

# Telecommunications Access Agreement

Effective Date: May 1, 2001

Agreement between Bell Canada ("Bell") and Telefirma (4000 VP) Inc. and 3160343 Canada Inc. (collectively, the "Building Owner") Authorizing Bell to Install and Operate Telecommunications Equipment and use the conduit and pathways into the Buildings owned or controlled by the Building Owner as listed in Schedule A (the "Buildings") attached hereto.

1. Bell and the Building Owner jointly recognize that, in order to provide tenants and other occupants of Buildings ("Tenants") with the high quality telecommunications services which Tenants expect in buildings owned or controlled by the Building Owner, equipment and/or connecting equipment may be required to be installed in the Main Telephone Room ("MTR"), POP Area or elsewhere in the Buildings, as the case may be, by Bell. Therefore, the Building Owner hereby authorizes Bell to install and maintain equipment and to use conduit and pathways in the Buildings to provide telecommunications services (the "Services") to Tenants subject to the terms and conditions of this agreement. Nothing in this Agreement limits, restricts or otherwise interferes with the Building Owner's sole right to grant, renew or extend similar rights to other parties. The addresses of the Buildings and a list of the equipment to be installed (the "Equipment") and its location in each of the Buildings ("Locations") is provided in Schedule "A" attached hereto.

2. The parties agree that nothing in this Agreement will be construed or interpreted to restrict the ~ 'l provision by Bell of Services to Tenants utilizing the Equipment. Notwithstanding the foregoing, ~', " the parties hereto acknowledge and agree that this Agreement does not permit any additional equipment to be installed, operated or maintained by Bell, either beyond the Equipment or outside of the Locations specified in Schedule "A", except as such Schedule is revised from time to time by written agreement between the parties pursuant to section 3, consent for which may not be unreasonably withheld or delayed.

3. In the event Bell wishes to install additional equipment in any of the Buildings, Bell shall provide the Building Owner advance written notification of any such additional equipment Bell may propose to install in the Building. Each time Bell contemplates the installation of additional equipment, it will submit a request to add such new equipment to the Equipment which request will include proposed revisions to the Locations and a description of the additional equipment for approval by the Building Owner in the form of an amended Schedule "A". Upon approval, the Building Owner will return an executed copy of such request for Bell's records, at which time the process described in item 5(a)(ii) below can proceed.

4. The parties hereto acknowledge and agree that this Agreement is effective as of the Effective Date shown above and expires on April 30, 2006 ("Term"). The Term of this Agreement may be extended upon written agreement of both parties.

5.

(a) (i) Bell's access to, and use of, the Locations in the Buildings as set out herein shall be limited and restricted to the following purposes:

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to operate, maintain, replace (subject to section 2), remove, and subject to ;} section (ii) below, install at Bell's sole expense and risk, the Equipment in the Locations (Which shall be located In the MTR of the Buildings and, If applicable, the POP Area as specified by the Building Owner) as set forth in Schedule "A" for the purpose of providing the Services to Tenants. Bell Equipment shall be specified in Schedule "A" which may be modified from time to time in accordance with section 2 hereof; and

D) for the Term and subject to the Building Owner's reasonable approval, to install, maintain, use and remove, at Bell's sole expense and risk, fiber and/or copper cables in the Buildings as may be necessary to supplement the Equipment for the purpose of providing connectivity to the Tenants ("Connecting Equipment"). The term "Connecting Equipment" shall also include switches, routers and other necessary equipment that is needed to provide the Services to the Tenants.

E) Before commencing to install any Equipment or Connecting Equipment, Bell will, at its sole cost and expense, prepare and deliver to the Building Owner working drawings for such work or installation, detailing the type, size and location of the Equipment and Connecting Equipment in the Building spaces. Bell will not install any equipment or connecting equipment, other than the Equipment and Connecting Equipment contemplated in Schedule A as of the Effective Date of this Agreement, without the Building Owner's prior written consent, which consent may not be unreasonably withheld or delayed. The parties acknowledge that Tenants expect their telecommunications service requirements to be met in an expeditious manner and agree to cooperate to this end. No work shall commence until the Building Owner has approved, in writing, all applicable construction or installation plans. Bell agrees that installation and construction shall be performed in a neat, responsible and workmanlike manner, using generally accepted construction standards, consistent with such reasonable requirements as shall be imposed by the Building Owner.

F) Bell shall, at its sole cost and expense, repair any damage to the Buildings or to any other property owned by the Building Owner or Tenants where such damage is caused by Bell, its subcontractors and those for whom it is in law responsible in relation to the installation, operation, maintenance or removal of Equipment or Connecting Equipment governed by this Agreement.

G) Bell shall not interfere with the quiet use and enjoyment of the Buildings or with any communications services or computer or telecommunications devices of the Building Owner, or any Tenants. If such interference shall occur, the Building Owner shall give Bell written notice thereof and Bell shall correct the same as quickly as reasonably possible, but in no event later than 48 hours after receipt of such notice.

H) Bell agrees to comply with all reasonable rules and regulations stipulated in advance and in writing by the Building Owner from time to time, concerning Bell's access to the Buildings, including, without limitation, safety, security, environmental and personnel conduct rules and restrictions.

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6. Without limiting the foregoing, Bell personnel shall check-in with building security, show a photo-ID and obtain the necessary authorizations each time they enter the Buildings prior to accessing the Locations. The Building Owner, acting reasonably and in a timely manner, will allow Bell's employees access to the Buildings seven (7) days a week, twenty four (24) hours a day, subject to the Building Owner's reasonable security requirements.

7. Bell shall, release, save harmless and indemnify the Building Owner from and against all actions, suits, claims, damages, expenses, costs and liabilities as a result of any damage to the Buildings or injury, harm or death to any person, or damage to or destruction or loss of any property that may result from, or be contributed to by, any act or omission of Bell whatsoever (and whether arising in contract, tort, negligence, equity or otherwise), which results directly from installation, operation, maintenance or removal of the Equipment or Connecting Equipment in the Buildings by Bell, its subcontractors, and those for whom it is responsible in law.

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(a) The parties hereto acknowledge and agree that Bell and its operations are subject to compliance with the orders, decisions, rules, regulations, license and directions (collectively "the Orders") of the Canadian Radio-Television and Telecommunications Commission ("CRTC") and its successors as they exist or are created from time to time during the Term, and any other regulatory bodies having jurisdiction. In the event an Order is issued which appears, in Bell's reasonable opinion, to impinge upon Bell's ability to comply with the terms of this Agreement, Bell may at its option, propose revisions to the Building Owner to give effect to such Order (which revisions shall be subject to the Building Owner's written approval, such approval not to be unreasonably withheld or delayed), or terminate this Agreement upon thirty (30) days written notice to the Building Owner.

(b) The parties recognize that a proceeding (initiated by Public Notice CRTC 2000-124 ("PN 2000-124») is currently underway before the CRTC concerning the payment of fees by LECs for access to end-users in Multi-Dwelling Unit buildings (MDU's). The parties agree that if, at the conclusion of the PN 2000-124 proceeding and any appeals process following such proceeding, Bell is directed to pay fees for access to end-users in MDU's, Bell and the Building Owner shall enter into negotiations to establish such fees and Bell agrees to pay such fees to the Building Owner, from the effective date of such proceeding or a final appeal thereof.

(c) In the event of termination of this Agreement upon notice by Bell, the parties agree that prior to the expiration of the thirty (30) day period they will, in good faith, use their reasonable efforts to reach an amendment to this Agreement to give effect to such Order.

9. This Agreement may be assigned by Bell with prior written consent to the Building Owner which consent shall not be required where such assignment by Bell is to an affiliate of Bell.

10. If Bell defaults in any of its material obligations contained herein and such default is not corrected as quickly as reasonably possible but in any case within twenty(20) days (or such longer period as may be agreed to by the parties) after written notice to Bell, the Building Owner shall have the right to terminate this Agreement without further notice or compensation to Bell.

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-Upon termination, Bell shall restore the affected parts of the Buildings to their original condition 1 and shall at its option remove its Equipment and Connecting Equipment from the Buildings, .normal wear and tear excepted.

### 1. INSURANCE

Throughout the Term of this Agreement, Bell, at its sole cost and expense, shall take out and keep in full force and effect comprehensive general liability insurance, including but not limited to personal injury liability, contractual liability and owners' and contractors' protective insurance coverage with respect to Bell's use of the Building or any portion thereof; such coverage shall include the activities and operations conducted by Bell and any other person(s) performing work on behalf of Bell or on whose behalf Bell is in law responsible. Such policy shall be written with inclusive limits of not less than Five Million Dollars (\$5,000,000.00) for each occurrence involving bodily injury, death or property damage. Upon request of the Building Owner, Bell will provide the Building Owner with current certificates of insurance evidencing that the required coverage is in full force.

Notwithstanding the above section 11, the parties hereto acknowledge that Bell is self-insured. In the event of any claim, Bell will be deemed to have insurance in place as described in Section 11.

### 2. NOTICE

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

Bell Canada -Carrier Relations 160 Elgin Street, Suite 920 Ottawa, ON K2P 2C4

Attention: Marc J. Barnes

Fax No.: (613)231-5200

with a copy to:

Bell Canada -Regulatory Matters Floor 6

105 Hotel de Ville Hull, QC J8X 4H7

Attention: Paula Kerr

Fax No.: (819) 770-1666

And to the Building Owner at the following address:

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Telefinna (4000 VP) Inc.  
c/o Bentall Properties Limited 1800,1055 Dunsmuir Street  
P.O. Box 49001, Four Bentall Centre Vancouver, BC V7X 1B1

Attention: Executive Vice President Fax No.: (604) 661-5055

and -

60343 Canada Inc.  
c/o Deutsche Bank Canada  
22 Bay Street, Suite 1100 Toronto, ON M5K 1E7

Attention: Peggy DaSilva  
Fax No.: (416)682-8111

with a copy to:

Bentall Real Estate Services (Canada) Ltd. Suite 500  
100 Carlson Court  
Toronto, ON M9W 6L2

Attention: Senior Vice President Eastern Canada  
Fax No.: (416) 674-7738

Any such notice shall be deemed to have been received by the Building Owner or Bell, as the case may be, on the date of delivery if hand delivered. Such notice, if sent by facsimile, shall be deemed to have been given and received by the addressee when actually transmitted by the sender, provided that such transmission was made during normal business hours of the recipient, with receipts or other verifications of such transmission.

**10. ENTIRE AGREEMENT**

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

**11. GOVERNING LAW**

This Agreement shall be governed by the laws of the province of Ontario. For greater certainty, the parties agree that this Agreement shall at all times be subject to Orders issued by the CRTC or its successor(s).

15. FURTHER ASSURANCES

Each of the parties agrees from time to time hereafter and upon any reasonable request of any other party, to make or cause to be made all such further acts, deeds, assurances and things as may be required to more effectually implement the true intent of this Agreement.

16. NO EXCLUSIVITY

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

17. CONFIDENTIALITY

--Bell and the Building Owner (in its own capacity and in its capacity as agent of any third parties) recognize that the unauthorized disclosure of information provided by Bell to the Building Owner pursuant to this Agreement concerning Bell's Equipment, Connecting Equipment and Services would result in competitive harm to Bell. The parties therefore agree that the confidentiality of information provided by Bell to the Building Owner concerning Bell's Equipment, Connecting Equipment, Services and customers will be protected by the Building Owner and that any information concerning Bell's Equipment, Connecting Equipment, Services and customers provided by Bell to the Building Owner pursuant to this Agreement will be used by the Building Owner solely for the purpose of assisting the Building Owner in relation to the service requirements of Tenants, the security and safety of the Building, and for the purpose of assisting the Building Owner in relation to the management of space in the MTR and/or POP .ct Area, and telecommunications pathways in the Buildings as the case may be. Without restricting the generality of the foregoing, the Building Owner shall not disclose the information provided by Bell. This section 17 shall survive termination or expiration of this Agreement.

18. DEGREE OF CARE

Each party shall exercise its rights under this Agreement with reasonable care, diligence and professionalism.

19. NOTICE OF THIRD PARTY VISITS

Bell shall provide the Building Owner with reasonable prior written notice of any person other than a Bell employee or contractor who will attend the Locations or any other parts of the Buildings, including any warrant or other order of a court of competent jurisdiction compelling Bell to grant access of any person to the Equipment, Connecting Equipment, Locations or otherwise.

20. LOSS OR DAMAGE TO EQUIPMENT

Other than loss or damage to the Equipment or the Connecting Equipment which is caused by any act or omission constituting gross negligence or wilful misconduct of Building Owner or those for whom it is in law responsible, the parties agree and confirm that the Building Owner shall have no liability whatsoever therefore with respect to any harm, loss, or damage that may be caused to any Equipment or Connecting Equipment. Bell agrees that such

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Limitation of liability is fair and reasonable in the commercial circumstances of this Agreement -#1 and that the Building Owner has relied upon Bell's agreement of exculpation as an inducement to enter into this Agreement.

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

**Telefirma (4000 VP) Inc.**

The terms and conditions of this Agreement are hereby accepted by Bell Canada

SCHEDULE "A"

**ABRIDGED: EQUIPMENT LIST REMOVED**



SKETCHES REMOVED