

THE SIX MINUTE COMMERCIAL LEASING LAWYER 2014

Landlord Additional Services to Premises

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This topic deals with the kinds of ongoing services that tenants might require from landlords in office buildings and that are in addition to services, such as janitorial services, heating, ventilating and air-conditioning, lighting, and other normal services typically dealt with in standard lease forms. The kinds of additional services with which this paper is concerned are those ongoing services that would be provided in a separate agreement or in non-standard clauses that are added to a lease. Services related to construction or repair projects are not addressed.

It has been suggested that these ongoing additional services might include telecommunication services, uninterruptable power supply ("UPS"), emergency power supply ("EPS"), special security services, and document shredding. However, as explained below, in the experience of the writer's law firm, except for EPS, landlords will seldom provide those services directly to tenants. Instead, tenants contract directly with the service providers for those services.

TELECOMMUNICATION SERVICES

Telephone and Data

The normal course is for the telecommunications service providers ("TSP's" such as Bell, Telus, Rogers, Shaw, etc.) to enter into a telecommunications license access agreement with the building owner permitting the service provider to install equipment in a point of presence room (a "POP Room") and to install cable running from the property line to the POP Room, from there

to the mainframe of the building, from there up through the risers, and from riser rooms on each floor to individual premises. The tenants make arrangements directly with the TSP for distribution to and within their premises and for ongoing services.

The license agreement between the TSP and the landlord requires the TSP to install its equipment at its cost and, in addition, to pay a reasonable annual license fee based on the rental value of the equipment room (the "POP Room"). As between the landlord and the tenant, there is no commitment for the landlord to provide telecommunications services. Attached as Exhibit 1 is an example of a clause which deals with telecommunication services in the context of a lease of office space. Note subclause (c) which provides for an exception to the basic principle that the tenant will obtain its telecommunications directly from the TSP. It provides that the landlord might elect to install a central telecommunications cable distribution system (a "CDS") in the building for use by TSP's and tenants. If it does so, the tenant's TSP or the tenant might be required to use the CDS for its communication cabling needs on terms and conditions to be set by the landlord. Those terms and conditions would include obligations to pay costs and to contribute to operating costs associated with the CDS and would provide, also, for a release of liability and an indemnity in connection with the use of the CDS. Clauses such as this were contemplated for standard lease forms at the point in time when building owners were considering the benefits of closely controlling and managing the use of cables in their risers by multiple service providers. In practice, the telecommunication providers in Canada have consistently refused to participate in such arrangements. With a few exceptions, the practice of building owners installing CDS has not moved forward. TSP's are reluctant to surrender control of their cabling within buildings.

Cellular Enhancement

Mobile telephone companies will often enter into agreements with building owners for the installation of a donor antenna on the roof, feeder cables, numerous small satellite antennae and other equipment throughout the building to provide enhanced cellular (mobile) phone reception. Arrangements are often made among the providers to enable them, with the building owner's consent, to sublicense the use of the cellular enhancement facilities in the building to enable multiple mobile telephone companies using the same facilities to provide enhanced reception to tenants of the building. Typically, landlords do not include in their leases or in agreements with their tenants, a commitment to provide enhanced cellular service. As is the case with "land line" telephone and data services, it is typically the mobile telephone providers that pay for the cost of the installation of the equipment necessary to provide the service and the service provider usually pays a fee to the building owner to obtain access to the building. Accordingly, there are no significant installation or maintenance costs associated with the services and costs do not need to be passed on by the landlord to the tenants as recharges or otherwise. These services are not typically treated as special or additional services for which a tenant contracts with the landlord.

If a building is not benefitted with cellular enhancement reception facilities and a tenant needs them, the usual solution to the problem is for the tenant to get the landlord to agree to permit a mobile telephone company to install a donor antenna or other communications feed on or in the building and for the tenant, with the landlord's consent, to arrange for small satellite antennae to be installed in appropriate locations within the tenant's space. The tenant would contract directly with the supplier for the service.

WiFi

Landlords would not normally directly provide WiFi services. They are not in the business of providing WiFi services and they lack the technology, equipment, and expertise to do so. However, some landlords, as an additional marketing tool for the building, will arrange to have WiFi services available for tenants in the building. This service is typically not provided on a tenant by tenant basis or pursuant to any specific contract between the landlord and the tenant. Rather, it is an additional amenity that is provided for all tenants in the building. When this special service (WiFi service) is provided, the lease document which the tenant is asked to sign might include a number of clauses protecting the landlord from claims that could arise in connection with disruption or interruption of those services and protecting against abuse of the service. Attached as Exhibit 2 is a set of clauses pertaining to WiFi services that might be included in the standard lease form of a landlord that provides WiFi services for the building.

Internet Services

Internet services might be provided to the tenants of the building. However, the arrangement is typically similar to the arrangements by which telephone and data services or cellular enhancement services are provided. The landlord enters into an agreement with the internet provider for the provision of internet services to the building and contracts for use of the services are entered into between the tenants and the internet provider.

Uninterruptable Power Supply (UPS) and Emergency Power Supply (EPS) Arrangements

The most common situation where a landlord provides an additional service to a tenant under a special arrangement is the situation where the tenant needs backup power and needs to get it from the landlord's emergency power generator. Many office buildings will include an

emergency power generating system fueled by diesel fuel and tenants with special needs will seek to obtain the use of those systems. In order to effectively access the emergency power generator system of the landlord, the tenant will typically need switching equipment which would also include batteries so that, if electricity is disrupted, the batteries can "kick in" and provide continued service while the tenant's electrical network is being switched over to the emergency power generator. Attached as Exhibit 3 is a typical form of diesel generator usage agreement that sets out the basis upon which a tenant's switching and batteries (uninterrupted power supply) equipment are installed and maintained, and sets out the basis upon which the tenant will be entitled to use power from the landlord's emergency power system.

Salient features of the diesel generator usage agreement attached as Exhibit 3 are as follows:

Licensee Switching Equipment

The definition of "Licensee Switching Equipment" is important. The Licensee Switching Equipment is the mechanism by which the licensee (referred in the rest of this part of the paper as the "Tenant") is connected to the emergency power generator and provides for uninterrupted power. The Licensee Switching Equipment includes an electrical circuit breaker within the landlord's emergency switchboard and ancillary equipment including batteries and related equipment. The agreement contains detailed provisions concerning the design, construction, installation and operation of the Licensee Switching Equipment to ensure that there is no disruption of building systems or other tenants' systems in the building.

Limitations on Capacity Use

In Section 3.02, the Tenant acknowledges that the generator system is intended only to provide for emergency backup and, in Section 3.03, a specified number of kilowatts are reserved for the Tenant. The Tenant is not allowed to add additional equipment or systems that would increase its electricity consumption requirements from the emergency power generator beyond the specified limit. In Section 3.03(d), the Licensor (referred to in the rest of this part of the paper as the "Landlord") agrees not to increase the electrical requirements of the landlord or other users of the system (i.e., other tenants) beyond a stated number of kilowatts. The intent is that the Tenant's reserved number of kilowatts is not encroached upon.

Fees

There is an annual fixed fee stipulated in Section 4.01, and in Section 4.02 the Tenant agrees to pay a proportionate share of operating costs in connection with the Landlord's generator system. The percentage is based on the amount of generator output reserved for the Tenant compared to the total output capacity of the generator system.

Limitations on Duration of Use

Section 6.01 Limitations of Generator System Use is particularly important. The Tenant acknowledges that the system is only designed and intended to be used for three (3) hours of continuous backup use and the Tenant acknowledges that the fuel supply for the generator system stored at the building is limited. The Landlord does not guarantee availability of fuel beyond the three hour period. In Section 6.02 Health and Safety, the Tenant agrees that its use of the generator system in an emergency could be pre-empted for health concerns or safety reasons.

The Risk Transfer Systems

Among the most important provisions of this document are those in Article 9. The continued effect of these provisions is to establish a risk transfer scheme to protect not only the Landlord but its officers, directors, employees, affiliates, related parties, etc. from claims arising from failure or malfunction of the generator system. It is expressly stated in the Article that the release extends not only to damages arising from negligence but also to gross negligence and extends also to lost profits, lost revenue and other economic losses. In addition, the Tenant indemnifies the Landlord and the other released entities referred to in the Article against claims arising out of not only wrongful acts of the Tenant but also damages arising from any third party claims against the Landlord (including claims by customers of the Tenant) in connection with losses or damages that they might suffer when an interruption in the supply of electrical power from the generator system and the switching equipment results in the Tenant's customers suffering losses. This exposure needs to be addressed because of developments in Canadian case law related to liability for damages for pure economic loss arising from a person's negligence.¹

An important aspect of these releases and indemnities concerns the so-called "third party benefit rule" that continues to apply in Canada. Since the affiliates of the Landlord and the owners of the building (where the landlord does not itself own the building), and their respective officers, directors, and employees are not parties to the lease, there is a substantial risk that the court might hold that they do not have the benefit of the releases and indemnities provided for in the document.² Section 9.03 attempts to reduce this risk by stipulating that the Landlord acts as an agent or trustee for the benefit of each of the other persons and entities intended to be benefited by the release and indemnity provisions. This mechanism is not entirely foolproof since the establishment of the agency or trust relationship would, in most cases, not be

documented and may not be possible to be established as between the licensor and the other released parties. However, the clause does open the possibility that a Canadian court seeking to support the enforceability of the releases and indemnities, on the basis that it reflects the intentions of the parties, would accept the agency and trust clause as a basis for that support.

The Need For a Risk Transfer System in Other Situations

The release, indemnity, and agency and trust provisions included in the generator usage agreement should be included in any agreement in which a landlord agrees to provide special services to a tenant where an interruption or a malfunction of those services would have the result of the tenant either itself suffering economic loss due to disruption of its business, or the tenant's customers might suffer economic loss where the tenant's ability to serve those customers is disrupted by the interruption of services.

The rationale for these limitations of liability should be obvious, but it is worth commenting that, in many cases, the amount of consideration received by the landlord in terms of fees or benefits in return for providing additional services does not adequately cover the landlord's risk of damages and liability should a disruption of the services occur. It is often difficult for the landlord to realistically assess the amount of risk involved in providing certain types of services having regard to the nature of the tenant's business and, accordingly, it is essential to a landlord providing special services to a tenant to negotiate some form of limitation of liability. Note, as well, that the exposure does not apply only to lost profits but the potential for litigation and the legal fees associated with it.

Security Services

In the writer's experience (and in the experience of the other lawyers in our firm) it is rare for a landlord to agree to provide security services to a tenant as additional services. The landlord might agree to install or upgrade security services for the building in connection with a lease negotiation and the cost of operating the security systems would typically be included in operating costs but, where a tenant requires its own specifically tailored security services, usually the tenant contracts directly with its own security service provider. Perhaps an exception exists where a tenant is performing work or requires supplemental additional security in connection with construction or other activities in the course of its use of the premises and the landlord makes available to the tenant its own security staff on a specifically identified and negotiated basis. Where this situation occurs, it is prudent for the landlord to make every effort to limit its liability in accordance with the risk transfer system described above. Tenants will, of course, resist those attempts by making exceptions for deliberate or grossly negligent actions on the part of the landlord or its employees, or by making an exception for negligence. However, unless the landlord is adequately compensated for the risk, it would not normally agree to those limitations.

Document Shredding

Document shredding services are generally available directly to tenants from third party suppliers of those services and landlords are rarely called upon to provide those services to tenants. The writer is aware of at least one or two isolated instances in earlier years when landlords agreed to provide these services and the form of agreement in each case did include appropriate limitations of liability and risk transfer clauses. It is worth noting that the exposure in the document destruction situation is really not different from the situation where a landlord provides janitorial services. Janitorial staff will typically have access to office areas where

documents, often confidential in nature, could be accessed in unlocked filing cabinets or even on desks and other open surfaces. For that reason, it is common for informed tenants to insist upon the landlord's janitorial staff being bonded and for the landlord to carry employee dishonesty insurance. The kinds of exposure to which a landlord may be vulnerable would not be covered under ordinary commercial general liability insurance policies.

Final Cautionary Note

When a landlord agrees to provide special services to a tenant the landlord exposes itself to the risk of claims for damages including economic and special damages where there is a breakdown in the provision of the service. In determining the compensation which the landlord receives for the additional service, the risk exposure needs careful consideration. The risk exposure can, in some cases, be mitigated by appropriate insurance coverage and that extra insurance cost would be factored into the determination of the fee. Where insurance coverage is not available or is not cost effective, carefully drafted limitations of liability and indemnities are needed. Conversely, when seeking additional services, a tenant should ensure that it retains the flexibility in its lease document to bring in its own service supplier and to choose service suppliers for special services with which it feels comfortable and whose background, experience, financial strength, and insurance programs adequately support the operations of the service supplier.

EXHIBIT 1

7.6 Telecommunications

- (a) The Landlord shall incur no expense or liability whatsoever with respect to any aspect of the provision of telecommunication services, including, without limitation, the cost of installation, service, materials, repairs, maintenance, interruption or loss of telecommunication service.
- (b) The Tenant may utilize a telecommunication service provider (a "TSP") of its choice with the Landlord's prior written consent, but:
 - (i) if the TSP is required to provide or install facilities in the Building in order to enable it to provide service to the Tenant, the Landlord must first determine that there is sufficient space in, or on the Building for the installation of the TSP's facilities and that the TSP is acceptable to the Landlord;
 - (ii) if the TSP intends to install, or has installed or purchased facilities situated in the Building for the purpose of providing telecommunication services to tenants in the Building, the Landlord may require the TSP to execute and deliver the Landlord's standard form of TSP licence agreement;
 - (iii) the Tenant shall be responsible for all costs incurred by the Landlord in enabling usage by the Tenant of its choice of TSP not otherwise paid by such TSP; and
 - (iv) the Tenant shall be responsible for the removal of all wiring serving the Premises by such TSP at the expiry of the Term, together with any cable wire, if required by the Landlord.
- (c) The Landlord may deem it desirable to provide a central telecommunications cable distribution system ("CDS") in the Building for use by TSPs and tenants. If the Landlord provides a CDS, the Tenant's TSP or the Tenant, as the case may be, may be required by the Landlord to use the CDS for its communications cabling needs on terms and conditions to be set by the Landlord. These terms and conditions will include obligations for the TSP, or the Tenant, as the case may be, to pay costs and to contribute to Operating Costs associated with the CDS and a complete release of the Landlord and indemnity from the TSP or the Tenant, as the case may be, in respect of the use of the CDS.
- (d) If the Tenant's approved TSP does not have a point of connection in the Premises, the Tenant may be required to install its own cable and facilities or to purchase cable and facilities from the Landlord for installation in the communication pathways and risers of the Building for connection to the Tenant's TSP's facilities in the main terminal room, at the main distribution frame or at other points of connection designated by the Landlord. In such case: (i) the Tenant may be required to pay all costs incurred by the Landlord; (ii) the Tenant may be required to remove such cable and facilities and restore any damage caused by the removal at the Landlord's option, or to pay the cost of removal and restoration at the end of the service term of that TSP; (iii) the Tenant may be required to contribute to the costs of riser management incurred by the Landlord; and (iv) the Tenant may be required to abide by any policies, directions or requirements of any riser manager retained by the Landlord and to pay, in addition, any direct costs invoiced to the Tenant by such riser manager in respect of plan review charges, inspection charges and other services provided by such riser manager to the Tenant.
- (e) If required by the Landlord, the Tenant shall change its TSP if the licence agreement referred to above in Section 7.6(b) is terminated or expires and is not renewed. The Tenant acknowledges that the Landlord has no obligation to ensure continuation of services by the Tenant's TSP or any other TSP in the Building.
- (f) The Landlord may require, upon 30 days prior written Notice, that the Tenant relocate all or any portion of the cables or facilities installed by it or its TSP.

EXHIBIT 2

1. WIFI – Wireless Fidelity

In the event that Landlord, in its sole discretion, now or hereafter provides a wireless fidelity network in the Building (the “Network”), the provisions of this Schedule “E”, Section 1 shall apply.

Tenant agrees that it will not:

Reproduce, modify, market, sell, distribute, license or use as an application service provider, any software comprising the Network, or create other software products on the basis of the software comprising this Network or parts thereof, or make the Network available to third parties in any form;

Use the Network for any unauthorized or unlawful purpose, including, without limitation, for the production or dissemination of any libelous, fraudulent, or obscene material or in any otherwise objectionable or illegal manner, or for the purpose of accessing and using any illegal file sharing or peer-to-peer network for the purpose of downloading or uploading to such networks any copy-written or otherwise protected materials;

Interrupt or attempt to interrupt the operation of the server through which Tenant accesses the Network;

Restrict, in any way, any other user of the Network or the server through which such user accesses the Network;

Do any act that compromises the security of the server through which Tenant accesses the data resident thereon, or the Network.

Disclaimer of Warranties - Unless otherwise provided, the Network is provided on an “as is” and “as available” basis and without warranties of any kind, either express or implied, statutory or otherwise. To the fullest extent permitted by applicable law, the Landlord disclaims all warranties, express or implied, including but not limited to implied warranties of merchantability and fitness for particular purpose with respect to the Network. The Landlord does not warrant that the functions or the contents of the Network will meet Tenant’s requirements, or that the Network will be uninterrupted or error free or accurate, or that defects will be corrected, or that the Network is free of viruses, worms, or other harmful components. The Landlord does not warrant that the Network is secure. Any personal or confidential information that Tenant transmits through the Network is at Tenant’s own risk and Landlord takes no responsibility for such personal or confidential information.

Limitation of Liability – The Landlord shall not be liable or obligated in any manner for any exemplary, special, incidental or consequential damages of any kind (including lost profits) regardless of the form of action, whether in contract, tort, negligence, strict product liability or otherwise resulting from the use of the Network. The aggregate liability of the Landlord under this Schedule “E”, Section 1 shall not exceed \$100 (Canadian funds) in the aggregate.

Proprietary Rights - The Network is owned or licensed by the Landlord and the structure, organization and code of the Network are valuable trade secrets of the Landlord or its suppliers. The Network is also protected by Canadian patent, copyright law and international treaty provisions. This Schedule “E”, Section 1 does not grant to Tenant any intellectual property rights in and to the Network or any part thereof and provides only the terms and conditions under which Tenant is licensed to use the Network.

Indemnification - To the maximum extent permitted by applicable law, Tenant will defend, indemnify and hold the Landlord harmless from and against any and all claims, damages, losses liabilities, costs and expenses of any kind, including all legal fees and costs, arising out of (i) Tenant’s breach of any provision of this Schedule “E”, Section 1, and/or (ii) Tenant’s use of the Network. The Landlord reserves the right, in its sole discretion and at its own expense, to assume the exclusive defence and control of any action, claim or matter otherwise subject to indemnification by Tenant. Tenant will co-operate as fully as reasonably required in the defence of any claim.

Suspension and Termination – Tenant’s access to the Network may be suspended or terminated immediately without notice from the Landlord if, in the Landlord’s sole discretion, Tenant fails to comply with this Schedule “E”, Section 1 or if the Landlord believes that Tenant, by its conduct, has violated any applicable law or is acting contrary to the interests of the Landlord. All limitations on liability, indemnities and proprietary rights shall survive termination of this Lease and Tenant agrees to remain bound by those provisions that survive termination.

EXHIBIT 3
DIESEL GENERATOR USAGE AGREEMENT

This Agreement made the [*] day of [*], 20[*]

B E T W E E N:

[*]

(the "Licensee")

OF THE FIRST PART

- and -

[*]

on behalf of the Owner(s)

(the "Licensor")

OF THE SECOND PART

WHEREAS:

- A. The Licensee is a tenant of the Leased Premises in the Building pursuant to the Lease;
- B. The Licensor has installed in the Building the Generator System to supply emergency electrical power to systems and equipment located in the Building in the event of the failure of the normal electrical supply for the Building's systems; and
- C. The Licensee wishes to install and the Licensor has agreed to allow the Licensee to install the Licensee's Switching Equipment to connect to the Generator System.

The Licensee and the Licensor agree as follows:

ARTICLE 1
DEFINITIONS AND SCHEDULES

1.01 DEFINITIONS

In this Agreement:

"Building" means the building municipally known as [*].

"Fuel Storage Room" means that portion of the Building containing the Fuel Storage Tank(s).

"Fuel Storage Tank(s)" means the diesel storage tank(s) supplying fuel to the Generator.

"Generator" means diesel generator with at least [*] kilowatt capacity, together with the Shared Switching Equipment and ancillary equipment but excluding the Licensee's Switching Equipment and the Licensor's Switching Equipment.

“Generator Room” means a portion of the [*] floor mechanical room of the Building.

“Generator System” means collectively the Generator and the Fuel Storage Tank(s) together with all ancillary equipment and systems installed or to be installed by the Licensor.

“Generator System Premises” means collectively the Generator Room, the Fuel Storage Room and the Switching Room.

“Lease” means the lease made as of [*] between the Licensor and the Licensee, as amended from time to time, the Term of which expires on **[insert expiry date]**.

“Licensee's Switching Equipment” means the dedicated electrical circuit breaker within the emergency switchboard and ancillary equipment including a Solid State Transfer Switch (“SSTS”) to be installed by the Licensee.

“Leased Premises” means that portion of the Building leased to the Licensee pursuant to the Lease being [*].

“Licensor's Switching Equipment” means the Licensor's switching equipment and distribution panel boards together with all ancillary equipment.

“Owner(s)” means the owner or owners from time to time of the freehold or leasehold title to the Building.

“Releasee” has the meaning ascribed thereto in Section 9.02.

“Shared Switching Equipment” means the emergency switchboard and the Generator output circuit breaker and associated ancillary equipment designated by the Licensor from time to time for shared use by the Licensee and others.

“Switching Equipment” means collectively the Licensee's Switching Equipment, the Licensor's Switching Equipment and the Shared Switching Equipment.

“Switching Room” means that portion (or those portions) of the Building containing the Switching Equipment.

“Term” has the meaning ascribed to it in Section 2.01.

“UPS” means the uninterruptible power system installed or to be installed by the Licensee in accordance with this Agreement and comprised of batteries and related equipment forming part of the Licensee's Switching Equipment, and including a dry fire depression system.

ARTICLE 2

TERM

2.01 TERM

The term of this Agreement shall commence on [*, 20[*] and expire on [*, 20[*] (the “Term”) unless this Agreement is terminated in accordance with the provisions of this Agreement.

2.02 AUTOMATIC EXTENSION

If the Term of the Lease is renewed or extended then the Term of this Agreement will be automatically extended so that it is co-terminus with the expiry of the renewal period or extension period, as the case may be.

ARTICLE 3 ACCEPTANCE AND USAGE OF GENERATOR SYSTEM

3.01 ACCEPTANCE OF GENERATOR SYSTEM

The Licensee confirms that it has satisfied itself concerning all aspects of the Generator System and that it accepts the Generator System as is and that it does not rely upon any representation of warranty on the part of or on behalf of the Licensor relating to any aspect of the Generator System, its design, capacity, or operation.

3.02 SHARED USAGE OF GENERATOR

In the event of a temporary failure or interruption of the Building's electrical systems or in the event of a failure or interruption of the supply of electrical power from the appropriate public utility, the Generator System will, subject to the provisions of this Agreement, including without limitation, Section 3.03, be used to supply emergency power (i) to the Licensee's equipment, computer and emergency systems located in the Building and (ii) to the Licensor's and other tenants' or occupants' equipment, computer and emergency systems located in the Building.

3.03 ALLOCATION OF ELECTRICAL SUPPLY FROM GENERATOR

- (a) The total electrical output of the Generator is at least [*] kilowatts. The Licensee's equipment and systems shall not consume more than [*] kilowatts.
- (b) The Licensee shall not be entitled to add any additional equipment or systems that increase its electricity consumption requirements from the Generator to more than [*] kilowatts unless the prior written consent of the Licensor is obtained, which consent may be arbitrarily and unreasonably withheld.
- (c) The Licensor shall be entitled at any time and from time to time to add any additional equipment or systems, whether or not they increase its electricity requirements from the Generator, provided such increased electrical requirements will not exceed the available capacity of the Generator and provided that the Licensor's equipment and systems drawing power from the Generator shall not consume more than [*] kilowatts of the total electrical output of the Generator at any time.
- (d) The Licensor shall be entitled at any time and from time to time to supply electrical power from the Generator System to computer and emergency systems of other tenants of the Building and to connect any additional equipment or systems to the Generator System to facilitate such supply, but the total aggregate

electrical requirements of the Licensors and the other users (the “Other Users”) will not exceed the capacity of the Generator and the equipment and systems of the Licensors and Other Users drawing power from the Generator shall not consume more than [*] kilowatts.

3.04 PAYMENT FOR GENERATOR SYSTEM USE IN EMERGENCY SITUATIONS

Other than as set out in Sections 4.01, 4.02, 4.03 and 6.03 and any other express provision of this Agreement to the contrary, the Licensee shall not be obligated to make payment for the usage of the Generator System in an emergency situation as described in Section 3.02.

ARTICLE 4 FEES

4.01 ANNUAL FEE

The Licensee will pay directly to the Licensors, without set-off, abatement or deduction, together with any applicable goods and services taxes payable thereon under the *Excise Tax Act* (Canada) (“GST”) an annual fee of [*] dollars (\$[*]) in equal monthly instalments of [*] dollars (\$[*]) in advance on the first of each month during the term of this Agreement together with any applicable GST.

4.02 OPERATING COSTS

The Licensee will pay [*] percent ([*%]) **[insert percentage based on proportionate share of the Generator output capacity that is available to the Licensee]** of all costs incurred in connection with the operation and maintenance of the Generator System including labour costs, fuel costs, maintenance, repairs, replacement, insurance, and an administration fee of fifteen percent (15%) of those costs. The Licensors will estimate the costs referred to in the preceding sentence (the “Operating Costs”) from time to time in respect of periods determined by the Licensors, and the Licensee will pay its share of the Operating Costs in monthly instalments based on those estimates. Within one hundred and twenty (120) days after the end of each estimate period, the Licensors will provide a statement to the Licensee of the actual amount of Operating Costs and the Licensee will pay to the Licensors any adjustment payment in respect of an underpayment or the Licensors will repay to the Licensee any adjustment payment in respect of an overpayment. The Licensee’s payment will be made within ten (10) days after receipt of the statement. The Licensors may, in lieu of repaying to the Licensee an amount of overpayment, apply a credit against annual fees remaining to be paid under this Agreement. If an amount is to be repaid to the Licensee in respect of an overpayment, it will be paid within thirty (30) days of the date of the statement.

4.03 VALUE ADDED TAXES

The Licensee will pay “GST” on all payment required to be made under this Agreement.

ARTICLE 5 SWITCHING EQUIPMENT

5.01 INSTALLATION, ALTERATION OR UPGRADING OF SWITCHING EQUIPMENT

- (a) The Licensee shall, prior to starting the installation of the Licensee's Switching Equipment provide to the Licensor detailed plans and specifications and obtain the Licensor's written approval. These detailed plans and specifications will be prepared by the engineer designated by the Licensor. After the Licensor has given its written approval of the plans and specifications, the Licensee shall, at its sole risk, cost and expense commence and diligently proceed with and will complete the installation connection of its Switching Equipment in strict accordance with the approved plans and specifications and to the satisfaction of the Licensor. This will include all work or construction which is necessary for the proper installation and interconnection of that equipment. All work will 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, and shall be subject to supervision by the Licensor. It will be performed only by persons approved by or designated by the Licensor.
- (b) The Licensee will design and construct protective enclosures with safety features to prevent damage to any battery and to protect against any outflow or seepage of battery liquids or acids. The design, construction and maintenance of the protective enclosures and features will be subject to the approval of the Licensor. In any case, all aspects of the protective enclosures and safety features must comply with all governmental requirements and all applicable industry and safety standards.

5.02 MAINTENANCE AND ALTERATIONS OF SWITCHING EQUIPMENT

- (a) The Licensor shall be solely responsible at its cost for the maintenance and repair of the Licensor's Switching Equipment.
- (b) The Licensee shall, at its own expense, keep the the Licensee Switching Equipment in a safe and properly maintained condition in compliance with all applicable laws, and should the Licensee fail to do so, the Licensor may effect any required repairs, replacements or maintenance if it gives the Licensee five (5) days' written notice of its intention to do so, except in the event of an emergency (when no notice shall be required).
- (c) No alterations, upgrades or replacements to any part of the the Licensee Switching Equipment will be permitted without the Licensor's prior written approval. Prior to starting any alterations, upgrades or replacements, the Licensee shall provide the Licensor with detailed plans and specifications for the Licensor's written approval. After the Licensor has given its written approval of the plans and specifications, the Licensee shall at its sole risk, cost and expense commence and diligently proceed with and complete the installation and connection of the

upgrades, alterations or replacements 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 and interconnection of such equipment. All alterations, 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 by or designated by the Licensor.

- (d) No repairs, maintenance, alterations, upgrades or replacements to any part of the the Licensee Switching Equipment shall be effected during the normal business hours of the Building without the Licensor's prior written consent, which consent will not be unreasonably withheld or unduly delayed in an emergency. In an emergency, prior to making maintenance or repairs, the Licensee shall immediately notify the on-site building manager or superintendent of the nature of the emergency and the need to make immediate repairs.

5.03 OPERATION OF LICENSEE'S SWITCHING EQUIPMENT

The Licensee shall be solely responsible at its cost for the operation (including insurance), maintenance, repair and upgrading of the Licensee's Switching Equipment.

5.04 NON INTERFERENCE

The Licensee and its agents, employees and contractors, shall co-ordinate all installation, maintenance, alteration, replacement or removal of the the Licensee Switching Equipment 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 its agents, employees and contractors, shall endanger any other work or facility at or near the Building or forming part of the Building. The cost of repairing, replacing or otherwise remediating any improvements, work, or conditions made necessary by the Licensee or its agents, employees or contractors, 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.

5.05 DAMAGE

The Licensee shall take all required precautions to avoid damage to property and persons, and will be responsible for repairing any damage to the Building and to any property owned by the Licensor or by any other occupant of the Building that is damaged in connection with any acts or omissions of the Licensee, its agents, employees, contractors, or those for whom in law the Licensee is responsible. The Licensee shall, at its sole cost and expense, have all damage caused by it to the Building or any improvements or property of others repaired immediately. The Licensor may, at its sole option, 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

5.06 DESIGNATED CONTRACTORS, SUPERVISION, INSPECTIONS AND REPORTS

- (a) If any component of the Licensee's work may impact a system or part of the structure of the Building the Licensor may require that the work be done at the Licensee's cost, by the Licensor's designated contractors.
- (b) All work relating to installation, maintenance, repairs or alterations to be performed by the Licensee will be subject to supervision by the Licensor.
- (c) The Licensor's costs of reviewing and approving plans and specifications, having its contractors perform work as contemplated above, and all costs of supervision will be payable by the Licensee together with an administration fee of fifteen percent (15%) of the costs and the amounts payable by the Licensee under this Section will be payable within ten (10) days after receipt of a written invoice by the Licensee from the Licensor.
- (d) The Licensee will obtain and provide to the Licensor, at the Licensee's cost, promptly, whatever inspection, test or other reports in connection with any work, installations or operations are required by the Licensor.

ARTICLE 6 GENERATOR USE - LICENSEE'S NEGLIGENCE - CONTINUITY

6.01 LIMITATIONS OF GENERATOR SYSTEM USE

The Licensee acknowledges that the Generator System is designed to provide backup power supply only on a temporary basis. If the Licensee uses the Generator System on a continuous basis in excess of three (3) hours continuous use, the Licensee will be fully responsible for any costs of maintaining and repairing the Generator System that are attributable to the excess usage, as determined by a qualified engineer retained by the Licensor. The Licensee will also be responsible for the cost of any report prepared by that engineer. The Licensee further acknowledges that the fuel supply for the Generator System stored at the Building is limited and that in an emergency it may not be possible to obtain fuel to replenish the fuel stored at the Building, even if reasonable efforts are made by the Licensor to replenish that fuel supply. The Licensor guarantees neither availability of fuel nor operation of the Generator System beyond three (3) hours and reserves the right to discontinue power to the Licensee's equipment without notice after any period of three (3) hours continuous use.

6.02 HEALTH AND SAFETY

The Licensee acknowledges that where, for health and safety reasons, it is necessary to do so, its usage of the Generator System may be preempted and where that occurs, the Licensee will not make any claim against the Licensor.

6.03 PAYMENT FOR FUEL CONSUMPTION

The Licensee shall pay to the Licensor, within ten (10) days after receipt of an invoice for any fuel consumed by the Generator where the Generator operates in excess of three (3) hours or

where due to negligence or other wrongful acts by the Licensee, its contractors or agents, the Generator is required to operate. This last mentioned charge is without limitation to any other rates or remedies of the Licensor.

6.04 LICENSEE'S ACKNOWLEDGEMENT

The Licensee acknowledges that the Generator System is not intended to ensure complete business continuity for the Licensee. It is intended as a "back-up facility" which should operate in conjunction with other redundancy features, failsafe features, and other measures which the Licensee should take to ensure complete business continuity.

ARTICLE 7 ACCESS TO GENERATOR SYSTEM

7.01 ACCESS

The Licensee acknowledges that it will not have any access to the Generator Room or the Fuel Storage Room and that its access to the Switching Room will be subject to the Licensor's written approval in advance or, in the case of an emergency, verbal approval given by an authorized representative of the Licensor.

ARTICLE 8 MAINTENANCE AND INSURANCE

8.01 MAINTENANCE, MONITORING, NOTICE OF DOWN TIME

- (a) The Licensor shall perform, at its own expense, the Generator System's manufacturer's recommended maintenance services in connection with the Generator System, and such other routine maintenance for the Generator System as are in keeping with the operation of a first class building and in accordance with legislated requirements. The routine maintenance will consist of the following:
 - (i) two (2) semi-annual inspections per year (cost includes all consumables);
 - (ii) one (1) annual load bank test per year;
 - (iii) one (1) annual test and inspection of the Switching Equipment;
 - (iv) diesel fuel replacement as required; and
 - (v) monthly operational testing of the Generator.

The Licensor shall maintain in full force and effect a contract (the "Maintenance Contract") with the manufacturer or a qualified maintenance contractor, acting reasonably, covering regular maintenance of the Generator System, the Licensor's

Switching Equipment and the Shared Switching Equipment. The Licensor shall provide the Licensee with a copy of the Maintenance Contract upon request.

- (b) The Licensee and its duly qualified agents, consultants, experts and advisors shall have the right to inspect the Generator System, the Switching Equipment and any ancillary equipment at any time upon at least twenty-four (24) hours prior written notice to the Licensor and in the presence of a Licensor representative. Should any such inspection reveal any deficiencies that may, in the reasonable opinion of the Licensee or its duly qualified agents, consultants, experts and advisors, result in the Generator System not being able to supply electrical power to the Licensee in accordance with this Agreement, the Licensor shall promptly remedy such deficiency.
- (c) The Licensor shall provide the Licensee where possible with at least forty-eight (48) hours prior written notice of it becomes aware that the Generator System or any ancillary equipment will not be functioning, or if for any reason the Licensor will be unable to supply emergency power to the Licensee's computer and emergency systems pursuant to this Agreement; but if, due to an emergency it is not possible for the Licensor to provide that notice, the Licensor will provide the Licensee with as much written notice as possible.
- (d) The Licensee shall be entitled to install, at the Licensee's sole cost and expense, a monitoring system on the Generator System to the extent the Licensee deems necessary or advisable, acting reasonably but the plans and specifications must first be approved by the Licensor, acting reasonably. All such work shall be carried out by qualified and competent and, if required by the Licensor, under the supervision of a representative of the Licensor. The Licensee shall be solely responsible for and shall indemnify the Landlord, from and against, any and all damage caused to the Generator System and the Switching Equipment as a result of the installation and presence of that monitoring system. The Licensee shall be solely responsible for the operation, maintenance and repair of that monitoring system. At the Licensor's option, the work may be carried out by the Licensor on behalf of, and at the expense of, the Licensee, and the Licensee shall pay to the Licensor all of the costs forthwith upon receipt of an invoice.

8.02 INSURANCE

- (a) The Licensor shall maintain such types of insurance with respect to the Generator System and the Generator System Premises, in accordance with prudent risk management practice as determined by the Licensor.
- (b) (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, 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 will also maintain in force Pollution Liability Insurance issued by an insurer acceptable to the Licensors in an amount of at least five million dollars (\$5,000,000.00) in a form approved by the Licensors, acting reasonably.
 - (C) The Licensee's insurance coverage shall include all risks direct damage insurance, covering the Licensee's Switching Equipment and all of the Licensee's chattels in an amount equal to the full replacement value thereof.
- (ii) Each insurance policy referred to herein shall add the Licensors and the owner(s) of the Building, as additional insureds, as their respective interests may appear and shall contain as appropriate:
 - (A) a severability of interests and a cross liability clause;
 - (B) liability coverage for the operations of the Licensors and the Releases in connection with the Generator System; 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 Licensors, the Owner(s) or any mortgagee of the Building.
- (iii) The Licensee shall provide a copy of its insurance policies and certificates of insurance to the Licensors, on or prior to the commencement of the term of this Agreement. All insurance policies shall contain an undertaking by the Licensee's insurer to notify the Licensors upon not less than thirty (30) day's prior written notice of any material change to the prejudice of the Licensors in terms, cancellation or termination.
- (iv) The Licensee shall co-operate with the additional insureds under the policies noted above so as to ensure that any proceeds or benefits to which they are entitled as additional insureds are provided by the insurer in each case, promptly and to the fullest extent provided for under the applicable policy.

ARTICLE 9

LIABILITY FOR LOSS AND DAMAGE

9.01 LOSS AND DAMAGE

- (a) The Licensee acknowledges that the Licensors does not warrant uninterrupted or error-free provision of services from the Generator System or any other aspect of the supply of power from the Generating System. Neither the Licensors nor any

Releasee shall be liable for the quality of transmission of electrical power, or for any damages arising from omissions, interruptions, delays, errors or defects in transmissions of electrical power suffered by the Licensee, or any of its employees, agents or customers, caused by failures or defects with the Generator System, the Switching Equipment or the Generator System Premises. To the extent that any of the Licensee's customers, agents or employees or any other third party suffer damages arising from any of the circumstances mentioned above for which the Licensor or any Releasee may be at law responsible, the Licensee hereby indemnifies and holds harmless the Licensor and each Releasee from and against any such claims, regardless of whether the Licensor or any Releasee is alleged or found to be negligent or grossly negligence. This indemnity shall survive the termination or expiry of this Agreement.

- (b) Notwithstanding anything to the contrary, the Licensor and the Releasees shall not be liable or in any way responsible to the Licensee, and the Licensee shall indemnify and hold the Licensor and the Releasees harmless, in respect of any claim, loss, injury or damage suffered by the Licensee or others, however caused, even if caused or contributed to by the gross negligence of the Licensor, its agents or any one else for whom the the Licensor is in law responsible.
- (c) Without limiting the foregoing, 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 Generator System Premises, the Generator System or the Switching Equipment, or arising out of any breach by the Licensor of its covenants and obligations under this Agreement or in any way arising out of the operation of the Generator System and the Switching Equipment, 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 and each Releasee in respect of the same. This indemnity shall survive the termination or expiry of this Agreement;
 - (ii) the quality, adequacy, compatibility or sufficiency of the Generator System and the Switching Equipment, it being acknowledged by the Licensee that the use of those items is at the sole risk of the Licensee;
 - (iii) the activities of any third party, whether or not that party is on the Generator System Premises under the terms of another generator sharing agreement 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 Generator System Premises;

- (iv) any claims resulting from any fire, explosion, lightning or other occurrence involving the Building, including the Generator System Premises, that cause any damage to the Generator System or the Switching Equipment or result in the interruption of any supply of electrical power from the Generator System;
 - (v) 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 labor problem, acts of God or acts of government.
- (d) The Licensee shall indemnify the Licensor and the Releasees from and against all liabilities, claims, damages or expenses (including legal fees on a substantial indemnity basis) arising out of any negligent or reckless act or omission by the Licensee or those for whom the Licensee is responsible, or arising out of any breach by the Licensee of any provision of this Agreement or arising from any and all claims by any third party, including customers of the Licensee, in connection with the supply of electrical power from the Generator System and the Switching Equipment. This indemnity shall survive termination or expiry of this Agreement.

9.02 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 (hereinafter, individually, the "Releasee" and, collectively, the "Releasees"), from all actions, suits, damages, costs and liabilities for:

- (i) any damage to the Generator System, the Generator System Premises and the the Licensee Switching 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 Generator System, the Switching Equipment or the Generator System Premises. This release extends to negligent acts and grossly negligent acts and omissions of each 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.

9.03 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 9.01, the benefit of the release and waiver provided for in Section 9.02, and the benefit of each other exculpatory provision included in this Agreement 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.

ARTICLE 10 DEFAULT

10.01 DEFAULT

- (a) Should any provision of this Agreement be breached by the Licensee and such breach is not remedied or diligently commenced to be remedied within ten (10) business days from receipt of written notice of such default from the Licensor, the Licensor may, in addition to any other rights available to it under this Agreement and at law, terminate this Agreement without further notice to the Licensee.
- (b) In the event that the Licensee fails to make any payment to the Licensor as and when due in accordance with the provisions of this Agreement (other than as a result of amounts genuinely in dispute), and such payment remains unpaid after ten (10) business days written notice of default from the Licensor, the Licensor, in addition to any other rights and remedies it may have under this Agreement or at law, will be entitled to suspend the rights of the Licensee, and the obligations of the Licensor, under this Agreement until such time as payment has been received, upon forty-eight (48) hours prior written notice to the Licensee.

ARTICLE 11 FORCE MAJEURE

11.01 FORCE MAJEURE

Notwithstanding anything herein contained neither party shall be in default with respect to the performance of any of the terms of this Agreement if any non-performance is due to any force majeure, strike, lockout, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of god, government regulations or controls, inability to obtain any material or service or any cause beyond the reasonable control of the party (unless such lack of control results from a deficiency in financial resources).

ARTICLE 12 TERMINATION

12.01 TERMINATION

- (a) This agreement may be terminated only in accordance with the provisions of Section 10.01. In addition, this Agreement shall terminate on (i) the expiry or earlier termination of the Lease, (ii) the effective date of any assignment of the Lease by the Licensee, and (iii) on ninety (90) days written notice should the Licensee intend, on a bona fide basis, to alter the Building in such a way as to make it unfeasible to continue to operate the Generator System.
- (b) Upon the expiry or earlier termination of this Agreement, ownership and title to the Licensee Switching Equipment shall vest with the Licensor, and the Licensee shall remove all of its other related equipment and chattels from the Generating System Premises as required by the Licensor and repair any damage caused to the Building as a result thereof.

ARTICLE 13 GENERAL

13.01 INTEREST ON OVERDUE AMOUNTS

In each instance when a party shall be obligated to pay any sum of money to the other party interest shall accrue thereon and be payable at three (3) percentage points above the prime lending rate charged from time to time by TD Canada Trust or its successor calculated and compounded monthly, not in advance, from the date such sum first became due until payment.

13.02 FURTHER ASSURANCES

At any and all times, the parties will do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all such further acts, deeds, conveyances, transfers and assurances in law as the other party shall reasonably require for the purpose of carrying out the true intent of this Agreement.

13.03 NOTICES

Any notices or other communications to be given by any party hereunder to the other shall be given or made by delivering the same by hand or by mailing the same in a sealed envelope by prepaid registered mail addressed to the party to whom the notice is directed at the address set out below or to such alternative address as may from time to time be determined by notice given in the manner provided in this section:

(a) to the Licensor at:

[*]
[*]
[*]
[*]

(b) to the Licensee at:

[*]
[*]
[*]
[*]

Each notice shall be deemed to have been given and received, if delivered, on the date of such delivery or, if mailed, on the third business day following the date of such mailing. No notice to be delivered hereunder shall be delivered by mail in the event that, at the time such notice would be posted, a suspension of postal service in Canada is in effect or, as a matter of public knowledge, is a reasonable likelihood within a period of ten (10) days.

13.04 LAWS OF ONTARIO

This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.

13.05 RIGHTS OF ASSIGNMENT, ETC.

- (a) Subject to Section 13.05(b), the rights of the parties under this Agreement are personal to the parties and may not be assigned, shared, charged or otherwise encumbered. However, each of the parties shall be entitled to assign all of its rights and duties under this Agreement, with prior written notice to the other party, to any corporate successor by way of merger, consolidation, or reorganization, provided that the assignee first delivers to the other party a reasonable and adequate written statement that the assignee assumes all of the assigning party's obligations in respect of this Agreement and that the assignor remains liable for any breach of its or the assignee's obligations.
- (b) In the event of a sale, or other disposition, by the Licensor of the Building or an interest in the Building, upon a transferee of this Agreement or any part thereof assuming the obligations of the Licensor under this Agreement, or any part thereof, the Licensor will be released automatically in respect of the performance of any obligation of the Licensor that is to be performed from and after the date of the transfer, to the extent it is assumed by the transferer.

13.06 REMEDIES CUMULATIVE

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

13.07 NO WAIVER

No action or failure to act by the Licensor or the Licensee shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13.08 NO WARRANTIES

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.

13.09 ENUREMENT

This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, as limited by the provisions of Section 13.05.

13.10 SEVERAL LIABILITY OF LICENSOR

If more than entity signs or assumes this Agreement as a licensor, the obligations and liabilities of each entity comprising the "Licensor" for the purposes of this Agreement is several and not joint and several and is limited to its interest in the Building subject to any further limitations of liability that are provided for in this Agreement.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

[*]

(Licensor)

Per: _____

Per: _____

I/We have authority to bind the corporation

[*]

(Licensee)

Per: _____

Per: _____

I/We have authority to bind the corporation

CITATIONS APPENDIX

¹ See *Kamloops (City) v Nielsen*, [1984] 2 SCR 2; *Canadian National Railway Co v Norsk Pacific Steamship Co*, [1992] 1 SCR 1021.

² See *London Drugs Ltd v Kuehne & Nagel International Ltd*, [1992] 3 SCR 299.