

- 1 **Q. Please provide a copy of the agreement relating to the installation and removal of the Joint**  
2 **Use Support Structures referred to on pg. 4 of the Additional Evidence, if such Agreement**  
3 **is not within the terms of the revised Joint Use Agreement to be provided in response to**  
4 **PUB-NP-3.**  
5
- 6 A. Attachment A provides a copy of the Restated Joint Use Service Agreement which relates  
7 to the installation and removal of the Joint Use Support Structures referred to on page 4  
8 of the Additional Evidence.

**Restated Joint Use Services Agreement**

**RESTATED JOINT USE SERVICES AGREEMENT  
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## RESTATED JOINT USE SERVICES AGREEMENT

**THIS AGREEMENT** made as of the 1<sup>st</sup> day of January, 2011,

**BETWEEN:**            **NEWFOUNDLAND POWER INC.**, a corporation incorporated under the laws of the Province of Newfoundland and Labrador,

(“Newfoundland Power”),

**AND:**                **BELL ALIANT REGIONAL COMMUNICATIONS, Limited Partnership** formed under the laws of the Province of Manitoba, by its general partner **Bell Aliant Regional Communications Inc.**, a corporation amalgamated under the laws of Canada,

(“Bell Aliant”),

**WHEREAS** by virtue of a Joint Use Agreement dated as of January 1<sup>st</sup>, 2011, as amended (the “JUA”), Newfoundland Power and Bell Aliant set out the terms and conditions of their Joint Use of Support Structures commencing on January 1<sup>st</sup>, 2011;

**AND WHEREAS** the JUA requires certain service obligations to be performed on Support Structures by each of Newfoundland Power and Bell Aliant;

**AND WHEREAS** Newfoundland Power and Bell Aliant agreed, by virtue of the Joint Use Services Agreement dated as of the 1<sup>st</sup> day of January, 2011, that certain service obligations with respect to Support Structures required to be performed by Bell Aliant pursuant to the JUA would be performed by Newfoundland Power;

**AND WHEREAS** Newfoundland Power and Bell Aliant have agreed to restate their respective obligations under the Joint Use Services Agreement in the manner set out in this Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** for and in consideration of the premises and of the mutual covenants contained in this Agreement, the Parties covenant and agree with each other as follows:

### ARTICLE 1 - INTERPRETATION

**1.1** For the purposes of this Agreement, including its schedules, unless the context or subject matter otherwise requires, the defined terms contained in the JUA shall have the same meaning in this Agreement.

- 1.2 This Agreement is to be read in conjunction with the JUA including the Administrative Practices.
- 1.3 This Agreement shall become effective on the 1<sup>st</sup> day of January 2011 and shall continue until the 31<sup>st</sup> day of December, 2020, subject to any provision allowing for termination or extensions of time for the benefit of Newfoundland Power to complete the work under this Agreement.

## **ARTICLE 2 - SERVICES TO BE PROVIDED**

### **(The "Work")**

- 2.1 For the term of this Agreement, Newfoundland Power shall install and remove all Joint Use Support Structures required to be installed and removed by Bell Aliant pursuant to the JUA. For greater certainty, this shall include, but not be limited to:
  - (a) the installation and removal of all Joint Use Poles, Anchors and Guys including customer interaction, obtaining of approvals and Property Rights, construction labour and material, quality assurance and acceptance of the Work;
  - (b) Joint Use Support Structure engineering and construction/Contractor supervision on behalf of Bell Aliant for Joint Use Poles, Anchors and Guys, provided that all engineering services rendered by Newfoundland Power related to Joint Use Support Structures owned by Bell Aliant shall be performed in consultation with, and subject to the final approval of, Bell Aliant; and
  - (c) ancillary services such as vegetation management, property restoration and surveying associated with the installation and removal of Joint Use Support Structures.
- 2.2 For 2011, Newfoundland Power shall perform all necessary planned maintenance work and maintenance work of an emergency nature associated with Support Structures required to be performed by Bell Aliant pursuant to the JUA.
- 2.3 For the period 2013 until termination of this Agreement, Newfoundland Power and Bell Aliant shall jointly initiate requests for proposals or similar invitations in relation to contracts for Joint Use Poles, Anchor and crib installation, and each Party, acting reasonably, shall agree before any contract is awarded. Subject to the foregoing, Newfoundland Power shall be responsible for the procurement and management of those contracts, and Bell Aliant shall pay Newfoundland Power an administration and processing fee of \$25,000 annually during each of those years.
- 2.4 Newfoundland Power shall perform the Work in a safe, good and prudent workmanlike manner and shall correct any deficiencies in a timely manner, and at all times in accordance with the JUA.

### **ARTICLE 3 - SUPPORT STRUCTURE INSTALLATION AND REMOVAL**

- 3.1** Except as provided for in section 3.3, the prices to be paid to Newfoundland Power by Bell Aliant for installation and removal of Joint Use Poles, Anchors and Guys pursuant to this ARTICLE 3 in 2011 and 2012 are set forth in Schedule 1 to this Agreement.
- 3.2** Except as provided for in section 3.3, and subject to section 3.4, the prices to be paid to Newfoundland Power by Bell Aliant for installation and removal of Joint Use Poles, Anchors and Guys pursuant to this ARTICLE 3 for the period 2013 until termination of this Agreement shall be calculated in accordance with Schedule 2 of this Agreement.
- 3.3** The price required to be paid by Bell Aliant to Newfoundland Power for installation and removal of Joint Use Poles, Anchors and Guys pursuant to this ARTICLE 3 as a result of a single severe weather event will reflect Newfoundland Power's actual costs, not the prices set forth in Schedules 1 and 2 to this Agreement. A single severe weather event is defined as an event requiring:
- (a) in 2011, 50 or more Joint Use Poles to be removed and installed; or
  - (b) for the period 2012 until termination of this Agreement, 20 or more Joint Use Poles owned by Bell Aliant to be removed and installed.
- 3.4** On or before January 31 of each year, commencing in 2013, Newfoundland Power shall provide to Bell Aliant written notification of the installation and removal costs of Joint Use Support Structures for that calendar year, as determined in accordance with Schedule 2 of this Agreement, along with the calculations and supporting information used by Newfoundland Power (the "Cost Notification"). Bell Aliant may, at its own expense, verify the Cost Notification by attending at the head office of Newfoundland Power to review such books, records and information as is reasonably necessary in the opinion of Bell Aliant for such verification, and Newfoundland Power shall, for this purpose, provide such support as is necessary. Any discrepancies in the calculations of Newfoundland Power identified by Bell Aliant shall be rectified by Newfoundland Power through a corresponding adjustment on the invoice issued for the month following receipt by Newfoundland Power of written notice of these discrepancies.

### **ARTICLE 4 - MAINTENANCE IN 2011**

- 4.1** Maintenance work, within the meaning of this Agreement, does not include the installation or removal of Joint Use Poles, Anchors or Guys.
- 4.2** Planned maintenance work will include the inspection of Joint Use Support Structures, prompt correction of defects identified during inspections, vegetation management and responding to customer requests on an ongoing basis in accordance with the JUA. Customer issues addressed will include enquiries with respect to public safety, Property Rights and environmental matters.

- 4.3 Maintenance work of an emergency nature will include standby service and trouble call response including such things as, removing trees on lines, securing individual downed wires, repairing broken guy wires and securing damaged Joint Use Poles. Standby service will consist of island wide 24 hour/7 day customer contact availability and field response as per Section 20 of the Administrative Practices in the JUA.
- 4.4 The price paid for these services in 2011 will be \$1 million for planned maintenance work and maintenance work of an emergency nature carried out by Newfoundland Power's workforce, and \$375,000 for vegetation management work carried out by Contractors.

#### **ARTICLE 5 - MAINTENANCE SUBSEQUENT TO 2011**

- 5.1 Bell Aliant shall perform all aspects of operating and maintaining its Support Structures, consisting of planned maintenance work and maintenance work of an emergency nature within the meaning of ARTICLE 4, from January 1, 2012 onwards.

#### **ARTICLE 6 - INVOICING**

- 6.1 Subject to section 6.2, Bell Aliant shall pay for the Work within sixty (60) days of its receipt of invoices provided by Newfoundland Power as follows:
- (a) in relation to the annual administration and processing fee as set-out in section 2.3 and the charges for planned maintenance work, maintenance work of an emergency nature and vegetation management work as set out in section 4.4, invoices of equal amounts shall be rendered on a monthly basis; and
  - (b) in relation to the installation and removal of Joint Use Support Structures as set-out in section 2.1, invoices shall be rendered upon payment by Newfoundland Power to the Contractor in relation to that Work.
- 6.2 No invoices for Work performed under this Agreement will be payable until the Payment Date, as defined in a Joint Use Support Structures Purchase Agreement dated as of January 1<sup>st</sup>, 2011 between Newfoundland Power and Bell Aliant at which time all amounts payable for Work performed under this Agreement from January 1, 2011 to the month ending immediately prior to the Payment Date shall form part of the payment date adjustments in accordance with the Joint Use Support Structures Purchase Agreement.
- 6.3 Bell Aliant may, on such a basis as it deems appropriate but not to exceed monthly, attend at the head office of Newfoundland Power to examine and take copies of the invoices rendered by the Contractor to Newfoundland Power in relation to Joint Use Support Structures installed or removed on behalf of Bell Aliant. Newfoundland Power shall make available, and shall provide the facilities necessary for Bell Aliant to examine and take copies of, these invoices.

## ARTICLE 7 - CONFIDENTIALITY

- 7.1 (a) Each of the Parties acknowledges that, in relation to the performance of the Work under this Agreement, it may receive confidential and proprietary information of the other Party. Each receiving Party shall hold this information in trust for the other Party, which shall retain all proprietary interest in the information, and the receiving Party shall not disclose, demonstrate, reproduce or copy such information or communicate it, in whole or in part, to any other person or entity for any other purpose than as is necessary in the performance of this Agreement or having first obtained the express written consent of the other Party. Each Party shall advise its officers, employees, and Contractors of their obligations with respect to such information and shall be responsible to the other Party for the protection of such information.
- (b) None of the information received by either Party from the other Party may be used for any other purpose than for the performance of the Work under this Agreement, except with the express written consent of the other Party.

## ARTICLE 8 - TERM OF AGREEMENT

- 8.1 Subject to this ARTICLE 8, this Agreement shall continue in force for the period January 1, 2011 to December 31, 2020, and shall not be terminable during such period except as provided in this ARTICLE 8.
- 8.2 After December 31, 2020, this Agreement shall automatically continue in full force and effect, on the terms and conditions then existing, for the period of one (1) calendar year, unless written notice of an intention not to renew this Agreement is given by either Party to the other no later than ninety (90) days before the expiration of the term of the Agreement.
- 8.3 Upon the expiry of a renewal period, this Agreement shall be automatically renewed, on the terms and conditions then existing, for an additional period of one (1) calendar year, unless written notice of an intention not to renew this Agreement is given by either Party to the other no later than ninety (90) days before the expiration of such renewal period.
- 8.4 This Agreement may be terminated by at least ninety (90) days notice in writing, for any material breach or default of this Agreement by the other Party but only if the defaulting Party has not taken reasonable steps to remedy such breach or default within thirty (30) days of written notice given to the defaulting Party specifying the nature of such breach or default.
- 8.5 The Parties shall complete, prior to September 30, 2015, a review of pricing and service delivery under this Agreement for the period subsequent to December 31, 2015. As a result of such review, this Agreement may be continued for the remaining five (5) years of the term, either on the terms and conditions of this Agreement or as revised by mutual agreement. If the Parties fail to agree as to the terms and conditions for the period



subsequent to December 31, 2015 on or before September 30, 2015, this Agreement may be terminated as of December 31, 2015 upon delivery of written notice by either Party to the other on or before October 31, 2015.

8.6 This Agreement shall terminate coincident with any termination of the JUA.

#### ARTICLE 9 - MISCELLANEOUS

- 9.1 Bell Aliant and Newfoundland Power shall execute and deliver any such documents as are commercially reasonable to ensure the respective obligations created under this Agreement are fulfilled. In particular, the Parties acknowledge that a more specific supply agreement will be required once the particular Poles to be owned by Bell Aliant in 2012 are identified; however this shall not diminish the respective obligations of the Parties under this Agreement.
- 9.2 During the term of this Agreement, Newfoundland Power shall acquire and maintain at its own expense, all appropriate insurance relating to the Work from a properly licensed insurance company or companies and shall provide proof of such insurance coverage upon request by Bell Aliant.
- 9.3 (a) Newfoundland Power shall save, defend, keep harmless and fully indemnify Bell Aliant from and against all claims which Bell Aliant may sustain or be put to on the account of injury to or death of any person or persons, or damage to or destruction to the property of Bell Aliant or of any other person, arising out of or in respect of any fault or negligence on the part of Newfoundland Power, or any person on its behalf, with respect to the performance of, or failure to perform, the Work or any portion of the Work.
- (b) Bell Aliant shall save, defend, keep harmless and fully indemnify Newfoundland Power from and against all claims which Newfoundland Power may sustain or be put to on the account of injury to or death of any person or persons, or damage to or destruction to the property of Newfoundland Power or of any other person, arising out of or in respect of any fault or negligence on the part of Bell Aliant, or any person on its behalf, with respect to Bell Aliant's obligations in connection with the Work.
- (c) Whenever any liability is proven against both of the Parties, based on proportionality, for injury to or the death of any person, including employees of either Party, for damages to any property or for any other damages or injuries arising out of the performance or failure to perform the Work or any portion of the Work, the liability for such damages, except as otherwise provided in this Agreement, shall be shared by the Parties in the same proportion as their negligence contributed to the losses.

- (d) Neither Party shall be liable to the other Party for any special, indirect or consequential damages, including but not limited to lost profits, lost business revenue or failure to realize expected savings.
  - (e) The entire liability of either Party for direct damages resulting from its performance or non-performance under this Agreement, regardless of the cause or form of action, and whether in contract, tort, negligence, breach of warranty or other legal or equitable grounds, will be limited in the aggregate for all claims to the total annual amount invoiced by Newfoundland Power for the Work.
- 9.4 The provisions of Articles XI to XVIII of the JUA shall apply to this Agreement, modified as necessary to give proper effect to those provisions.
- 9.5 Each Party shall ensure that all activities performed by it under this Agreement comply with all applicable federal and provincial statutes and regulations including transportation of dangerous goods legislation.
- 9.6 This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the applicable federal laws of Canada and each Party agrees irrevocably to conform to the jurisdiction of the applicable courts.
- 9.7 If any provision of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that unenforceability or invalidity shall not affect or impair the remaining portions of this Agreement and such unenforceable or invalid provision shall be severed from this Agreement.
- 9.8 This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.
- 9.9 This Agreement shall replace the Joint Use Services Agreement and, as of the execution date of this Agreement, the Joint Use Services Agreement shall be null and void.

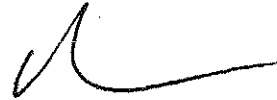
[Remainder of page purposefully left blank]

IN WITNESS WHEREOF this Agreement has been executed by the Parties this 29<sup>th</sup> day of August, 2011, but effective as of and from the day and year first written before.

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



**BELL ALIANT REGIONAL  
COMMUNICATIONS, Limited  
Partnership** by its general partner Bell Aliant  
Regional Communications Inc.



Name: Charles Hartlen  
Title: Senior Vice-President,  
Customer Experience

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

**NEWFOUNDLAND POWER INC.**

Name: Earl Ludlow  
Title: President and Chief Executive Officer

Name: Peter Alteen  
Title: Corporate Secretary

Name: Gary Smith  
Title: Vice President, Customer Operations  
and Engineering

IN WITNESS WHEREOF this Agreement has been executed by the Parties this 26<sup>th</sup> day of August, 2011, but effective as of and from the day and year first written before.

SIGNED, SEALED AND DELIVERED  
in the presence of:

\_\_\_\_\_

BELL ALIANT REGIONAL  
COMMUNICATIONS, Limited  
Partnership by its general partner Bell Aliant  
Regional Communications Inc.

\_\_\_\_\_  
Name: Charles Hartlen  
Title: Senior Vice-President,  
Customer Experience

SIGNED, SEALED AND DELIVERED  
in the presence of:

Sharon A. Stockley

Sharon A. Stockley  
A Commissioner for Oaths  
in and for the Province of Newfoundland and Labrador  
My commission expires on December 31, 2013

NEWFOUNDLAND POWER INC.

Earl Ludlow  
Name: Earl Ludlow  
Title: President and Chief Executive Officer

Peter Alteen  
Name: Peter Alteen  
Title: Vice President, Regulation and  
Planning

## SCHEDULE 1

### Support Structure Installation and Removal Costs 2011 and 2012 (\$ per unit)

	2011		2012	
	Installation	Removal	Installation	Removal
Pole	1,540	250	1,550	253
Anchor	382	50	384	51
Guy	96	25	98	26

Support Structure installation and removal costs for subsequent years of this Agreement shall be determined in accordance with Schedule 2.

## SCHEDULE 2

### Support Structure Installation and Removal Costs For 2013 Forward

For the period 2013 until the termination of this Agreement, costs will be calculated annually based upon the 2012 costs from Schedule 1 as adjusted upwards or downwards for the adjustment factors of internal labour, contractor labour and materials as more particularly described in this Schedule 2.

#### 2012 Costs (\$ per unit)

	<u>Internal Labour</u>	<u>Contractor Labour</u>	<u>Material</u>	<u>Total Billable</u>
Pole Installation	310.00	852.50	387.50	1550.00
Anchor Installation	76.80	211.20	96.00	384.00
Guy Installation	73.50	0.00	24.50	98.00
Pole Removal	63.25	189.75	0.00	253.00
Anchor Removal	12.75	38.25	0.00	51.00
Guy Removal	26.00	0.00	0.00	26.00

#### 2013 Costs (\$ per unit)

	<u>Internal Labour (X)</u>	<u>Contractor Labour (Y)</u>	<u>Material (Z)</u>	<u>Total Billable</u>
Pole Installation	$310.00 \times (1+A)$	$852.50 \times (1+B)$	$387.50 \times (1+C)$	$X + Y + Z$
Anchor Installation	$76.80 \times (1+A)$	$211.20 \times (1+B)$	$96.00 \times (1+C)$	$X + Y + Z$
Guy Installation	$73.50 \times (1+A)$	0.00	$24.50 \times (1+C)$	$X + Y + Z$
Pole Removal	$63.25 \times (1+A)$	$189.75 \times (1+B)$	0.00	$X + Y + Z$
Anchor Removal	$12.75 \times (1+A)$	$38.25 \times (1+B)$	0.00	$X + Y + Z$
Guy Removal	$26.00 \times (1+A)$	0.00	0.00	$X + Y + Z$

#### 2014 Forward Costs (\$ per unit)

	<u>Internal Labour (X)</u>	<u>Contractor Labour (Y)</u>	<u>Material (Z)</u>	<u>Total Billable</u>
Pole Installation	Previous Yr $\times (1+A)$	Previous Yr $\times (1+B)$	Previous Yr $\times (1+C)$	$X + Y + Z$
Anchor Installation	Previous Yr $\times (1+A)$	Previous Yr $\times (1+B)$	Previous Yr $\times (1+C)$	$X + Y + Z$
Guy Installation	Previous Yr $\times (1+A)$	Previous Yr $\times (1+B)$	Previous Yr $\times (1+C)$	$X + Y + Z$
Pole Removal	Previous Yr $\times (1+A)$	Previous Yr $\times (1+B)$	Previous Yr $\times (1+C)$	$X + Y + Z$
Anchor Removal	Previous Yr $\times (1+A)$	Previous Yr $\times (1+B)$	Previous Yr $\times (1+C)$	$X + Y + Z$
Guy Removal	Previous Yr $\times (1+A)$	Previous Yr $\times (1+B)$	Previous Yr $\times (1+C)$	$X + Y + Z$

Where:

- A = The year over year percentage wage increase or decrease for a power line technician at Newfoundland Power as determined by the collective agreement expressed in decimal format rounded to four decimal places.
- B = The year over year percentage increase or decrease in the weighted average base contract price (no extras) for installing a 30 to 50 foot pole expressed in decimal format rounded to four decimal places.
- C = The year over year percentage increase or decrease in contract price for a 40 foot pole based on supplier cost expressed in decimal format rounded to four decimal places.

Provided that if actual contractor labour costs (Y) or material costs (Z) as of 2013 are different than the assumed costs provided in this Schedule 2, the actual contractor labour costs and material costs will be used as the costs for 2013 to be adjusted for 2014 forward.