licensee agrees to pay for such electricity consumption. The Owner shall use reasonable commercial efforts to notify the Licensee in advance of any planned utility outages that may interfere with the Licensee's use. The Licensee agrees that the Owner has no obligation or responsibility to provide emergency or backup power to the Licensee, unless the parties agree that the Owner will provide emergency or

backup power to the Licensee on such terms and conditions as mutually agreed between the parties.

- 6.3 Telephone Service** The Licensee, at its sole cost and expense, shall have the right to install a telephone on the Equipment Room if required by the Licensee.
- 6.4 Nuisance** The Licensee shall not use nor permit the Licensee's Equipment or any part of the Equipment Room to be used in such a manner as to annoy, disturb or cause nuisance to or impede in any way the operation of the Owner or the occupiers, tenants or other licensees of the Building, or in a manner that constitutes a contravention of law.
- 6.5 Compliance with Laws** The Licensee, in installing, maintaining, operating, repairing and replacing the Licensee's Equipment in the Equipment Room and the Building Risers shall comply at all times with all applicable laws, regulations, by-laws, rules, orders and ordinances of all federal, provincial and municipal governmental authorities, including, without limitation, the rulings and decisions of the CRTC.

#### **ARTICLE 7- INSTALLATION, MAINTENANCE AND REPAIRS**

- 7.1 Approval of Plans** Prior to the commencement of the installation of the Licensee's Equipment in the Equipment Room and in the Building Risers, the Licensee shall prepare and submit plans, specifications, and working drawings to the Owner in respect of such installation for the approval, in writing, of the Owner.
- 7.2 Other Costs** In addition to License Fee, the Licensee agrees to pay the Owner within sixty (60) days of receipt of an invoice from the Owner, the cost for the review of Plans and Working Drawings referred to in Subsection 7.1, which cost shall not exceed \$500.00.
- 7.3 Escort Services** The Licensee agrees to pay the Owner fees for security escorted access to the Building, Building Risers, rooftop or the Equipment Room, within sixty (60) days of receipt of an invoice from the Owner. Such fees shall be charged at a rate in accordance with attached Schedule G and shall not be charged if recovered by the Owner from the tenants or occupants of the building.
- 7.4 Installation** Upon receipt of the Owner's written approval pursuant to Section 7.1 above, the Licensee, at its sole expense and risk, shall be entitled to commence the installation of the Licensee's Equipment, which installation shall be performed in a responsible and workmanlike manner and in accordance with all applicable laws, regulations, by-laws, orders, rules and ordinances of all federal, provincial, and municipal governmental authorities.
- 7.5 Cables** The Licensee shall label each cable placed by the Licensee in the Building Risers and any telecommunications closets through which the Licensee's cable passes with an identification number assigned by the Owner to the Licensee.
- 7.6 Repairs and Maintenance** The Licensee, at its own cost and expense, shall keep the Equipment Room and the Licensee's Equipment in a safe and properly maintained condition.
- 7.7 Liens** The Licensee shall be responsible for the satisfaction or payment of any liens registered against the Building by any supplier of labour, material or services to the Licensee. Any such liens shall be discharged by the Licensee within ten (10) Business Days at the request of the Owner by payment of sufficient money into Court to obtain removal of such lien, provided that the Licensee shall be entitled to contest, in good faith, any such liens.

## ARTICLE 8- INSURANCE AND INDEMNIFICATION

- 8.1 Insurance** The Licensee, at its own expense, shall take out and maintain in force while this agreement is in effect comprehensive general liability insurance with a combined single limit of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate annually, for legal liability for bodily injury, death and physical damage to tangible property damage including, but not limited to damage and loss to the Building and any property therein as well as for any injury or loss suffered by any of the customers and their employees in the Building and excess "Umbrella" liability coverage of not less than Eight Million Dollars (\$8,000,000) per occurrence, and in the aggregate annually. The aforementioned total required insured limit of Ten Million Dollars (\$10,000,000) shall be composed of any combination of primary and excess (umbrella) insurance policies. The Licensee's liability insurance required above will contain owners' and contractors' protective coverage, contractual liability coverage, a cross liability and severability of interests clause, and will be written on an occurrence basis, and add the Owner as an additional insured limited to the extent of the gross negligence of the Licensee and those over which it is responsible in law.
- 8.2 Indemnification** The Licensee shall indemnify and save harmless the Owner from and against any loss, suit, claim, action, damage or expense, limited to the extent of the Licensee's gross negligence arising out of, from or by reason of, the installation, operation, maintenance, repair or removal of the Licensee's Equipment in the Equipment Room and the Building communications space pursuant to this Agreement. The Licensee's liability for consequential damages shall be limited to the amount of liability insurance carried by the Licensee. The Owner acknowledges and agrees that the Licensee shall not be liable for any environmental contamination of the Building which occurred prior to the date on which the Licensee commences installation of its Equipment or the Term commences, whichever first occurs, provided the Licensee, its representatives, employees, agents, visitors or those authorized to be in the Building, invitees, contractors and all other persons for whom the Licensee is in law responsible in no way contributed to the existence, damage, disturbance or release in any way of any such environmental contamination in, on, over, under or emanating from the Building. The Licensee shall indemnify the Owner against any environmental contamination caused by the Licensee or the Equipment.

## ARTICLE 9- TERMINATION

- 9.1 Termination by Licensee** The Licensee shall have the right to terminate this Agreement upon written notice to the Owner in the event of the occurrence of any of the following:
- (a) the Licensee is unable to secure, on terms and conditions reasonably satisfactory to the Licensee, all necessary consents, approvals, permits and authorizations of any federal, provincial or municipal governmental authority having jurisdiction over the installation, operation, maintenance, repair, removal and use of the Licensee's Equipment;
  - (b) the Licensee's Equipment is damaged or destroyed and the Licensee determines that it will not effect repairs to, or replace, the Licensee's Equipment;
  - (c) the Licensee no longer requires the Equipment Room or the Building Risers for the purpose of providing its communications services to customers in the Building;
  - (d) the Owner defaults in the observance or performance of any of the Owner's obligations under this Agreement, and such default continues for more than thirty (30) days after receipt of written notice of such default by the Licensee to the Owner, unless such default cannot reasonably be cured within such thirty (30) day period, in which event the period for curing such default shall be extended for the minimum period of time reasonably required to effect such cure, provided that the Owner promptly commences such cure with reasonable diligence; or



- (e) the Owner makes an assignment for the benefit of creditors or becomes bankrupt, or takes the benefit of, and becomes subject to, the legislation in force relating to, bankruptcy or insolvency, it being understood that the appointment of a receiver, receiver/manager, or trustee of the property and the assets of the Owner is conclusive evidence of insolvency.

**9.2 Termination by the Owner** The Owner shall have the right to terminate this Agreement upon written notice to the Licensee in the event of the occurrence of any of the following:

- (a) the Licensee defaults in the payment of the License Fee or any other sum due under this Agreement, and such default continues for more than thirty (30) days after receipt of written notice of such default by the Owner to the Licensee;
- (b) the Licensee defaults in the observance or performance of any of the Licensee's obligations under this Agreement and such default continues for more than thirty (30) days after receipt of written notice of such default by the Owner to the Licensee, unless such default cannot reasonably be cured within such thirty (30) day period, in which event the period for curing such default shall be extended for the minimum period of time reasonably required to effect such cure, provided that the Licensee promptly commences such cure with reasonable diligence; or
- (c) the Licensee makes an assignment for the benefit of creditors or becomes bankrupt, or takes the benefit of, and becomes subject to, the legislation in force relating to bankruptcy or insolvency, it being understood that the appointment of a receiver, receiver/manager, or trustee of the property and the assets of the Licensee is conclusive evidence of insolvency.

**9.3 Surrender** Upon the expiration or earlier termination of this Agreement, the Licensee shall remove the Licensee's Equipment from the Equipment Room, the Building and the Building Risers and shall be responsible for repairing any damage caused by such removal, except damage caused by ordinary wear and tear.

## **ARTICLE 10- DAMAGE OR DESTRUCTION OF BUILDING**

**10.1 Right to Terminate** In the event the Building is damaged to such an extent that the Licensee is unable to effectively exercise its rights pursuant to the license granted by the Owner under this Agreement, the Owner, at its sole option and expense, may attempt to repair such damage within one hundred eighty (180) days. In the event the Owner elects not to repair the damage within one hundred eighty (180) days, the Licensee shall have the right to terminate this Agreement upon providing thirty (30) days' prior written notice to the Owner, in which event the Licensee shall remove the Licensee's Equipment in accordance with the provisions of Section 9.3 of this Agreement. The Licensee shall have no obligation to pay the License Fee or any other amounts under this Agreement during the thirty (30) day notice period, and the portion of the License Fee paid by the Licensee in advance shall be refunded by the Owner to the Licensee on a pro rated basis to the date of damage to the Building.

## **ARTICLE 11- FORCE MAJEURE**

**11.1 Force Majeure** Without limiting or restricting the applicability of the law governing frustration of contracts, in the event either party fails to meet any of its obligations under this Agreement within the time prescribed, and such failure shall be caused by, or materially contributed to, force majeure, such failure shall be deemed not to be a breach of the obligations of such party under this Agreement, and the time for the performance of such obligation shall be extended accordingly as may be appropriate under the circumstances. For the purpose of this Agreement, force majeure shall mean any acts of god, war, natural calamities, strikes, lockouts or other labour stoppages or disturbances, civil commotions or disruptions, riots, epidemics, acts of government or any competent authority having jurisdiction, or any other legitimate cause beyond the reasonable

control of such party, and which, by the exercise of due diligence, such party could not have prevented, but lack of funds on the part of such party shall not be deemed to be force majeure.

## ARTICLE 12- NOTICES

**12.1 Notices** Any Notice pursuant to this Agreement shall be sufficiently given if in writing and personally served, or sent by facsimile or registered mail, and addressed or sent as specified below:

- (a) If to the Owner:  
CONSOLIDATED PROPERTIES (505 – 3 RD STREET) LTD. and  
3RD STREET SOUTHWEST BUILDING LIMITED  
C/o MORGUARD INVESTMENTS LTD.  
Suite 505 – 3<sup>rd</sup> Street SW  
Calgary, Alberta T2P 3E6

Attention: Regional Vice-President

- (b) If to the Licensee:

NEXACOR REALTY MANAGEMENT INC.  
10104 - 103rd Avenue, 28th floor  
Edmonton, Alberta T5J 0H8

Attention: Director, Realty Transactions and  
Director, Lease Administration

Fax: 780.409.6964

With a copy to:

BELL CANADA  
111 - 5th Avenue SW, 21st floor  
Calgary, Alberta T2P 3Y6

Attention: Senior Legal Counsel

Fax: 403.410.4019

Tel: 1-888-333-2811

**12.2 Change of Address** Either party may change its address or particulars for the purposes of the receipt of any Notices in connection with this Agreement by giving notice in the same manner as provided in this Article 12.

**12.3 Receipt** Where a Notice is delivered personally or by facsimile, it shall be deemed to have been received the same Business Day, or if the day on which the Notice was sent is not a Business Day, the Notice shall be deemed to have been received on the next Business Day. Where a Notice is sent by registered mail, it shall be deemed to have been received three (3) Business Days after the date of mailing. In no event shall any Notice be sent by mail during any period of interrupted or threatened interruption of postal service.

## ARTICLE 13- MISCELLANEOUS

**13.1 Entire Agreement** This Agreement cancels, replaces and supercedes as of its effective date all existing agreements and understandings, written or oral, between the parties relating to the subject matter of this Agreement. The whole contract between the parties is contained in this Agreement and no preliminary proposals, written or oral, form any part of this Agreement. This Agreement may not be amended or modified except by mutual agreement of the parties in writing.

**13.2 Waiver** No failure by either party hereto to exercise any right under this Agreement or to insist upon full compliance by the other party with its obligations under this Agreement will constitute a waiver of any provision of this Agreement. No waiver shall be effective unless made in writing by an authorized officer of the party.



- 13.3 Successors and Assigns** This Agreement shall not be assigned by the Licensee, in whole or in part, without the express written consent of the Owner, provided that the Licensee shall be entitled to assign this Agreement to an affiliate of the Licensee, as defined in the *Canadian Business Corporations Act*, upon written notice to the Owner. This Agreement shall be binding upon, and shall enure to, the benefit of the parties and their respective successors and permitted assigns.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by the hands of their respective officers duly authorized in that behalf as of the date first set forth above.

**OWNER:**

**CONSOLIDATED PROPERTIES (505 – 3RD STREET) LTD.** *h* *h*

Per: \_\_\_\_\_

Name: \_\_\_\_\_

**PRESIDENT & CHIEF  
EXECUTIVE OFFICER**

Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**We have the Authority to bind the Company.**

**3RD STREET SOUTHWEST BUILDING LIMITED** *h* *h*

Per: \_\_\_\_\_

Name: \_\_\_\_\_

*Vice-President*  
*Asset Management*

Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

*Vice-President*

Title: \_\_\_\_\_

**We have the Authority to bind the Company**

**LICENSEE: BELL CANADA**

**BELL CANADA** \_\_\_\_\_

Per: *<*

Name \_\_\_\_\_

Title: *MANAGER, ASSET MANAGEMENT*

**I have the Authority to bind the Company.**

**SCHEDULE A**

**LEGAL DESCRIPTION OF LANDS**

PLAN C

BLOCK 27

LOTS 6 TO 9 INCLUSIVE

EXCEPTING THERE OUT THAT PORTION FOR ROAD WIDENING ON PLAN 8111511

EXCEPTING THEREOUT ALL MINES AND MINERALS

ATS REFERENCE: 5;1;24;15;NW

SCHEDULE C

PLAN FOR CONNECTING EQUIPMENT

**Intentionally left blank**

## **SCHEDULE D**

### **BUILDING RULES AND REGULATIONS**

1. **Definition** - In these rules and regulations, "Licensee" includes the employees, servants, agents, invitees and sublicensees of the Licensee and others over whom the Licensee can reasonably be expected to exercise its control.
2. **Common Areas** - The Owner reserves entire control of the common areas of the Building and will maintain them in such manner as it deems best for the benefit of the tenants generally. The Owner reserves the right to restrict and regulate the use of the common areas of the Building by the Licensee and by persons making deliveries to the Licensee.
3. **Smoking** - Smoking is not permitted in the common areas of the Building, except as may be otherwise designated. The Owner shall have the right, in its sole discretion, to determine whether any designated smoking area shall be established, and the size and location of any such area.
4. **Obstructions** - The sidewalks, driveways, entrances, vestibules, passages, corridors, halls, elevators and stairways shall not be encumbered or obstructed by the Licensee or be used by it for any purpose other than for entrance to and exit from the Equipment Room.
5. **Deliveries** - The Licensee shall not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking area or other common areas of the Building. The Licensee shall ensure that deliveries of materials and supplies to the Equipment Room are made through such entrances, elevators and corridors and at such times as may from time to time be designated by the Owner and shall promptly pay or cause to be paid to the Owner the cost of repairing any damage in or to the Building caused by any person making such deliveries. The Owner reserves the right to remove at the expense and risk of the owner any vehicle not using designated "vehicle standing" areas.
6. **Security** - The Owner may from time to time adopt appropriate systems and procedures for the security and safety of the Building including restricting access during non-business hours and the Licensee shall comply with the Owner's reasonable requirements relating thereto.
7. **Locks** - No additional locks or bolts of any kind shall be placed by the Licensee upon any of the doors or windows of the Equipment Room, nor shall any changes whatsoever be made to existing locks or the mechanics thereof except by the Owner at its option. The Licensee shall not permit any duplicate keys to be made, but additional keys as reasonably required shall be supplied by the Owner when requested by the Licensee in writing and at the Licensee's expense. Upon termination of the Lease, the Licensee shall surrender to the Owner all keys to the Equipment Room and any other parts of the Building together with any parking passes or other devices permitting entry.
8. **Antennae** - The Licensee shall not mount or place an antenna or aerial of any nature on the exterior of the Equipment Room or Building.
9. **Garbage** - The handling and disposal of garbage shall comply with arrangements prescribed by the Owner from time to time. No disproportionate or abnormal quantity of waste material shall be allowed to accumulate in the Equipment Room and the cost of removal or clearing of quantities in excess of such normally provided service may be charged to the Licensee.
10. **Repairs, Alterations and Improvements** - The Licensee shall carry out repairs, maintenance, alterations and improvements in the Equipment Room only during times agreed to in advance by the Owner and in a manner which will not interfere with the rights of other tenants in the Building.

11. **Maintenance** - The Licensee shall provide adequate facilities and means to prevent the soiling of walls, floors and carpets in and abutting the Equipment Room whether by shoes, overshoes, any acts or omissions of the Licensee or otherwise.
12. **Installations and Wiring** - The Licensee shall not mark, paint, drill into or in any way deface the walls, ceilings, partitions, floors or other parts of the Equipment Room and the Building except with the prior written consent of the Owner and as it may direct. If the Licensee desires electrical or communications connections, the Owner reserves the right to direct qualified persons as to where and how the wires should be introduced, and without such directions, no boring or cutting for wires will be permitted. No gas pipe or electric wire will be permitted which has not been ordered or authorized in writing by the Owner.
13. **Heating, Air Conditioning and Plumbing Systems** - The Licensee shall not attempt any repairs, alterations or modifications to the heating, air conditioning or plumbing systems.
14. **Water Fixtures** - The Licensee shall not use the plumbing facilities for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the Licensee shall pay the cost of any breakage, stoppage or damage resulting from a violation of this provision.
15. **Personal Use of Equipment Room** - The Equipment Room shall not be used for residential, lodging or sleeping purposes or for the storage of personal effects or property not required for business purposes as permitted under the Lease.
16. **Solicitations** - The Owner reserves the right to restrict or prohibit canvassing, soliciting or peddling in the Building.
17. **Heavy Articles** - The Licensee shall not, in the Equipment Room or the Building, bring in, take out, position, construct, install or move anything liable to injure or destroy any part of the Building including, without limiting the generality of the foregoing, any safe, business machinery or other heavy machinery or equipment without the prior written consent of the Owner. In giving such consent, the Owner shall have the right, in its sole discretion, to prescribe the permitted weight and the position thereof, and the use and design of planks, skids or platforms required to distribute the weight thereof. All damage done to the Building by moving or using any such heavy equipment or machinery shall be repaired at the expense of the Licensee. The moving of all heavy equipment or other machinery shall occur only by prior arrangement with the Owner.
18. **Bicycles, Animals** - The Licensee shall not bring any animals, except for guide dogs, into the Building and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Building except in areas designated from time to time by the Owner for such purposes.
19. **Furniture and Equipment** - The Licensee shall ensure that furniture, equipment and fixtures being moved into or out of the Equipment Room are moved through such entrances, elevators and corridors and at such times as may from time to time be designated by the Owner and shall promptly pay or cause to be paid to the Owner the cost of repairing any damage in the Building caused thereby.
20. **Heating / Cooling** - The Licensee shall not use any means of heating or cooling the Equipment Room other than that provided by or specifically otherwise permitted in writing by the Owner.
21. **Undue Electrical Loads, Heat, Vibration** - No material or equipment which could cause undue loads on electrical circuits or undue vibration, heat or noise shall be brought into the Building or used therein by or on behalf of the Licensee and no machinery or tools of any kind shall be affixed to or used in the Equipment Room without the prior written consent of the Owner.

22. **Fire Regulations** - No tenant shall do or permit anything to be done in the Equipment Room or bring or keep anything therein which will in any way increase the risk of fire, or obstruct or interfere with the rights of other tenants, or violate or act at variance with the laws relating to fires or with the regulations of the fire department or the board of health. The Licensee shall cooperate in any fire drills and shall participate in all fire prevention or safety programs designated by the Owner.
23. **Flammable Materials** - No flammable oils or other flammable, dangerous or explosive materials shall be kept or permitted to be kept in the Equipment Room.
24. **Food and Beverages** - Only persons approved from time to time by the Owner may prepare, solicit orders for, sell, serve or distribute foods or beverages in the Building or use the elevators, corridors or other common areas of the Building for any such purpose. The Licensee shall not permit in the Equipment Room the use of equipment for the preparation, serving, sale, distribution or dispensing of food and beverages except with the prior written consent of the Owner and in accordance with arrangements approved by the Owner.
25. **Notice of Accidents** - The Licensee shall give immediate notice to the Owner in case of fire or accident in the Equipment Room or in the Building, or in case of defects therein or in any fixtures or equipment thereof, notwithstanding the Owner may have no obligations with respect thereto.
26. **Janitorial Services** - The Licensee shall not use or engage any person or persons other than the janitor or janitorial contractor of the Owner for the purpose of any cleaning of the Equipment Room, except with the prior written consent of the Owner.
27. **Dangerous or Immoral Activities** - The Licensee shall not make any use of the Equipment Room which could result in risk or injury to any person, nor shall the Equipment Room be used for any immoral or criminal purpose.
28. **Proper Conduct** - The Licensee shall not perform any acts or carry on any practice which may damage the common areas of the Building or be a nuisance to any other tenant in the Project.
29. **Additional Rules and Regulations** - The Owner shall have the right to make such other and further reasonable rules and regulations as in its sole judgment may from time to time be necessary or of benefit for the safety, care, cleanliness and appearance of the Project and for the preservation of good order therein.

## **SCHEDULE E**

### **BUILDING SECURITY REGULATIONS**

The Licensee shall ensure that the doors of the Equipment Room are closed and locked before the Licensee or the Licensee's employees leave the Equipment Room, so as to prevent waste or damage, and for any default or carelessness in this regard the Licensee shall make good all injuries sustained by the Owner or other tenants or occupants of the Building.

The Licensee shall keep the doors to the Equipment Room corridors closed and locked at all times when not in use.

No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any licensee, nor shall any changes be made in existing locks or the mechanism thereof. Lock cylinders and keys shall be changed by the Owner at the Licensee's expense upon receipt of written request from the Licensee.

The Licensee must, upon the expiration or sooner termination of this Agreement, return to the Owner all keys and/or access cards either furnished to, or otherwise procured by, the Licensee, and in the event of the loss of any keys so furnished, the Licensee shall pay to the Owner the cost of replacement keys.

Building janitors and contract cleaners will be provided with a passkey to offices in the Building.

**SCHEDULE F**

**TERM**

The Term of this License is for five (5) years commencing on the Commencement Date.

Commencement Date is November 1, 2003.



## **SCHEDULE G**

### **LICENSE FEE**

The Equipment Room contains approximately 16 square feet of wall space.

The Licensee shall pay to the Owner an annual License Fee in the amount of Seven Hundred and Fifty Dollars (\$750.), excluding GST. The License Fee for the initial term as set forth in Schedule F shall be payable in advance on the Commencement Date.

The Licensee shall pay GST as applicable on the License Fee, which GST shall be paid at the time the License Fee is payable. The Owner's GST registration number is \_\_\_\_\_.

### **ESCORT FEE**

The Licensee agrees to pay for escort services required in connection to access to non-exclusive areas within the building at a rate of \$ 25.00/hour excluding GST, minimum 0.5 hrs/occurrence.