

Filed Electronically

20 September 2023

Claude Doucet
Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario
K1A 0N2

RE: Part 1 Application re MDU Bulk Agreements practices of Rogers Communications Inc.

Dear Mr. Doucet,

1. This is an Application filed by Beanfield Technologies Inc., operating as Beanfield Metroconnect (“Beanfield”), pursuant to Part 1 of the *CRTC Rules of Practice and Procedure*, section 24 and subsection 27(2) of the *Telecommunications Act* (the “Act”), requesting that the Commission prohibit Rogers Communications Inc. (“Rogers”) from unduly limiting competition and consumer choice by concluding bulk billing agreements (“Bulk Agreements”) with multiple dwelling unit (MDU) developers and condominium corporations for Internet services that have the effect of restricting other Internet service providers (“ISPs” or “providers”) from accessing and serving end-users.
2. Beanfield understands that, while the Commission has some awareness of the existence of bulk arrangements, no formal complaint has ever been filed in respect of the legality of the practice. Beanfield submits that Bulk Agreements effectively eliminate end-user choice, constitute an undue advantage and should be deemed to be contrary to the MDU Access Condition.

Bulk Agreements generally

3. Exclusivity arrangements in the form of bulk deals are not new but, until about 5 years ago, were rare. When Beanfield was awarded its Waterfront Toronto network contract in 2011, this was in response to an RFP that specifically provisioned a bulk arrangement because of the nature and complexity of building an entirely new network over an enormous amount of downtown Toronto. Notwithstanding the advantages for Beanfield of that arrangement, we have requested that future phases of this redevelopment be open to competition. We did so because, over the course of the past 5 years, despite the increasing ubiquity of fibre network deployment, what had been a rare and targeted practice only occurring in exceptional circumstances has become increasingly, and disturbingly, common and entrenched. We raised the issue of bulk arrangements in the process leading up to the Commission’s 2021 Decision on access to MDU in building wire (“IBW”) and more recently in the Commission’s review of the wholesale high-speed access service framework.¹

¹ <https://crtc.gc.ca/eng/archive/2021/2021-239.htm>, para 88 and Beanfield Initial Intervention and Intervention in Telecom Notice of Consultation CRTC 2023-56.

4. In a typical Bulk Agreement scenario, a building developer and network provider agree to a multi-year (five to eight year) deal wherein the provider offers some combination of up-front fee to the developer (not the end user or condominium corporation) and preferential rates in return for servicing all units in the building. The provider issues one bill for all service to the building, and residents are automatically enrolled in, and required to pay for Internet service, as part of their rent or condo fees.
5. While not technically preventing the provision of service from other providers, a Bulk Agreement removes any incentive for an end-user to request service from another provider, as they are already obliged to pay for service from a single provider chosen for them. In turn, with no material market share possible, potential competitors (especially non-incumbent ones) have little incentive to pursue access.² Opportunities to provide service can theoretically exist after the initial term of a Bulk Agreement expires, but once established, bulk arrangements are not readily dissolved. The bulk service provider has the advantage of incumbency in having already built its network and recouped that investment over a first term. Its presence and method of payment of service fees have become entrenched. With its in-building network paid for, it can easily outbid any carrier on any bulk renewal or be in a position to price compete if the bulk arrangement ends and other carriers enter, not to mention having years of first access and monopolistic advantage – not only in terms of its provision of internet service, but television, home phone, cellular phone and home security services as well.
6. Thus, Bulk Agreements are not only preferential arrangements that restrict other providers from accessing and serving end-users, they effectively grant exclusivity to one service provider on an indefinite basis.
7. Core elements of a Bulk Agreement that make this possible include:
 1. The servicing of all or virtually all end-user units in an MDU; and
 2. The single point of billing through the MDU owner or condominium corporation that forms part of the rent or mandatory expenses of the end-user;
8. Contrary to earlier Commission findings,³ Beanfield submits that Bulk Agreements no longer constitute a limited or isolated practice.
9. We have estimated that Bulk Agreement arrangements currently represent close to half of all new MDU developments in the GTA.⁴ (The GTA comprises 19% of Canada’s housing market and is, by far, Canada’s largest condo market.⁵) And the dominant provider in, and concluder of, such Bulk Agreements appears to be Rogers.

² It costs on the order of \$50K to \$100K for a service provider to install fibre network facilities and equipment in an MDU. A handful of \$50/month subscribers cannot cover that investment. Only incumbents can justify it, in the hope of some material revenue stream at some point in the future.

³ Ibid, para 92. At that time (July 2021), the Commission expressed “the view that no further regulatory measures are necessary to address [such] MDU access-related issues at this time, given the limited number of occurrences of such issues.”

⁴ Based on figures provided in Beanfield’s June Intervention in Telecom Notice of Consultation CRTC 2023-56 - Review of the wholesale high-speed access service framework, para 47. We acknowledge some inadvertent errors in that paragraph, which should have read as follows: “Of 110 new MDU development projects Beanfield reached out to (for potential access) since January 2022, 54 projects, comprising a total of 39 617 units, already had bulk deals – bulk deals that were in the pipeline to be rolled out on the basis of pre-established developer/incumbent telco relationships. While these developments will come to market over a number of years, to put them in perspective, the number of condo units that will be under these bulk arrangements is almost double the total housing starts for the City of Toronto for 2022 (20 864). It’s also almost double all the housing starts for SK, MB, NB, NS, NL and PEI combined for 2022 (21 757).”

⁵ CMHC Statistics, at <https://www.cmhc-schl.gc.ca/professionals/housing-markets-data-and-research/housing-data/data-tables/housing-market-data/housing-starts-dwelling-type>

Bulk Agreement practices of Rogers

10. At Exhibit A to this Application, Beanfield has provided a spreadsheet of what we understand to be active Bulk Agreements initially executed with developers of Toronto MDUs between 2017 and 2022. We compiled this exhibit based on internal research and investigation; we do not assume it to necessarily be an exhaustive list.
11. Of the 37 buildings identified, all but eight, that is 78%, are believed to be with Rogers. The remainder appear to be with Bell. No non-incumbent providers are identified as having executed Bulk Agreements with developers over this period.
12. These 37 active bulk MDU arrangements, mostly with condominiums, comprise almost 17,000 individual units, or end-users, of whom over 13,000 are bulk-served by Rogers. The number of units per MDU development range from just under a hundred to over a thousand. Initially executed by the developer, underlying condominium Bulk Agreements would have been subsequently assigned to the MDU condominium corporation – typically following registration of the corporation but before occupancy or board elections.”⁶ Expiry/renewal dates range from 2023 to 2028.
13. Unfortunately, we believe that these 37 active bulk MDU arrangements are just the tip of the iceberg. Beanfield is aware of 54 planned/in progress MDU developments in the GTA, representing almost 40,000 units with nine different developers, that appear to be already locked into Bulk Agreements.⁷ This suggests that in the last year and a half, more than twice as many end-users will have been denied end-user choice and forced into future bulk arrangements than in the previous five years.⁸
14. Pursuant to Telecom Decision CRTC 2003-45, a LEC is required to “disclose on its web site all terms and conditions, including fees, of any written access agreement concluded with the building owner of that MDU.”⁹ Beanfield has been able to locate a limited number of unexecuted access agreement templates on Rogers’ website in respect of the bulk arrangements identified at Exhibit A, but no actual Bulk Agreements.¹⁰
15. At Exhibit B to this Application, Beanfield has provided a copy of the Rogers Bulk Agreement (including associated agreements) for one of the MDUs identified in Exhibit A, namely that at 19 Western Battery Rd. (the “Sample Bulk Agreement Package”), which was sent to us by a unit holder.¹¹ We believe this Sample Bulk Agreement Package to be fairly typical of bulk arrangements, generally, and representative of Rogers’ bulk arrangements, in particular.
16. The Sample Bulk Agreement Package includes the following component agreements:
 1. An Access Agreement between Rogers and Liberty Residences Limited Partnership (“Owner”; a single purpose entity formed by the developer for the development in question), dated October 11, 2017 (“Sample Access Agreement”). The Sample Access Agreement is similar to, but somewhat more extensive than,

⁶ Upon registration of the Corporation the developer appoints members of the development team as the interim Condominium Board. The unit holder elected board of directors is not selected until the turnover meeting, typically 6 months to 2 years later.

⁷ Per note 4, *infra*.

⁸ We have incomplete information on the service providers concerned, but based on the information we have, believe Rogers continues to be the dominant bulk provider.

⁹ <https://crtc.gc.ca/eng/archive/2003/dt2003-45.htm> at para 175.

¹⁰ See <https://www.rogers.com/home/mdu-agreements>. For example, template access agreements can be found for 275 Village Green Sq. and 50 Ann O’Reilly Rd.

¹¹ We note in passing that in this particular building, Bell is understood to have installed its own network notwithstanding the Bulk Agreement with Rogers.

- those provided on Rogers’ website, as noted above. The Sample Access Agreement states that “the access rights granted to Rogers are non-exclusive and non-preferential” (section 2), but then goes on to state that “Rogers and any other service providers granted access, shall have the non-exclusive right to provide Communications Services to the Premises and occupants, solely on a direct subscriber pay basis while this agreement is in effect” (section 4);
2. A Marketing Agreement between Rogers and Liberty Residences Limited Partnership, dated October 11, 2017 (“Sample Marketing Agreement”). The Sample Marketing Agreement provides Rogers with “exclusive right and license” to specified on-site marketing activities (section 1). Pursuant to the Sample Marketing Agreement, “The Owner covenants and agrees that it will only endorse Rogers’ Communications Services [television, internet, telephony and other communications services] and will not promote competitive products and/or services, nor will it permit other service providers to conduct any on-site marketing or promotion initiatives ...” (section 2). The Sample Marketing Agreement also states that “The owner and Rogers agree that this Agreement is not an agreement [f]or access to the Property and in no way restricts the Owner from granting access to any other provider of Communications Services” (section 6);
 3. A Bulk Internet Agreement between Rogers and Liberty Residences Limited Partnership, dated January 8, 2019. This Sample Bulk Service Agreement states that “Rogers will provide the occupants of the premise on a bulk billing basis” in accordance with a rate card based on 538 units; starting at \$25 per month per unit and rising to \$55 per month per unit in year 6 (section 2, Schedule A). The Sample Bulk Service Agreement is deemed to be assumed by the Condominium Corporation after turnover, and has an initial six-year term, extendable by a further four years if not otherwise terminated (section 4). The Sample Bulk Service Agreement is expressly “subject to the laws and regulations of applicable regulatory authorities” (section 6); and
 4. An assignment of the Bulk Agreement from Liberty Residences Limited Partnership to Toronto Standard Condominium Corporation No. 2792 (“Bulk Agreement Assumption”), dated September 2, 2020. The assignment is post registration of the corporation, but pre-board elections and turnover, meaning that appointees of the developer, rather than elected representatives of unit holders, legally assumed the Bulk Agreement on behalf of the Condominium Corporation.

Rogers Bulk Agreements violate the MDU Access Condition

17. As is evident from the above review of the Sample Bulk Agreement Package, Rogers’ Bulk Agreement practices are designed to *appear* to be in compliance with the MDU Access Condition. Rogers is careful to execute a distinct and separate access agreement that, on the surface, provides no preferential or exclusive rights. It is only in reviewing companion marketing and service agreements that the extent of preferential treatment and exclusivity becomes apparent. The full import of a bulk arrangement is thereby afforded limited exposure, as only a basic template of the access agreement itself is treated as being subject to public disclosure requirements.
18. The MDU Access Condition, established pursuant to the Commission’s powers under section 24 of the Act, requires that the provision of telecommunications service by a LEC [local exchange carrier] in an MDU be subject to the condition that all LECs wishing to serve *end-users* in that MDU are able to access end-users in that MDU on a timely basis, by means of resale, leased facilities or their own facilities, at their choice, under reasonable terms and conditions.¹²

¹² Pursuant to Telecom Decision [2003-45](#). In Telecom Regulatory Policy [2021-239](#), the Commission extended the MDU access condition and associated obligations to all carrier ISPs such that all carrier ISPs would have access to copper IBW on the same basis as LECs.

19. Rogers' Bulk Agreement practices seek to circumvent the MDU Access Condition by choosing to assume an extremely narrow definition of the word "access" – in particular, that "access" should be interpreted to mean mere *physical* access, rather than *de facto* access, taking into account broader context.
20. Were it reasonable to apply such a narrow approach to interpretation, Beanfield would agree - bulk arrangements would not contravene the MDU Access Condition as they do not directly deny physical access to MDU end-users. Nothing in the Rogers Sample Agreement Package prevents another service provider from obtaining physical access and seeking to provide services on a direct subscriber pay basis. What the Rogers bulk arrangements do is eliminate any practical means by which a competing provider can market, provide and monetize services to end-users "under reasonable terms and conditions".
21. In Beanfield's submission, not only does the plain and ordinary meaning of the word "access" not lend itself to such a narrow restrictive interpretation, but so does the context in which the Commission framed and established the MDU Access Condition.

Defining access

22. In establishing the MDU Access Condition, the Commission set out a number of specific "Guidelines as to just and expedient conditions of access to MDUs", stating the following in respect of exclusive and preferred access arrangements:
 150. The Commission does not consider that permitting exclusive or preferred access arrangements would be consistent with its policy objectives, with the Act or with the access condition.
 151. In Decision [99-10](#), the Commission set out its view that any agreement between a LEC and another party that resulted in the provision of local service to an MDU on an exclusive basis was, *prima facie*, a violation of subsection 27(2) of the Act. Furthermore, as noted in Decision [99-10](#), the condition imposed in Decision [97-8](#), requiring all LECs to ensure that the end-users they served had direct access, under reasonable terms and conditions, to services provided by any other LEC serving in the same area, also requires that a LEC not take any action, either alone or in conjunction with another party, which would preclude such access.
 152. In light of the above, the Commission concludes that any arrangement between a LEC and another party, whether written or unwritten, **that has the effect of restricting another LEC from accessing and serving end-users in an MDU is unjustly discriminatory, and contrary to the MDU access condition.**
(emphasis added)
23. The Commission's conclusion at paragraph 152 of Telecom Decision [2003-45](#) cited above is unambiguous, as is its application in the current circumstances. Rogers Bulk Agreement practices, as evidenced by the Sample Bulk Agreement, have the effect of restricting other providers from accessing and serving end-users, and are therefore contrary to the MDU Access Condition.
24. We also submit that the Sample Marketing Agreement, in providing an exclusive rather than a preferred marketing arrangement to Rogers, has the effect of limiting access by other providers, and is contrary to the MDU Access Condition, per paragraph 153 of Telecom Decision [2003-45](#) cited above.

Defending end-user choice

25. The foundational principle that underlies the MDU Access Condition is end-user choice. As noted in Telecom Decision [2003-45](#):

In order to facilitate end-user choice, the Commission determined in Decision [97-8](#) that it was in the public interest that end-users have the right and the means to access the LEC of their choice in all situations ... In order to ensure that these principles were observed, the Commission required, as a condition of providing service, that all LECs ensure that the end-users that they served were able to have direct access, under reasonable terms and conditions, to services provided by any other LEC operating in the same area.

26. While in Decision [97-8](#), the Commission affirmed the rights of end-users, including tenants in MDUs, to access the service providers of their choice in all situations,¹³ for convenience and practicality, for the purposes of the MDU Access Condition, it recognizes a condominium corporation as representative of end-users/tenants and assumes that entity will act in their best interests unless proven otherwise. That being said, the Commission's seminal 2016 decision on a Beanfield complaint regarding a condominium corporation denying access confirmed that a condominium corporation **could not circumvent the MDU Access Condition by merely deeming itself the end-user**.¹⁴
27. This Application addresses a very different type of circumvention of the MDU Access Condition, in a very different way.
28. Rogers' Bulk Agreement practices intentionally ensure that end-users retain a theoretical legal right to obtain services on a *direct subscriber pay* basis from alternate providers, but render this right meaningless. End-users are obliged to pay for Rogers bulk services whether they use them or not. Further key to Rogers' Bulk Agreement practices is the fact that the developer rather than the condominium is the entity that initially agrees to thwart end-user choice. The condominium board inherits a decision that has already been made for it, and end-users pay the price.
29. Thus, even if the Commission were to leave open the question as to whether, in certain circumstances, bulk agreements between an elected condominium corporation and a service provider do not breach the MDU Access Condition, the fact that Rogers' Bulk Agreement practices are entrenched at the developer level should make them entirely unacceptable.
30. Simply put, the developer or building owner (in the case of rental) has no valid claim to represent end-user choice. To the contrary, as evident from the Sample Bulk Agreement Package, the developer's agreement with Rogers locks tenants into an arrangement that not only precludes choice, but also subjects them to paying for legacy monopoly services at escalating rates that rapidly cease to be competitive.¹⁵ By contrast, given checks and balances in

¹³ At para 203.

¹⁴ <https://crtc.gc.ca/eng/archive/2016/2016-324.htm>

¹⁵ Beanfield notes that in Toronto MDUs it currently offers a residential service of 1Gbps symmetrical speed, with unlimited usage and no contracts for \$50 per month; prices having dropped by 20% and speed increasing by 400% over the last three years. <https://www.beanfield.com/residential/internet/>

provincial condominium legislation,¹⁶ there is almost no potential for Bulk Agreements to be established after the developer/condominium turnover meeting.¹⁷

31. Why would a developer do bulk deals? Missing from the Sample Bulk Agreement Package is evidence of any upfront fees paid or other consideration provided by Rogers to the developer. Beanfield has no specific knowledge of the presence or the nature of upfront fees in this particular bulk arrangement, but is aware of developers who have requested fees of \$100 to \$300 per unit for the rights to an exclusive bulk arrangement.¹⁸ Moreover, it is our understanding and belief that such developer-service provider bulk arrangements are increasingly being made at a broader or master agreement level, governing not just a single building, but a number of developments over master planned communities.¹⁹
32. Beanfield submits that proof of Rogers payment of pay access fees in return for Bulk Agreements is not necessary for the purposes of a finding that Rogers has breached the MDU Access Condition. Nevertheless, should the Commission choose to require Rogers to disclose agreements relating to access at the developer level, such additional evidence would assist in understanding:
 1. the degree to which the Bulk Agreements sacrifice end-user interests for the financial benefit of the developer and Rogers;
 2. additional potential grounds for a finding that Rogers has breached the MDU Access Condition;²⁰ and
 3. the reasons why Bulk Agreements with incumbent providers in new builds are becoming so entrenched.

Rogers Bulk Agreements constitute an undue preference

33. Section 27(2) of the *Telecommunications Act* prohibits unjust discrimination and undue preference:

No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

34. The Commission's consideration of an allegation of undue or unreasonable preference or disadvantage under subsection 27(2) of the Act is conducted in two phases. First, the Commission must determine whether the conduct in question constitutes a preference or subjects a person to a disadvantage. If it so determines, it must then decide whether the preference or disadvantage is undue or unreasonable.²¹

¹⁶ For example, under Ontario's Condominium Act, introducing an exclusive bulk agreement would constitute a "substantial change in a service that a corporation provides to the owners" requiring approval of 66²/₃% unit holders.

¹⁷ The turnover meeting is the first meeting of unit owners after the developer is no longer the majority owner and the condominium is registered. This generally occurs within 42 days of a majority of unit ownership being transferred from the developer.

¹⁸ **Such fees can, accordingly, amount to hundreds of thousands of dollars per development, further thwarting competition as it would be unlikely for independent ISPs to be in a position to afford such upfront fees. This could also explain why all 37 active bulk MDU arrangements identified in Exhibit A are with incumbents.**

¹⁹ Exhibit A provides anecdotal evidence of this. The last five buildings listed are part of "The Well" development; all served by Rogers and comprising 1673 units.

²⁰ As confirmed in <https://crtc.gc.ca/eng/archive/2022/2022-5.htm>, para 58. "Building owners are also reminded that access fees for the right to enter MDUs that are in the nature of an admission or entry fee (as opposed to other approved fees, such as for the use of IBW under the control of building owners or for the use of space occupied by telecommunications facilities, or certain costs associated with installing or upgrading IBW) are not appropriate."

²¹ See, for example, <https://crtc.gc.ca/eng/archive/2017/2017-105.htm>, para 22.



35. The Commission has also stated that “two essential elements must be present. The first is discrimination, preference, advantage, prejudice or disadvantage... and the second is the absence of justification...”²²
36. Finally, the burden is on the applicant to demonstrate that the conduct is preferential or disadvantages a person. Pursuant to subsection 27(4) of the Act, the respondent has the burden of proving that any preference or disadvantage is not undue or unreasonable.²³
37. In the current instance, there can be no doubt that the Rogers Bulk Agreement practices, as evidenced by the Bulk Agreement Package confer a preference on Rogers by granting it an exclusive bulk service arrangement and exclusive marketing rights that have the effect of making it the preferred, if not de facto exclusive provider of internet services to end-users in the specified MDU. In so doing, the Rogers’ Bulk Agreement practices also discriminate against and disadvantage other ISPs by preventing them from competing on a realistic or reasonable basis, and discriminate against and disadvantage end-users by effectively preventing them from obtaining service from the ISP of their choice - ultimately saddling them with legacy technology at uncompetitive prices.
38. In light of this, Beanfield submits that the onus falls on Rogers to prove that the preference or disadvantage conferred by its Bulk Agreement practices is not undue or unreasonable.
39. To this end, we do note, however, that:
- The exclusive nature of the Bulk Service and Marketing Agreements with a specified MDU raise them to the level of undue and unreasonable. Rogers is the only provider of bulk internet services, and provides, and is paid on the basis of providing, these services to all units in the MDU. Rogers is also the only provider of television, internet, telephony and other communications services able to *market* such services in the building;
 - The fact that other service providers can, in theory, execute their own access and direct subscriber pay service agreements with the same MDU does not provide such other providers with a reasonable means of offering service – not just internet services, but in practice almost any other communications services;
 - There is no justification for the Rogers’ Bulk Agreement practices, other than their benefit to Rogers. They limit end-user choice, competition and network resiliency. They effectively lock end-users into legacy technologies. Any initial price advantage to the consumer is quickly eroded;
 - The fact that Rogers Bulk Agreements are originally executed at the developer level means that there is no end-user input into decision making, and little practical ability for the condominium board to change the arrangement;
 - Evidence of upfront fees paid by Rogers to developers in return for Bulk Agreements would further demonstrate the egregious anti-competitive nature of the arrangement; and
 - These are no longer limited, isolated arrangements but part of a concerted strategy to “lock up” the provision of communication services in new condominium builds; to bypass competition by creating monopoly MDU islands.
40. Moreover, we again note the Commission’s prior determination that “any arrangement between a LEC and another party, whether written or unwritten, *that has the effect of* restricting another LEC from accessing and serving *end-users* in an MDU is unjustly discriminatory” (emphasis added).²⁴

²² The Commission’s approach in relation to allegations that a Canadian carrier has breached what is now section 27(2) was set out in Telecom Decision CRTC 77-16 (*Challenge Communications Ltd. v. Bell Canada*), cited in <https://crtc.gc.ca/eng/archive/1989/dt89-5.htm>

²³ See, for example, <https://crtc.gc.ca/eng/archive/2013/2013-40.htm> at para 15.

²⁴ Telecom Decision [2003-45](#), para 152; extended to include arrangements between carrier ISPs and building owners per Telecom Regulatory Policy [2021-239](#), para 186.

Broad Policy Considerations

41. The Act requires the Commission to exercise its powers and perform its duties with a view to implementing the Canadian telecommunications policy objectives. The broad policy objectives also support a broad interpretation of the Commission’s discretion to determine what constitutes a violation of subsection 27(2) of the Act.²⁵
42. Beanfield notes that there is considerable rationale, on a broad policy basis, to prohibit Bulk Agreements. Indeed, as we stated in our intervention in respect of the Commission’s review of the wholesale high-speed access service framework, contrary to the 2023 Policy Direction, allowing exclusive bulk arrangements completely undermines the competitive internet services market, and in particular:
 1. Discourages competition and investment;
 2. Reduces the availability of reliable and resilient telecommunications;
 3. Increases barriers to access for new providers; and
 4. Disables the innovation that smaller players would otherwise inherently provide in fighting to gain market share.²⁶
43. Over three decades ago, the Commission expressed the view that “an important objective of local competition was to increase consumer choice, and that it was in the public interest that end-users have the right and the means to have access to the LEC of their choice in all situations.”²⁷ Today, a house owner in a single-family dwelling typically has two facility-based providers plus wholesale providers to choose from. A residential MDU is just like a small town or neighbourhood – we do not allow the person who builds or governs a town to deny choice to residents, but with Bulk Agreements we are allowing it in MDUs. Such discrimination on the basis of the type of housing one lives in is clearly contrary to established policy and must be curtailed.
44. In preparing our interventions in the Commission’s wholesale access review, we came to the conclusion that the Rogers’ Bulk Agreements practices that are the subject of this Application are so clearly in contravention of the MDU Access Condition and subsection 27(2) of the Act, that no new regulatory measures should be necessary to address them.²⁸ While we find it unnecessary to delve into all the policy merits of granting the requested relief, we believe that such policy considerations strongly favour granting this Application.

Conclusion and Remedy Sought

45. The Sample Bulk Agreement Package provides clear evidence of Rogers engagement in Bulk Agreement practices designed to appear to comply with the letter of the MDU Access Condition, while being entirely inconsistent with it.

²⁵ Per, for example, <https://crtc.gc.ca/eng/archive/2021/2021-398.htm>

²⁶ *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy: SOR/2023-23*, <https://ised-isde.canada.ca/site/mobile-plans/en/order-issuing-direction-crtc-renewed-approach-telecommunications-policy> Cited in Beanfield Intervention, Telecom Notice of Consultation CRTC 2023, para 49.

²⁷ Telecom Decision 97-8, para 205; reiterated at Telecom Regulatory Policy 2021-239, para 4.

²⁸ Consistent with the Commission’s findings at <https://crtc.gc.ca/eng/archive/2021/2021-239.htm>, para 92. This and the realization that the validity of exclusive bulk billing arrangements had never been “tested” before the Commission.

46. Offending elements of Rogers' Bulk Agreement practices include:
1. Exclusivity in providing internet services to all or virtually all end-user units in an MDU on a bulk basis;
 2. A single point of billing through the developer/condominium corporation; the per unit fees from which are expensed to the unit holder/end-user;
 3. Initial agreement at the developer level that triggers automatic assignment from the developer to the condominium corporation; and
 4. Exclusive marketing arrangements for Internet and other communications services.
47. Such exclusive bulk internet service arrangements with MDU developers and condominium corporations have the effect of preventing other ISPs from accessing and serving end-users. Beanfield thus submits that, in concluding the Rogers' Bulk Agreements, Rogers has:
1. Contravened the MDU Access Condition; and
 2. Granted an undue preference to itself, and unjustly and unreasonably discriminated against these competitors and their customers, in violation of Section 27(2) of the *Telecommunications Act*.
48. Rogers Bulk Agreement practices are also inconsistent with several of the objectives of Canada's telecommunications policy and contrary to the directives issued to the Commission in the 2023 Policy Direction.
49. While not representative of all potentially inappropriate bulk agreements, Rogers' Bulk Agreement practices represent, in our view, the most egregious and extensive behaviour of their kind. A clear and timely Commission ruling against Rogers' Bulk Agreement practices would address material anti-competitive bulk agreement behaviour and set a precedent that would help end similar behavior.
50. Accordingly, Beanfield respectfully requests that the Commission:
1. Declare Rogers Bulk Agreement, and similar Bulk Agreement, practices as contrary to the MDU Access Condition and Section 27(2) of the *Telecommunications Act*;
 2. Require Rogers to:
 1. Terminate all Rogers Bulk Agreements that had not been assigned to a Condominium Corporation as of the date of this Part 1 Application;
 2. Advise Condominium Corporations that are a party to a Rogers Bulk Agreement that the agreements will terminate no later than 180 days from the date of the Commission's decision; and
 3. Within 30 days of the date of the Commission's decision, provide the Commission with a transition plan for each Condominium Corporation that is a party to a Rogers Bulk Agreement that, on an expedited basis:
 1. winds down Rogers exclusive marketing and bulk service arrangements;
 2. enables competing service providers to access the MDU and provide services to end-users, consistent with the MDU Access Condition; and
 3. advises end-users of, and ensures the ability of end-users to, exercise their right to receive and pay for internet services from the service provider of their choice.



51. In so doing, Beanfield urges the Commission to confirm that the MDU Access Condition should be interpreted broadly, and with a view to maximizing end-user choice, including:

- “end-user” meaning the person whose name is on the bill and is using the services, not owners or developers;
- “access” meaning not only physical access but competitive service delivery access;
- that that the type of housing a person has should not limit their choice of provider; and
- that bulk billing practices are *prima facie* contrary to the MDU Access Condition, unless exceptional circumstances can be proven that they are in end-user’s interests and not discriminatory.

All of which is respectfully submitted.

Yours sincerely

Todd Hofley
VP, Policy and Communications

cc. Rogers Communications Inc. regulatory@rci.rogers.com

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BULK AGREEMENT ASSUMPTION

BETWEEN:

**LIBERTY RESIDENCES INC.,
as general partner of and on behalf of
LIBERTY RESIDENCES LIMITED PARTNERSHIP**

(the "Assignor")

and

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2792

(the "Assuming Party")

WHEREAS:

- A. The Assignor entered into a bulk internet agreement with Rogers Communications Inc. ("Rogers") dated as of the 8th day of January, 2018, a copy of which is attached hereto as Schedule "A" (the "Bulk Agreement"); and
- B. The Assuming Party has agreed to take an assignment of the Bulk Agreement and assume the obligations of the Assignor thereunder;

NOW THEREFORE, for good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto acknowledge and agree as follows:

1. The Assignor hereby assigns and the Assuming Party hereby assumes the rights, benefits, liabilities and obligations of the Assignor under the Bulk Agreement as of the date set out below.
2. Provided the Assignor has paid all fees owing to Rogers under the Bulk Agreement to the date hereof, the Assuming Party on behalf of itself and for and on behalf of each and every unit owner of the Assuming Party, and their respective heirs, executors, administrators, successors and assigns, hereby releases, forever discharges and covenants and agrees to fully indemnify and save harmless the Assignor, its related, affiliated, and/or associated companies (as defined in the *Income Tax Act* (Canada)) and their respective shareholders, directors, officers, employees, principals and agents, of and from all claims, demands, costs, expenses, damages, actions, or causes of action past, present or future, arising from, relating to, in connection with and/or pertaining to the Bulk Agreement. This provision shall survive the term or any termination of the Bulk Agreement and/or this agreement.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF the Assignor and Assuming Party have executed this Bulk Agreement Assumption as of the 2nd day of September, 2020.

**LIBERTY RESIDENCES
LIMITED PARTNERSHIP,
by its general partner
LIBERTY RESIDENCES INC.**

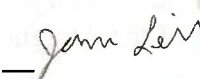


Digitally signed by Gavin Cheung
DN: cn=US, e=gcheung@centrecourt.com,
o=CentreCourt, cn=Gavin Cheung
Reason: I am approving this document
Date: 2020.09.03 14:46:11-04'00'

Name:
Title:

I/We have authority to bind the Corporation

**TORONTO STANDARD
CONDOMINIUM
CORPORATION NO. 2792**



Digitally signed by
Jonathan Levinoff
Date: 2020.09.03
13:44:09 -04'00'

Name:
Title:



Digitally signed by
Sarah George
Date: 2020.09.03
13:47:04 -04'00'

Name:
Title:

I/We have authority to bind the Corporation

SCHEDULE "A"

BULK AGREEMENT

(see next page)

Bulk Internet Agreement

January 8, 2018

Liberty Residences Limited Partnership
By its general partner, Liberty Residences Inc.
c/o 134 Peter Street, Suite 200
Toronto, Ontario
M5V 2H2

Contract No.

Attention: Andrew Hoffman

Re: Bulk Internet Services offered by Rogers Communications Inc. ("Rogers") to **Liberty Residences Limited Partnership by its general partner, Liberty Residences Inc. ("Declarant")** for the condominium project known as "ZEN King West" constructed upon the premises located at **19 Western Battery Road, Toronto, Ontario ("Premises")**

We are pleased to offer the Internet services ("**Internet Services**") described in Schedule "A" to the occupants of the Premises on the following terms and conditions:

1. Subject to all applicable laws, Rogers and the Declarant agree that Section 4 of the Transfer of Easement between the parties which provides that Rogers and any other service providers shall only be permitted to provide Communication Services on a direct resident pay basis during the first ten years following the date of registration of the Premises as a condominium, shall not apply to the provision of Internet Services under and during the term of this agreement and any extension(s) thereof.
2. Rogers will provide the occupants of the Premises with Internet Services on a bulk billing basis to the Declarant. The internet modems that are provided shall remain the property of Rogers at all times and shall be returned to Rogers in good working order, reasonable wear and tear excepted, upon expiry or termination of this agreement.
3. The Declarant agrees to pay to Rogers service charges ("**Periodic Billing**") calculated in accordance with the provisions of Schedule "A".
4. This agreement shall be for a term of six (6) years commencing on the date of first occupancy of the Premises ("**Initial Term**"). The condominium corporation to be created upon the registration of the Premises as a plan of condominium, shall assume this agreement and shall have the right to extend the term of this agreement for an additional term of four (4) years at the rates set out in Schedule "A" (the "**Option**") provided that the Declarant or the condominium corporation exercises such right by notice in writing to Rogers at least ninety (90) days before the end of the Initial Term. Notwithstanding anything to the contrary herein, if the Option is not exercised and the condominium corporation has failed to provide written notice to Rogers at least thirty (30) days prior to the end of the Initial Term that it requires Rogers to cease providing the Internet Services to the condominium corporation following the end of the Initial Term and Rogers continues to provide the Internet Services to the condominium corporation and residents after the end of the Initial Term, this agreement shall deemed to have been automatically extended on a year to year basis at the rates specified in Schedule "A" and terminable by either party at the end of the extended term on not less than ninety (90) days' prior written notice given before the end of the extended term.
5. Any notice relating to this agreement will be in writing and sent by registered mail to the other party, delivered personally or transmitted by facsimile to the addresses noted below.
6. This agreement is subject to the laws and regulations of applicable regulatory authorities which will

prevail in the event of a conflict. If any provision of this agreement is declared invalid such provision shall be deemed severed and shall not affect the remaining provisions. Delay in the performance by either party of their respective obligations under this agreement for reasons and circumstances beyond their reasonable control shall be excused for the period of such delay. Any amendment to this agreement shall be in writing and signed by the parties.


7. This agreement shall enure to the benefit of and bind the Premises, the parties, their transferees, successors and assigns. Upon the delivery to Rogers of a copy of the registered bylaw authorizing the assumption of this agreement by the condominium corporation, the Declarant shall thereupon automatically be released from all further obligations to Rogers under this agreement and references to the Declarant shall be deemed to mean the condominium corporation.

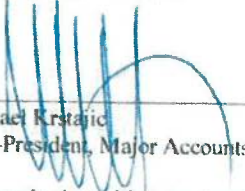
We look forward to providing services to you and the residents. Please confirm your agreement to the foregoing by signing and returning the enclosed duplicate copies of this letter to the undersigned.

Yours very truly,

Rogers Communications Inc.

855 York Mills Road
Don Mills, Ontario
M3B 1Z1
Facsimile: (416) 446-7416
Attn: Director, Major Accounts

Per: 
Name: Stephen Marshall
Title: Director, Major Accounts

Per: 
Name: Michael Krstajic
Title: Vice-President, Major Accounts

We have the authority to bind the corporation.

**Liberty Residences Limited Partnership
By its general partner, Liberty Residences Inc.**

134 Peter Street, Suite 200
Toronto, Ontario
M5V 2H2
Attn: Andrew Hoffman

Agreed and accepted this 2 day of May, 2018.

Per: 
Name: Gavin Chiu
Title: Vice President

Per: 
Name:
Title:

I/We have the authority to bind the corporation.

Schedule "A"
Bulk Internet Services and Rates

Address of Property: 19 Western Battery Road, Toronto, Ontario

Section 1 - Description of Internet Services

Rogers Ignite™ 1G - High-Speed Internet service including Rogers Advanced Wi-Fi Modem

Specifications:

Download - Up to 1Gbps

Upload - Up to 30 Mbps

Unlimited usage

- 1 Speed may vary with Internet traffic, server gateway router, computer (quality, location in the home, software and applications installed, home wiring, home network or other factors)

Section 2 - Activation & Billing

The Declarant acknowledges end users access to the Internet Services will be subject to acceptance of, and compliance with, Rogers' Acceptable Use Policy and Terms and Conditions of Service established by Rogers from time to time, posted at www.rogers.com/terms

Section 3 - Periodic Billing

- a) The Declarant agrees to pay the monthly billing set out in the following table, based on the periodic rate multiplied by the number of residential condominium units within the Premises:

Period	Rate		Units		Monthly*
Year 1	\$25.00	x	538	=	\$13450.00
Year 2	\$30.00	x	538	=	\$16140.00
Year 3	\$35.00	x	538	=	\$18830.00
Year 4	\$40.00	x	538	=	\$21520.00
Year 5	\$45.00	x	538	=	\$24210.00
Year 6	\$55.00	x	538	=	\$29590.00
Option Period					
Year 7	\$55.00	x	538	=	\$29590.00
Year 8	\$56.65	x	538	=	\$30477.70
Year 9	\$58.35	x	538	=	\$31391.30
Year 10	\$60.10	x	538	=	\$32333.80
* ALL APPLICABLE TAXES ARE EXTRA					
** MONTHLY RATE SUBJECT TO ADJUSTMENT BASED ON ACTUAL NUMBER OF UNITS					
***If first occupancy does not take place on or before December 31, 2022, the rate charged in the first year of the term shall be increased by 3% per year					

- b) The monthly billing shall commence upon the first day of the month in which the Premises begins to occupy and shall commence at the initial Periodic Billing Rate, discounted for the first six months of the term in accordance with the following table:

Month	Deemed % of Units Occupied
1	20.00%
2	36.00%
3	52.00%
4	68.00%
5	84.00%
6+	100.00%

Section 4 - Default

In the event that the Declarant fails to pay the Periodic Billing as aforesaid, the Declarant will pay interest on such overdue accounts at the rate of 1% per month calculated and compounded monthly on the overdue amounts (12.6825% per year), not in advance, from the due date until paid in full. In addition to the foregoing, if the Declarant fails to make any payments as aforesaid, Rogers may give notice to the Declarant requesting full payment and if the Declarant fails to cure such default within ten (10) days of receipt of notice, Rogers will have the right to a) suspend service to the Declarant until such default is remedied or (b) terminate this agreement. Despite suspension of service, the Declarant shall remain liable for Periodic Billing to the date of expiry or earlier termination of the agreement. In addition, temporary or permanent suspension of service to an end user as a result of violating Rogers' Acceptance Use Policy or material terms or conditions of the Terms of Service shall not result in a reduction in the Periodic Billing to the Declarant.

ACKNOWLEDGMENT AND DIRECTION

TO: Owens Wright LLP

RE: Transfer Easement between Liberty Residences Limited Partnership by its general partner, Liberty Residences Inc.
and Rogers Communications Inc.
Property Address: 19 Western Battery Road, Toronto, Ontario
Our File No. 5555-8090

This will confirm that:

- I/We have reviewed the agreement attached hereto and confirm that the information contained therein is accurate;
- You are authorized and directed to sign and register electronically on my behalf the document(s) described in this Acknowledgment and Direction as well as any other document(s) required to complete the transaction described above;
- You are further authorized and directed to amend the document, if required, provided such amendments are minor in nature and are required to effect registration of the document;
- The effect of the electronic documents described in this Acknowledgment and Direction has been fully explained to me/us and I/we understand that I/we are parties to and bound by the terms and provisions of these electronic document(s) to the same extent as if I/we had signed these documents; and
- I/we are in fact parties named in the electronic documents described in this Acknowledgment and Direction and I/we have not misrepresented our identities to you.
- A copy of this Acknowledgement and Direction may be executed and delivered by fax and/or email and shall have the same legally binding effect as if it were an original.
- This Acknowledgement and Direction may be released by you to Her Majesty the Queen in Right of Ontario as represented by The Director of Land Registration (the "Director") upon request of the Director in the event of any investigation regarding suspected fraudulent or unlawful activity or registration.

Dated at toronto, this 2 day of May, 2018.

LIBERTY RESIDENCES LIMITED PARTNERSHIP
By its general partner, **LIBERTY RESIDENCES INC.**

Per: [Signature]
Name: CHRIS W. CHERRY
Title: VICE PRESIDENT

Per: [Signature]
Name: _____
Title: _____

I/We have authority to bind the Corporation.

October 11, 2017

Liberty Residences Limited Partnership
By its general partner, Liberty Residences Inc.
c/o 134 Peter Street, Suite 200
Toronto, Ontario
M5V 2H2

Dear Sirs:

In consideration of \$2.00 received, **Liberty Residences Limited Partnership by its general partner, Liberty Residences Inc.** (the "Owner") grants to **Rogers Communications Inc.** ("Rogers") access to the premises located at **19 Western Battery Road, Toronto, Ontario** (the "Premises") being the servient tenement described in Schedule "A" to permit Rogers to provide television, internet, telephony and other communication services ("Communication Services") on the following terms and conditions:

1. Rogers will, subject to the Owner's reasonable rules and regulations, have access over the Premises at times and location specified by the Owner, to install, upgrade, operate, remove, replace, supplement and maintain signal distribution and processing equipment ("Distribution System") necessary to provide Communication Services all at Rogers' sole cost and expense. In connection with such access, a portion of the Distribution System is, or will be located in a space designated by the Owner ("Equipment Space") and Rogers shall have access to the Equipment Space 24 hours a day, 7 days a week provided Rogers gives notice of such access to the on-site supervisor or representative and subject to reasonable conditions of the Owner relating to any security staff/equipment (if any) serving the Premises from time to time. The conduit does not form part of the Distribution System but does form part of the Equipment Space. The conduit may be used by another service provider. Access to all other portions of the Premises shall be by appointment during normal business hours except for emergencies.
2. Rogers may connect the Distribution System to the electrical power source in the Premises. Rogers shall be responsible for electrical power costs exceeding a 15 amp service. Rogers will obtain the Owner's approval for the timing, methods and location of the installation work. Rogers agrees to use the access facilities designated by the Owner. The parties acknowledge that the access rights granted to Rogers are non-exclusive and non-preferential. Rogers shall maintain and repair the Distribution System at its expense.
3. Rogers agrees to perform its work in a good and workmanlike manner, and further agrees to provide the Communication Services and Distribution System to the Premises and units in accordance with the Owners specifications and requirements, acting reasonably, and to indemnify and save the Owner, its officers directors, shareholders, servants, agents and employees harmless from any loss, cost, expense, suits, damages, liability, claims, actions, causes of action and damage to persons or property caused by reason of the negligence acts/omissions of Rogers (or those for whom it is responsible) or improper installation, repair or maintenance of the Distribution System or Communications Services. Rogers will maintain a policy of general liability insurance in respect of personal injury, property damage or contractual liability arising from the operation of the Distribution System or Communication System with not less than five million dollars (\$5,000,000.00) coverage and such insurance policy shall name the Owner as an additional insured. The installation and use of the Distribution System will comply with all government requirements including fire and building code regulations. Rogers acknowledges and agrees that it shall be solely responsible to maintain and repairs its Distribution System and Communication System. In completing or providing the work or services herein, Rogers shall comply with all statutes, by-laws, orders, regulations and requirements of all municipal or other government authorities or enforcement bodies, including but not limited to the Building Code, Workplace Safety and Insurance Act ("WSIA"), including but not limited to providing compliance certificates pursuant to the Occupational Health and Safety Act and WSIA.
4. Rogers shall have access to the Premises during normal business hours to promote and market the Communication Services to the prospective purchasers and residents of the Premises. After the turn-over meeting (the "Turn-over Meeting") regarding the Premises and conducted pursuant to S.43 of the Condominium Act, 1998, as amended (the "Act") and subject to the condominium corporation's reasonable rules and regulations, Rogers shall have access to the Premises during normal business hours to promote and market the Communication Services to purchasers and residents of the Premises. Rogers and any other service providers granted access, shall have the non-exclusive right to provide Communication Services to the Premises and occupants, solely on a direct subscriber pay basis while this agreement is in effect.
5. Subject to CRTC regulations and the Act, Rogers is the owner of the Distribution System which will remain the property of Rogers and will not be or become a fixture despite any rule of law or equity to the contrary. This agreement in no way restricts the Owner from contracting with any other service provider as aforesaid to provide Communications Services or any other services to the Premises.
6. The Owner may terminate this agreement if, by no act of the Owner, Rogers ceases to provide Communication Services using the Distribution System or in accordance with subsection 22(9) of the Act.
7. Rogers and the Owner acknowledge and agree that upon the registration of a Declaration and Description pursuant to the Act as amended against (or in respect of) the servient tenement (or any portion thereof), the easement granted herein is hereby released against all of the units as described in the Declaration and Description and those portions of the common elements appurtenant to such residential units designated as exclusive use common elements (if applicable) except the easement shall not be released against units and their appurtenant common elements that are created for the purpose of communication facilities and equipment.
8. Rogers shall execute and deliver forthwith upon request by the Owner and without charge, any acknowledgement, consent, status statement etc. in respect of such registered document as may be required to permit the registration of a

Declaration and Description on the premises (within the meaning of the *Condominium Act*). The Owner shall be released from its obligations under this agreement upon the registration of a Declaration and Description on the Premises whereupon the condominium corporation created thereunder shall be responsible for such obligations, and such condominium corporation (the "Corporation"), shall, for the purposes of this agreement, be henceforth the "Owner". In addition, in the event that the Owner transfers or assigns title to the Premises to a third party prior to the registration of the Declaration and Description creating the Corporation, upon such transfer or assignment, the Owner shall be released from its obligations under this Agreement and the aforementioned third party shall for the purposes of this agreement, be henceforth the "Owner".

9. If any provision of this agreement is declared invalid such provision shall be deemed severed and shall not affect the remaining provisions. Delay in the performance by either party of their respective obligations under this agreement for reasons or circumstances beyond their reasonable control shall be excused for the period of such delay. This agreement is subject to the laws and regulations of the applicable regulatory authorities which shall prevail in the event of a conflict. The Owner and Rogers each has the authority to enter into this agreement.
10. Any notice or communication relating to this agreement will be in writing and sent by registered mail to the other party, delivered personally or transmitted by facsimile to the following addresses:

To: Liberty Residences Limited Partnership
By its general partner, Liberty Residences Inc.
c/o 134 Peter Street, Suite 200
Toronto, Ontario
M5V 2H2
Facsimile:
Attn: Andrew Hoffman

To: Rogers Communications Inc.
855 York Mills Road
Don Mills, Ontario
M3B 1Z1
Facsimile: (416) 446-7416
Attn: Director, Major Accounts


11. This agreement shall be registered on title to the Premises and enure to the benefit of and bind the Premises, the parties, their transferees, successors and assigns. Rogers agrees, upon request and at no cost to the Owner, to postpone and subordinate this agreement to any mortgage or chargee, financing or refinancing of the Premises in return for such lender's standard non-disturbance agreement.
12. Despite anything contained herein to the contrary, Rogers will be liable for and will indemnify and save harmless the Owner, its associated and affiliated companies, its directors, officers, employees, and contractors, and those for whom it is responsible in law and any other trades, service providers or other parties furnishing materials or services to the Premises (collectively, the "Owner Indemnitees"), from and against any and all losses, suits, actions, causes of action, proceedings, damages, costs, claims and expenses (collectively, the "Losses") arising from physical damage to any equipment, property, tangible property or bodily injury, including death, to any person caused by or arising out of any act or omission, provided that Rogers will not be required to indemnify the Owner Indemnitees to the extent any such Losses are caused by any negligent or wilful act or omission of any of the Owner Indemnitees.

Please confirm your agreement to the foregoing by signing and returning the enclosed duplicate copies of this letter to the undersigned.

We agree to the foregoing this 2 day of May, 2018.

Rogers Communications Inc.

Liberty Residences Limited Partnership
By its general partner, Liberty Residences Inc.

Per 
Name: Stephen Marshall
Title: Director, Major Accounts

Per 
Name: Gavin McInnis
Title: Vice President

Per 
Name: Michael Krstajic
Title: VP, Major Accounts

Per 
Name:
Title:

I/We have the authority to bind the Corporation.

I/We have the authority to bind the Corporation.

SCHEDULE A

Legal Description of the Servient Tenement

PIN: 21299-0054 (LT)

BLOCK 4, PLAN 66M2394; TORONTO

Legal Description of the Dominant Tenement

Part of Lot 10, Concession 3, East of Yonge Street, designated as Parts 15 to 20 on Plan 64R-14349, City of Toronto (formerly City of North York) and/or any other lands within the Greater Toronto Area from which the Transferee now or hereafter operates or conducts its business.



Marketing Agreement

October 11, 2017

Contract No.

Liberty Residences Limited Partnership
By its general partner, Liberty Residences Inc.
c/o 134 Peter Street, suite 200
Toronto, Ontario
M5V 2H2

Attention: Andrew Hoffman

Dear Sirs:

In consideration of \$2.00 and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **Liberty Residences Limited Partnership by its general partner, Liberty Residences Inc.** (the "Owner") grants to **Rogers Communications Inc.** ("Rogers") exclusive rights to promote and market television, internet, telephony and other communications services ("Communication Services") to the Owner, purchasers, and/or residents (the "Residents") of the premises located at **19 Western Battery Road, Toronto, Ontario** and estimated to comprise 538 residential units (the "Premises"), all on the following terms and conditions:

1. (a) Rogers shall have the exclusive right and license, from the date this Agreement is signed until the condominium turnover meeting (the "Turnover Meeting"), as that term is defined under Section 43 of the Condominium Act, 1998, as amended (the "Act") (the "Term") to enter and gain access to the Premises, the sales office, the common elements and other common areas of the Premises, subject to the Owner's reasonable rules and regulations and prior consent in order to develop and implement, at no cost to the Owner, reasonable marketing programs to promote and sell Communication Services to the Residents of the Premises who have consented to same on notice and at such locations and times approved by the Owner, acting reasonably, (Rogers acknowledges that the Owner must comply with and adhere to the Personal Information Protection and Electronic Documents Act, as amended or any other applicable privacy legislation (collectively "Privacy Legislation") in this regard), which marketing program shall be limited to the following activities:
 - i) distributing promotional material to Residents of the Premises and to that end, the Owner will exclusively assist Rogers to sign up new Residents for Rogers Communication Services by supplying welcome kits as provided by Rogers;
 - ii) contacting Residents to market Rogers Communication Services before or after Residents move into the Premises;
 - iii) implementing specific marketing programs or initiatives targeting existing, new or changed Residents, which shall be contained in updated lists provided to Rogers by the Owner as described herein;
 - iv) at the Owner's discretion, displaying and/or distributing information and/or advertising material regarding Rogers Communication Services on bulletin boards located within the Premises or sales office;
 - v) at the Owner's discretion, conducting one or more information meetings, seminars, demonstrations or "open houses" to inform Residents of the Premises of the availability of Rogers Communication Services;
 - vi) co-sponsoring special events with the Owner; and
 - vii) any other methods acceptable to the Owner, in the Owner's sole and absolute discretion.
 - (b) Save as permitted under Sections 1(a)(iv), and 3, Rogers agrees that it shall only distribute information packages, notices and any other type of marketing, promotional or informational materials (the "Marketing Materials") directly to residents and occupants of the Building and that Marketing Materials shall not be placed or deposited by Rogers within common elements and other common areas of the Premises. Rogers shall forthwith remove and dispose of any Marketing Materials located within the common elements and other common areas of the Premises as well as any Marketing Materials that are deemed by the Owner, at its sole discretion, to constitute litter and the cost of the removal and disposal of the said Marketing Material shall be borne solely by Rogers. During the Term, The Owner covenants and agrees to exclusively provide Rogers, at least 120 days prior to the date of occupancy of the Premises, updated lists of all Residents of the Premises unless a Resident has expressly instructed the Owner not to release such contact information. In any event, the Owner agrees that it will not provide such lists or any other information regarding the Residents of the Premises to any other service provider. Rogers acknowledges that the Owner's information may not be accurate and Rogers hereby releases the Owner for any information which is provided which is not accurate, provided the Owner is acting in good faith. The Owner further agrees not to enter into a bulk service agreement or prepaid Communication Services offering for any Communication Services with any competitor of Rogers.
2. The Owner covenants and agrees that it will only endorse Rogers' Communication Services and will not promote competitive products and/or services, nor will it permit other service providers to conduct any on-site marketing or promotion initiatives which would breach the exclusivity granted to Rogers in this agreement.

3. If any provision of this agreement is declared invalid such provision shall be deemed severed and shall not affect the remaining provisions. Delay in the performance by either party of their respective obligations under this agreement for reasons or circumstances beyond their reasonable control shall be excused for the period of such delay. This agreement is subject to the laws and regulations of the applicable regulatory authorities which shall prevail in the event of a conflict. The Owner and Rogers each has the authority to enter into this agreement.
4. Any notice or communication relating to this agreement will be in writing and sent by registered mail to the other party, delivered personally or transmitted by facsimile to the following addresses:

To: Liberty Residences Limited Partnership
 By its general partner, Liberty Residences Inc.
 c/o 134 Peter Street, Suite 200
 Toronto, Ontario
 M5V 2H2
 Facsimile:
 Attn: Andrew Hoffman

To: Rogers Communications Inc.
 855 York Mills Road
 Don Mills, Ontario
 M3B 1Z1
 Facsimile: (416) 446-7416
 Attn: Director, Major Accounts


5. This agreement shall enure to the benefit of and bind the Premises, the parties, and their transferees, successors and assigns, however notwithstanding anything to the contrary, the Owner shall have no further obligations, responsibilities or liabilities in any way arising out of this Agreement after the Turnover Meeting.
6. The Owner and Rogers agree that this Agreement is not an agreement or access to the Property and in no way restricts the Owner from granting access to any other provider of Communication Services.
7. Notwithstanding any of the terms of this Agreement, the Residents' personal information provided by the Owner to Rogers shall not be used by Rogers for any other purpose other than for Rogers to market during the Term the Rogers Communication Services in accordance with this Agreement and such information shall not be released by the Owner to Rogers if the Resident has objected to the release of his or her personal information to service providers. Rogers agrees to use the personal information provided by the Owner in accordance with the Personal Information Protection and Electronic Documents Act and all other privacy legislation. Rogers shall not release, distribute or give out the said personal information.
8. Despite anything contained herein to the contrary, Rogers will be liable for and will indemnify and save harmless the Owner, its associated and affiliated companies, directors, officers, employees and contractors and those for whom it is responsible at law and any other trades, service providers or other parties furnishing materials or services to the Premises, (collectively the "Owner Indemnitees") from and against any and all losses, suits, actions, causes of action, proceedings, damages, costs, claims and expenses, including, without limitation, all reasonable legal fees in relation thereto (collectively the "Losses") arising from or relating to (A) the provision or non provision of Rogers' Communication Services to the Property and/or Residents; (B) Rogers' marketing and promotional activities; and (C) from physical damage to any equipment, property, tangible property or bodily injury, including death, to any person caused by or arising out of any act or omission of Rogers' employees or agents. This Section shall survive the expiration or termination of this Agreement.

Please confirm your agreement to the foregoing by signing and returning the enclosed duplicate copies of this letter to the undersigned.

We agree to the foregoing this 2 day of May, 2018.


Rogers Communications Inc.


Per 
 Name: Stephen Marshall
 Title: Director, Major Accounts

Per 
 Name: Michael Kestajic
 Title: VP, Major Accounts

I/We have the authority to bind the Corporation.

**Liberty Residences Limited Partnership
 By its general partner, Liberty Residences Inc.**

Per 
 Name: Gavin Caplan
 Title: Vice President

Per 
 Name:
 Title:

I/We have the authority to bind the Corporation.

<u>Building</u>	<u>Address</u>	<u>Units</u>	<u>Provider</u>	<u>Est Bulk Expiry</u>	<u>Developer</u>
St. Lawrence Condominiums	158 Front St E	490	Rogers	2026	Cityzen
Riverview Condos	38 Water Walk Dr	1046	Rogers	2026	Times Group
Riverside Uptown Markham	15 & 25 Water Walk Dr	615	Rogers	2026	Times Group
Parfait at Atria	60 Ann O'Reilly Rd / 2207 Sheppard Ave W	235	Rogers	Oct-23	Tridel
Trio at Atria	50 Ann O'Reilly Rd	339	Rogers	Oct-23	Tridel
Selene Condos	225 Village Green Sq	310	Rogers	2024	Tridel
Avani at Metrogate 1	255 Village Green Sq	363	Rogers	2025	Tridel
Avani at Metrogate 2	275 Village Green Sq	363	Rogers	2025	Tridel
Stonebrook Condos	1055 Southdown Rd	226	Bell	2024	United Lands Corp
Thornwood II Condominiums	25 Scrivener Sq.	135	Bell	Unknown	Unknown
Thornwood Condominiums	20 Scrivener Sq.	163	Bell	Unknown	Unknown
Transit City 1 & 2	5 Buttermill Ave / 898 Portage Parkway	1110	Rogers	2025	Tridel
Block Nine	4055 & 4085 Parkside Village	600	Rogers	2025	Amacon
Alias Condos (Under Dev)	120 Church St	546	Bell	Unknown	Madison Group
The Capitol Residences (Under Dev)	2500 Yonge St	145	Bell	Unknown	Madison Group
Argento	18 Graydon Hall Dr	319	Rogers	2024	Tridel
SQ2 at Alexandra Park	80 Vanauley St / 51 Paul Lane Grdns	174	Rogers	2023	Tridel
Valleymede Towers	386 & 398 Hwy 7 E	311	Rogers	2028	Times Group
Mirvish Village	581 Bloor St W	855	Rogers	2027	Westbank
Bloor Promenade	5 Mabelle Ave	396	Rogers	Unknown	Tridel
Sugar Wharf Condos	95 Lake Shore Blvd E	1927	Bell	2025	Menkes
Madison Avenue Lofts	380 Macpherson Ave	211	Bell	2028	Unknown
Bloor Vista at Islington Terrace	9 Mabelle Ave	392	Rogers	Unknown	Tridel
The Rocket Condos	545 Wilson Ave	291	Rogers	Oct-27	Metropia
330 Richmond	330 Richmond St W	340	Bell	Unknown	Greenpark Homes
AYC Condos	181 Bedford Rd	281	Rogers	Unknown	Diamondcorp
The Bluffs	2799 Kingston Rd	188	Rogers	2027	Skale Developments
Alter Condos	89 McGill St	337	Rogers	2027	Tridel
CityLights on Broadway	99 Broadway Ave	922	Rogers	Jan-28	Pemberton Group
Zen Condos	19 Western Battery Rd	538	Rogers	2025	CentreCourt
Via Bloor I & II	575 Bloor St E	772	Rogers	2026	Tridel
Diamond On Yonge	75 Canterbury Pl	371	Rogers	2026	Diamante Dev Corp
Signature Series at The Well	455 Front St W	98	Rogers	2028	Tridel
The Classic Series I at The Well	444 Front St W	400	Rogers	2028	Tridel
The Classic Series II at The Well	480 Front St W	252	Rogers	2028	Tridel
Four Fifty The Well	450 Front St W	592	Rogers	2028	Tridel
The Residences at The Well	425 Wellington St W	331	Rogers	2028	Tridel
	Total Units	16984			
	Total Bell Units	3693			
	Total Rogers Units	13291			