

Appendix B
Amended Mark-up of Bell's Support Structure Licence Agreement

Telecom Notice of Consultation CRTC 2020-366

Call for comments regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient

Reply of
Rogers Communications Canada Inc.

January 19, 2020

SUPPORT STRUCTURE LICENSE AGREEMENT

BETWEEN

having its head-office at the City of _____ in the Province of _____
hereinafter called the "**Company**";

AND

_____,
hereinafter called the "**Licensee**";

WHEREAS the Licensee is a cable television undertaking and/or a Canadian carrier, as defined in the Tariff;

AND WHEREAS the Licensee, to provide service to the public, desires to place Licensee's Facilities on or in Support Structures in the provinces of _____ and the Company will permit, to the extent it may lawfully do so, the placement of the Licensee's Facilities on or in such Support Structures;

Now therefore the parties hereto for themselves, their successors and assigns, respectively hereby agree as follows:

1 Interpretation

- 1.01 Unless the context otherwise requires, the definitions used in the Support Structure Tariff of the Company and in any revisions and replacements thereof (hereinafter "the **Tariff**") shall apply to this Agreement.
- 1.02 Headings in this Agreement are inserted for convenience of reference and are not intended to assist in the interpretation of any provisions thereof.
- 1.03 Use of a Support Structure or payment of any rentals or charges shall not vest in the Licensee any ownership, easement or other property rights in the Support Structure. Except as otherwise specifically provided for herein, this Agreement or the Tariff shall not vest in the Company any ownership or other property rights in the Licensee's Facilities.
- 1.04 This Tariff item on Support Structures shall prevail where it conflicts directly with the SSA. Where the General Tariff including the Terms of Service, conflicts directly with the specific Tariff item on Support Structures or the SSA, the aforementioned Tariff item or the SSA, as applicable, shall prevail.

2 Scope

- 2.01 Support Structure Service is available to the Licensee in accordance with Tariff item 901 and this Support Structure License Agreement. The following documentation must be provided to the Company prior to a Support Structure License Agreement being executed:
- (a) a certificate of insurance confirming the requirements identified in [section 7](#) of this Agreement
 - (b) for cable television undertakings, a copy of the Canadian Radio-television and Telecommunications Commission (the "**Commission**") license for each territory
 - (c) for a Canadian carrier, a letter on its letterhead, stating that it is a Canadian carrier as defined in the Telecommunications Act
 - (d) for cable television undertakings, upon request, a map describing the serving area.
- 2.02 The Company shall provide to the Licensee use of the Support Structures where Spare Capacity is available except where such use will unduly interfere with the rights of any Joint- User or other Licensee. In all circumstances, the Company has priority access to Support Structures in order to meet the Company's current and anticipated future service requirements.
- 2.03 Use of any Support Structure by the Licensee is subject to the approval by the Company of an Application submitted by the Licensee. If Spare Capacity is available and the Licensee's proposed use of Support Structures conforms with the terms and conditions of this Agreement, the Tariff and the Support Structure Service Construction Standards (hereinafter "**Construction Standards**"), the Company will issue a Permit to the Licensee allowing the Licensee to use the Support Structures as described in the Permit. Each Permit issued by the Company to the Licensee shall become effective upon receipt by the Company of written acceptance by the Licensee of all costs, terms and conditions specified in such Permit.
- 2.04 Any subsisting Permit issued by the Company shall form part of this Agreement.
- 2.05 The Licensee shall install, maintain and remove its Facilities without damaging, rearranging, relocating or removing the Support Structures and the Company's facilities or other parties' facilities, in accordance with the safety and technical standards and requirements, specified in the Construction Standards.
- 2.06 Should there be any contradiction, conflict or variance between the provisions of the Construction Standards and the provisions of this Agreement, the provisions of this Agreement shall prevail.

- 2.07 The Licensee shall, at its sole cost and expense, be responsible to install, maintain, rearrange, replace, repair, remove or transfer Licensee's Facilities or perform any other work, ~~all~~ to meet the Company's requirements to comply with the requirements of a government authority or Joint User within the time period specified by the Company or specified by ~~the a third party (e.g.,~~ government authority, Joint-User) who is exercising its rights to be no less than ninety (90) days where the decision lies with the Company. After notice to the Licensee that the Licensee is to perform work under this provision, the terms and conditions of this Agreement, the Tariff and/or the Construction Standards and after the Licensee's failure to do so within the time period specified, the Company may perform such work and the Licensee shall pay to the Company all expenses incurred by the Company in performing such work.
- 2.08 Where the Company determines that a Support Structure must be replaced, the Licensee shall be responsible for removing and transferring Licensee's Facilities to the new Support Structure within the time period specified by the Company, which time period shall be no less than ninety (90) days, or agree to permit the Company to perform such work. Unless the replacement of the Support Structure is required to accommodate additional facilities of the Company or another authorized attacher pursuant to Tariff Item 901, the costs of removing and transferring Licensee's Facilities in accordance with this provision shall be the sole responsibility of the Licensee.
- 2.09 Both the Licensee and the Company shall comply with the Construction Standards as defined in the Tariff. The Licensee shall not be required to comply with any Construction Standard that the Company itself does not follow.
- 2.10 The Licensee shall, at its sole cost and expense, be responsible for maintaining, rearranging, replacing, repairing, removing or transferring Licensee's Facilities or perform any other work necessary to correct any non-compliance of Licensee's Facilities with the Construction Standards within thirty (30) days' notice from the Company of any such non-compliance, failing which the Company may perform such work and the Licensee shall pay all expenses incurred by the Company in performing such work.
- 2.11 For purposes of performing OTMR Eligible Make-Ready, as defined in Tariff Item 901, the Company agrees that Licensee may rearrange, transfer or remove Company facilities and facilities of a third party licensee authorized pursuant to Tariff Item 901 (referred to hereafter as a "Third Party Licensee") that are supported by a Support Structure, and the Licensee agrees that the Company or a Third Party Licensee may rearrange, transfer or remove Licensee's Facilities, provided that:
- (a) The rearrangement, transfer and/or removal of the facilities qualifies as OTMR Eligible Make-Ready;

- (b) The Company, the Licensee or Third Party Licensee, as applicable, uses an Approved Contractor or Bell to perform the OTMR Eligible Make-Ready;
- (c) The Company, the Licensee or the Third Party Licensee that is performing the OTMR Eligible Make-Ready (the "OTMR Party) provides fifteen (15) calendar days advance notice of commencement of the OTMR Eligible Make-Ready to the Licensee, the Company and to all Third Party Licensees with attachments supported by the Support Structure that may be affected by the OTMR Eligible Make-Ready as identified by the Company ("Affected Parties"), which notice shall include the date of commencement of the OTMR Eligible Make-Ready, a description of the OTMR Eligible Make-Ready to be conducted, the name of the Approved Contractor or a statement that the Company will perform the OTMR Eligible Make-Ready, and a statement that the Affected Party may be present for the OTMR Eligible Make-Ready;
- (d) The OTMR Party notifies all Affected Parties within fifteen (15) calendar days of completion of the OTMR Eligible Make-Ready, which notice shall provide each Affected Party with ninety (90) calendar days from receipt of the notice to inspect the OTMR Eligible Make-Ready and fourteen (14) calendar days from completion of any such inspection to submit a claim to the OTMR Party for any damages or deficiencies to the Affected Party's facilities demonstrably resulting from the OTMR Eligible Make-Ready;
- (e) The OTMR Party shall correct any damages or deficiencies demonstrably caused by the OTMR Eligible Make-Ready and claimed by an Affected Party within fourteen (14) calendar days of receipt of the claim or such longer period as may be agreed by the OTMR Party and the Affected Party, failing which the Affected Party may correct such damages or deficiencies and the OTMR Party shall pay the expenses incurred by the Affected Party in performing such work;
- (f) On request of an Affected Party, where the Licensee is the OTMR Party, the Licensee agrees to enter into a written contract with such Affected Party agreeing to compensate the Affected Party in accordance with (e) above; and
- (g) The Company shall ensure that any Third Party Licensee permitted to perform OTMR Eligible Make-Ready on Licensee's Facilities agrees in a written contract with the Company to comply with the obligations in this section, including the obligations to correct any damages or deficiencies to Licensee's Facilities demonstrably resulting from its performance of OTMR Eligible Make-Ready or to pay the costs of correcting any such damages or deficiencies, and to enter into a written contract with the Licensee in accordance with (f) above.

3 Taxes

- 3.01 Each party hereto shall pay all taxes levied upon its own property.
- 3.02 Should any taxes be levied upon the Company's property solely because of the Licensee's use thereof, the Licensee shall pay the amount of such taxes to the Company within seven (7) calendar days after receiving from the Company a copy of the tax bill or other writing showing the amount of the taxes and that they are solely based upon the Licensee's use. The Company shall then pay such taxes under protest. However, failure to pay under protest will not cause loss of the Company's right to such payment by the Licensee. The Licensee shall be free to negotiate with the taxing authority or to institute legal proceedings against the taxing authority to have such taxes canceled or reduced. Any refund received by the Company in connection with such taxes shall be paid over to the Licensee with such interest as the Company will have received from the taxing authority in respect thereof less any applicable expenses reasonably incurred by the Company.

4 Statutes, Rules and Regulations

- 4.01 In all cases, the Licensee shall be responsible for obtaining and maintaining, at the Licensee's sole expense, any necessary permits, consents, authorizations, licenses, inspections or approvals from Federal, Provincial, Municipal or other authorities. The Licensee shall comply with all laws, statutes, by-laws, codes, ordinances, rules, orders and regulations of all governmental authorities in force (including the requirements of any provincial workers' compensation legislation) and all health, occupational, safety, labour and environmental legislation) when engaged in any undertakings hereunder and in the use of Support Structures or other Company property. The Licensee acknowledges that the federal laws of Canada, in particular with respect to occupational health and safety law, labour law, and environmental law, may be applicable to it when engaged in undertakings under this Agreement and the Tariff and the Licensee hereby agrees to comply with such legislation. In case of conflict between any such statutes, regulations and by-laws, the Licensee shall comply with the most stringent statute, regulation or by-law.
- 4.02 Without limiting any of the Company's rights contained in **section 9** of this Agreement, if the Licensee's failure to comply with the provisions of **section 4.01** of this Agreement, or if the Licensee otherwise by its conduct, or that of its employees, contractors or agents, causes the loss of the Company's, any Joint User's or any third parties' easements, rights-of-way, privileges, municipal consents or other interests on or in land or watercourses or crossing rights, the Licensee shall indemnify and save the Company, any Joint User or such third party harmless from all claims or demands resulting from such loss and shall pay the Company, Joint User or such third party, the cost or expense incurred as a result, in whole or in part, of such loss, including the cost or expense incurred to transfer the Company's, Joint User's or third party's facilities and the Support

Structure. When there is a dispute as to whether such loss, cost or expense has been incurred, the Licensee shall make such payment to the Company until the matter has been settled in accordance with [section 11](#) of this Agreement or until judgment of a court or regulatory authority of competent jurisdiction disposes of the issue, whichever occurs first.

- 4.03 The Licensee shall obtain and maintain, at its sole expense, easements, servitudes, rights-of-way, privileges, municipal consents or other interests on or in land or watercourses, and crossing rights from railways, pipelines and other utilities, and written consents to the Licensee's activities by any Joint User or other third party as may be necessary for the placement, maintenance and operation of the Licensee's Facilities on or in Support Structures and shall provide written evidence of same upon request by the Company. Where the Company's easements, servitudes, rights-of-way, privileges, municipal consents or other interest on or in land or watercourses, and crossing rights from railways, pipelines and other utilities, and written consents to the Licensee's activities by any Joint User or other third party expressly allow the Company to grant to the Licensee the right to place, maintain and operate the Licensee Facilities on or in Support Structures, the Company shall, at the sole cost and expense of the Licensee, obtain such rights and provide written evidence thereof upon reasonable request by the Licensee, provided that such rights shall only be obtained in respect of Licensee Facilities for which the Company has issued a Permit after the date this Agreement comes into effect.
- 4.04 The Company does not guarantee that the Support Structures are located on property to which the Company holds an irrevocable easement, right-of-way, servitude or other privilege. In the event that the Company is required by a property owner to remove Support Structures, the Licensee shall remove its Facilities in accordance with the provisions of *National Services Tariff Item 901.3(n)*, at its own expense.

5 Performance of Work on, in or in Proximity to Support Structures

- 5.01 Where a company employee, agent or representative determines that a Licensee does not have the required permit, license, consent, approval or authorization to perform work, the Licensee is required to apply for a permit, license, consent or approval, pursuant to the applicable tariff provisions and in addition, shall be liable for the payment of an unauthorized attachment charge pursuant to *National Services Tariff Item 901.5(a)(1)*. In the event that a company employee, agent, or representative believes that Support Structures or any attached facilities are being exposed to hazardous conditions as a result of the Licensee's work operations, the Company may inspect the work, order that it be stopped immediately, and take action pursuant to *National Services Tariff Item 901.4(q)*.
- 5.02 In the event of a dispute between the Company and the Licensee with respect to a determination by the Company pursuant to **section 5.01** of this Agreement, the dispute may be resolved in accordance with the procedure specified in **section 11** of this Agreement.
- 5.03 The Licensee shall ensure that any employee, contractor and agent that is to perform work on, in or in proximity to the Company's Support Structures is aware of and fulfills the Licensee's responsibilities as specified in the Tariff, this Agreement and the Construction Standards. In any event, the Licensee shall be responsible for the conduct of such employees, contractors and agents, the procurement and maintenance of any permits, consents, authorizations, licenses, inspections or approvals as specified in **sections 4.01** and **4.03** of this Agreement, and for any installation and maintenance work performed by the Licensee's employees, contractors and agents on, in or in proximity to the Company's Support Structures.
- 5.04 The Licensee shall not register, permit or cause to be registered any lien, encumbrance or other charge under any law, or otherwise encumber any title to any Support Structures. Any such registration shall be immediately removed by the Licensee at the expense of the Licensee. If the Licensee fails to remove any such registration within fifteen (15) calendar days of the Company's written request to do so, the Company may do so at the expense of the Licensee and the Licensee, by executing this Agreement, shall be deemed to have irrevocably appointed the Company as the Licensee's attorney with full power and authority to execute any instruments required to discharge any such registration.

6 Liability

- (a) Without restricting the generality of the Company's General Tariff, except where such claim, suit, action, loss, cost, expense or liability arises from performance of OTMR Eligible Make-Ready by the Company or non-compliance with section 2.11(g), or the ~~gross~~ negligence or the willful act of the Company, the Licensee shall: (a) be liable to the Company, its employees, contractors, agents, successors and assigns (collectively, in this **section 6.01** and **6.03**, the "**Company and its personnel**") and (b) indemnify, defend and hold harmless the Company and its personnel from and against any and all claims, suits, actions, losses, costs, damages, expenses, and liabilities that may be brought against the Company by any person, or which the Company may incur as a result of or in connection with:
- (i) any loss, delay or disruption in any existing or scheduled service provided by the Company or any authorized user of the Support Structures to any person by reason of the placement, installation, removal, maintenance, or use of the Licensee's Facilities or equipment in or on the Support Structures, by any action or omission of the Licensee under this Agreement, or the Tariff, or arising in any manner from the use of the Support Structure.
 - (ii) any interruption, discontinuance, or interference with the Licensee's service to any of its subscribers or customers or the Licensee's Facilities or equipment caused or allegedly caused by any action or omission of the Company or its personnel under this Agreement or the Tariff, or arising from any use of the Support Structures, the use of the Licensee's Facilities or equipment in or on the Support structures, or the use or misuse of the Support Structures by the Licensee; or
 - (iii) any damages to the property, real and personal of, or physical injury (including death resulting therefrom) to the Company or its personnel, or any other person caused by the Licensee or the use of the Licensee's Facilities in or on the Support Structures; or
 - (iv) the Licensee's failure to observe the terms of this Agreement, the Tariff, any Permit, any license, or any statute, regulation, or by-law.

6.01 The Company shall be liable to the Licensee, its employees, contractors, agents, successors and assigns (collectively, "Licensee and its personnel") and shall indemnify, defend and hold harmless the Licensee and its personnel from and against any and all claims, suits, actions, losses, costs, damages, expenses and liabilities that may be brought against the Licensee by any person or which the Licensee may incur as a result of or in connection with the performance of work

that qualifies as OTMR Eligible Make-Ready by the Company or failure by the Company to comply with section 2.11(g) of this Agreement.

- 6.02 Notwithstanding anything contained in this Agreement, the Tariff, or any Permit to the contrary, neither the Licensee, its employees, contractors, agents, successors and assigns, or the Company and its personnel, shall be liable for any indirect, special, or consequential damages, however caused, arising out of this Agreement, the Tariff or the Construction Standards.

7 Insurance

- 7.01 The Licensee shall, at its sole cost and expense, carry insurance covering all liabilities at law assumed by the Licensee and the operations performed by the Licensee's contractors and agents under this Agreement. The Company shall be added as an additional named insured (co-insured) under the Licensee's insurance policies relating to such liabilities.
- 7.02 The amounts of such insurance against liabilities shall be no less than \$2,000,000 in the aggregate as to any one accident or occurrence.
- 7.03 Notwithstanding termination of this Agreement, all insurance required shall remain in force as long as the Licensee retains any Facility, except any Facility which the Company requires to be abandoned in place such as Conduit Connections, on or in the Company's Support Structures.
- 7.04 The company or companies issuing the insurance required by this **section 7** of this Agreement shall be duly licensed to provide insurance as required by applicable Provincial and/or Federal Laws. The Licensee shall submit to the Company certificates of insurance, for each insurance company insuring the Licensee and its contractors and agents, which certificates of insurance shall state that such insurance company has insured the Licensee and its contractors and agents against liability or that of the Licensee and of its contractors and agents under this Agreement and that the insurance company will not cancel or change any policy of insurance issued to the Licensee and its contractors and agents except after having given thirty (30) calendar days prior written notice to the Company.
- 7.05 The Company shall not be responsible for insuring the Licensee's Facilities or equipment against loss or damage.

8 Term of Agreement

- 8.01 Subject to the termination provisions of this Agreement, this Agreement shall be effective from the date it is made and shall continue in force for a period of five (5) years from the date it is made, and thereafter for successive five (5) year terms, unless and until terminated by one year prior notice in writing by either party.

9 Termination of Agreement and Permits

- 9.01 Notwithstanding any other provision of this Agreement, and subject to the provisions of *National Services Tariff Item 901*, the Company shall be entitled, to terminate any Permit and/or this Agreement upon sixty (60) calendar days written notice to the Licensee:
- (a) where the Licensee fails to pay any undisputed amounts due and owing to the Company under the Tariff or this Agreement;
 - (b) fails to pay 50% of the disputed amount claimed by the Company; or
 - (c) where the Licensee fails to comply with any of the terms and conditions of the Tariff or this Agreement; always provided that the Licensee shall have been given written notice of such failure to pay or to comply and a period of sixty (60) calendar days within which to cure such failure to pay or to comply, and that such deficiency shall remain unremedied at the expiration of such sixty (60) day period.
- 9.02 Notwithstanding any other provision of this Agreement, and subject to the provisions of *National Services Tariff Item 901*, the Company shall be entitled to terminate any Permit and/or this Agreement upon written notice to the Licensee:
- (a) where the Licensee fails to procure, maintain, pay for or keep in force the insurance required in accordance with **section 7** of this Agreement;
 - (b) where required by law, court order or regulatory order or directive;
 - (c) upon the Licensee becoming bankrupt;
 - (d) upon the Licensee ceasing to carry on business.
- 9.03 Notwithstanding any other provisions of this Agreement, and subject to *National Services Tariff Item 901*, the Company may, upon notice to the Licensee, terminate any Permit for the use of the Company's Support Structures in the following circumstances:
- (a) Default on the part of the Licensee in complying with **section 4.01** or **4.03** of this Agreement;
 - (b) Default on the part of the Licensee in complying with the Construction Standards and failure to correct such default;
 - (c) Where Support Structures for which the Company has issued a Permit are destroyed from any cause and the Company has determined that the replacement structures must differ from the original; and

- (d) A Permit for Support Structures being replaced for maintenance purposes shall not be terminated.
- 9.04 In the event of termination of this Agreement, the Licensee shall, at its expense, remove its Facilities from the Support Structures and shall have one hundred eighty (180) to two hundred seventy (270) calendar days, or such additional period as the parties may agree upon, of the effective date of termination of this Agreement.
- 9.05 In the event of termination of a Permit, the Licensee shall, at its expense, remove its Facilities from the Support Structures on or before the date specified in the notice from the Company for termination of any such Permit, such removal date to be no less than sixty (60) days following the termination date of the Permit.
- 9.06 Should the Licensee fail to remove its Facilities under [sections 9.04](#) or [9.05](#), above, then ownership of such Licensee's Facilities shall thereupon and without further action by the parties be transferred to the Company at no cost to the Company and the Company may remove and/or sell the affected Facilities at the Licensee's risk and expense and apply the net amount of such sale to the Licensee's account. In such case the effective date of the termination of any rentals and charges shall be the date of the removal or sale of the Facilities by the Company.
- 9.07 Notwithstanding [section 9.06](#), where the Licensee requests in writing that its Facilities remain in place after termination of the Agreement or of any Permit, and where the Company agrees in writing to such request, the ownership of such Facilities will be transferred to the Company at a mutually agreed to date, prior to the effective date of termination of this Agreement or of any Permit, and at no cost to the Company. Where the Company determines on a reasonable basis that removal of the Licensee's Facilities will result in damage to the Support Structures, the Company shall, at least thirty (30) calendar days prior to the termination date of the Agreement or of any Permit, advise the Licensee, in writing, of the Company's determination and shall provide a written estimate of costs to repair the Support Structures. The Licensee shall then have ten (10) calendar days to advise the Company, in writing, of whether it intends to remove the Facilities and pay costs to repair the Support Structures or to transfer ownership of the Facilities. All liability of the Licensee accruing after the date of such transfer (other than any liability accruing after the date of such transfer arising as a result of any act or omission of Licensee or any failure to comply with the Agreement prior to termination of the Agreement) under this Agreement and the Tariff, including payment of any rentals and charges, will cease for such Facilities.
- 9.08 When in the opinion of either party adequate grounds for the termination of this Agreement or any Permits exist, pursuant to the provisions of the present Agreement, the Tariff, or for non-compliance with the standards and

requirements specified in the Construction Standards, either party can so inform any third party which appears to have an interest.

10 Unauthorized Presence of Licensee's Facilities

- 10.01 The Company will issue a Permit once the Application submitted by the Licensee has been approved by the Company. Where any Licensee's Facilities are installed on or in the Support Structures without a Permit, the Company shall notify the Licensee in writing of the unauthorized attachments. Without restricting any other remedies available to the Company under applicable law, the Company shall apply, and the Licensee agrees to pay, an unauthorized attachment charge for each unit of rental for such unauthorized attachments as identified in the Tariff. The Company may remove such Licensee's Facilities from the Support Structures following thirty (30) calendar days written notice to the Licensee and charge the Licensee based on the expense incurred. If the Licensee desires to continue the use of such Support Structures, the Licensee must submit an Application within the thirty (30) calendar day notice period, for a Permit to do so.
- 10.02 If Spare Capacity is available and the unauthorized Facilities have been otherwise installed and maintained in accordance with the terms and conditions contained in the Tariff, this Agreement and the Construction Standards, the Company may approve an Application for a Permit or Permits allowing the Licensee to continue using such Support Structures. However, if Spare Capacity is available and the unauthorized Facilities have not been installed and maintained in accordance with the terms and conditions contained in the Tariff, this Agreement and the Construction Standards, the Company may approve an Application for a Permit or Permits provided that the Licensee agrees to correct all defects and alter such Facilities to conform to the terms and conditions of the Tariff, this Agreement and the Construction Standards.
- 10.03 If Spare Capacity is not available, and where it is practicable to do so, the Company may elect to provide or upgrade Support Structures for the use of the Licensee and charge the Licensee based on the expense incurred. If the Licensee does not agree to these charges, the Application will not be approved and the Company will require the Licensee to remove the unauthorized Facilities at the Licensee's expense within a period of one hundred eighty (180) to two hundred seventy (270) calendar days, or the Company may remove such unauthorized Facilities at any time after the end of such time period and charge the Licensee based on the expense incurred.

11 Dispute Resolution Process

- 11.01 The Company and the Licensee agree to attempt to resolve any disputes arising under this Agreement, the Tariff or the Construction Standards in an expedient manner. The Company of the Licensee may seek relief from the Commission in respect of a dispute at any time, by way of any if the Commission's expedited or

~~standard application processes. On mutual agreement, the Company and the Licensee may also seek to resolve a dispute through internal escalation and/or formation of a joint committee consisting of representatives of the Company and the Licensee. Where possible, the Company and the Licensee shall endeavor to resolve any disputes between themselves, at the level at which the dispute arose. If the dispute cannot be so resolved, the Company and the Licensee agree that either party may escalate the matter to higher management. In the case of the Company, this shall be the manager of the business unit responsible for provision of Support Structure services under the Tariff. In the case of the Licensee, this shall be a manager having sufficient authority to determine the matter on behalf of the Licensee, designated by the Licensee. If the dispute cannot be resolved at this level, the Company and the Licensee agree to establish, upon the request of either party, a joint committee consisting of representatives of the Company and the Licensee to attempt to resolve the dispute. If the dispute cannot be resolved by such a joint committee, then either party may refer the matter to the Commission for settlement. Once a dispute arises, the parties will agree upon time frames for resolution at the local level, or for referral of the dispute to the management level, for establishment of the joint committee, or for the referral of the dispute to the Commission. At a minimum, the period within which the dispute will be referred to the Commission shall be agreed upon at the higher management level referenced herein. Unless otherwise agreed to by the parties, in no event shall the period within which a dispute may be referred to the Commission exceed thirty (30) calendar days from the date the joint committee is established.~~

12 General Conditions

- 12.01 **Survival.** Any terms or conditions of this Agreement and the Tariff by which obligations of either party are expressed to be applicable or which extend or may extend beyond termination of this Agreement, shall survive and continue in full force and effect except to the extent expressly set out herein. Notwithstanding anything herein contained, all the liabilities of the Licensee under this Agreement and the Tariff, including payment of any fees and charges, shall continue and be in full force and effect until all the Licensee's Facilities are removed from Support Structures and the Company has inspected and has accepted such removal. This **section 12.01** shall survive termination of this Agreement.
- 12.02 **No Waiver.** The failure of either party hereto to enforce or insist upon compliance with any of the terms and conditions of this Agreement or the Tariff, or the standards and requirements specified in the Construction Standards, or to exercise any rights under same shall not constitute a waiver or relinquishment of any such terms, conditions or rights. For greater certainty, but without limiting the generality of the foregoing, the mere passage of time or the giving of notices shall not affect other terms, conditions or rights in and under this Agreement unless expressly stated and the latter shall remain in full force and effect.

12.03 Use of Trademarks. A party shall not use the copyright, trademarks, service marks, corporate identification, logos or any other proprietary designation or intellectual property of the other party, for whatever reason, without such other party's prior written consent which may be withheld for any reason and, upon the obtaining of written consent, only in accordance with the instructions and standards which may be provided by the other party.

12.04 Notifications. Until written notice indicating any other signing authority or address is received, any applications, Permits or notices provided for in the present Agreement, the Tariff or the Construction Standards, shall be in writing and shall be sufficient if signed by a duly authorized representative, and if delivered personally, by facsimile or by mail addressed as follows: to Licensee:

However, any default notices, termination notices and any notices under [section 9](#) of this Agreement must be sent by registered mail. Any application, Permit or notice sent by ordinary mail will be deemed to be received five (5) business days from the date of mailing. Where sent personally or by facsimile such applications, Permits or notices shall be deemed to have been received on the next business day following date sent, with the exception of a request made pursuant to [section 5.01](#) of this Agreement in which case a notification given personally shall be deemed to have been received at the time it was given.

12.05 Assignment

- (a) This Agreement may be assigned, in whole or in part, by either party upon thirty (30) days written notice, provided that any assignment by the Licensee shall be subject to the Company's prior written consent that shall not be unreasonably withheld. In the case of assignment by the Licensee, the Licensee must provide advance notification of assignment by giving to the Company written notice at least thirty (30) calendar days prior to the assignment date. Upon receipt of the written notification and consent of the assignment or change, which will not be withheld unreasonably, the Company will prepare and forward the necessary documentation to the Licensee within thirty (30) calendar days. The Licensee will return the executed documents to the Company within thirty (30) calendar days of the effective date of the assignment or change. When consent of the requested change is denied, the Company will advise the Licensee of the reason, in writing, within thirty (30) calendar days of receipt of the original request. Without restricting any other remedies available to the Company under applicable law, the Company shall apply, and the assignee and assignor, jointly and severally agree to pay, a charge for each day after the thirtieth (30th) calendar day prior to the assignment date for which notification of assignment has not been received by the Company.
- (b) All assignments consented to by the Company shall be on the condition that such assignee enter into a support structure license agreement with the Company on terms identical to those contained in this Agreement.

- 12.06 **Prior Agreements.** This Agreement including the Tariff and Construction Standards supersedes, replaces and cancels as of the effective date hereof any and all existing licenses, agreements and contracts between the parties hereto relating to the installation of the Licensee's Facilities on or in Support Structures.
- 12.07 **Legal Relationship.** The parties acknowledge and agree that each is an independent contractor and neither party shall be considered to be the agent, representative, employer or employee of the other party for any purpose whatsoever and that neither party has any authority to enter into any contract, assume any obligation or give any warranties or representations on behalf of the other party. Nothing in this Agreement or the Tariff shall be construed to create a relationship of partners, joint ventures, fiduciaries, or any other similar relationship between the parties.
- 12.08 **Severability** In the event that any provisions contained in this Agreement or the Tariff shall be declared invalid, illegal or unenforceable by a court or other lawful authority of competent jurisdiction, this Agreement and the Tariff shall continue in force with respect to the enforceable provisions and all rights and remedies accrued under the enforceable provisions shall survive any such declaration. Any non-enforceable provision shall, to the extent permitted by law, be replaced by a provision which, being valid, comes closest to the intention underlying the invalid, illegal or unenforceable provision.
- 12.09 **Inurement.** Subject to [section 12.05](#) above, this Agreement and any Permits issued pursuant thereto shall inure to the benefit of and be binding upon the parties and their successors and permitted assigns.
- 12.10 **Governing Law.** This Agreement and any Permits issued pursuant thereto shall be governed by, subject to, and interpreted in accordance with the laws of Canada and the laws of the Province in which the Company's Support Structures are located. The parties hereto agree that any dispute brought before any court, tribunal or governmental agency other than the Commission, shall be heard by such court, tribunal or governmental agency in the Province in which the Company's Support Structures which are the subject of such dispute are located. In the event a dispute is brought before the Commission such dispute shall be heard by the Commission in the manner specified by the Commission.
- 12.11 **Time Is Of The Essence** Time shall be of the essence in this Agreement and the Tariff.

13 Confidentiality provision

- 13.01 The Company agrees to use information regarding the Licensee's customers, services, facilities, and current or future business plans and strategies provided by the Licensee to the Company in the course of the performance by the parties of their obligations under this Agreement, the Tariff and the Construction Standards ("**Licensee Confidential Information**") solely for the purpose of

facilitating the provision of the services contemplated under this Agreement, the Tariff and the Construction Standards. The Company shall hold in confidence Licensee Confidential Information in accordance with the Company's Terms of Service and shall protect the confidentiality of Licensee Confidential Information to the same degree or greater as the Company protects the confidentiality of its own confidential information which, in any event, shall not be less than a reasonable degree of care. The Company shall not disclose Licensee Confidential Information to any other person, including any other Canadian carrier or distribution undertaking, except as may be expressly permitted under this Agreement. Furthermore, the Company will not use or disseminate or permit dissemination of Licensee Confidential Information within the Company or to any other person for competitive purposes. Any Licensee Confidential Information provided by the Company to any person shall be provided to such person upon the agreement of such person to protect the confidentiality of such Licensee Confidential Information to the same degree that the Company protects the confidentiality of Licensee Confidential Information pursuant to this [section 13](#).

13.02 The Licensee will hold in confidence information regarding the Company's customers, services, facilities, and current or future business plans and strategies provided to it by the Company or received by the Licensee in the course of the parties' performance of their obligations under this Agreement, the Tariff or the Construction Standards or as a result of the Licensee's use of the Support Structures ("**Company Confidential Information**"). The Licensee agrees to use Company Confidential Information solely for the purpose of facilitating performance of the services contemplated in this Agreement, the Tariff and the Construction Standards. The Licensee will protect the confidentiality of Company Confidential Information to the same degree that the Licensee protects the confidentiality of its own confidential information which, in any event, shall not be less than a reasonable degree of care. Furthermore the Licensee shall not use or permit use of Company Confidential Information for competitive purposes nor will, without the prior written consent of the Company, it disclose or permit its disclosure to any third parties except to contractors authorized pursuant to the Tariff and then, only for the purposes of facilitating the performance of services contemplated in this Agreement, the Tariff and the Construction Standards.

13.03 Information provided by one party to this Agreement (the "**Disclosing Party**") to the other (the "**Receiving Party**") shall not be subject to the obligations specified in [sections 13.01](#) and [13.02](#), above, where such information:

- (a) was already known to the Receiving Party free of any obligation to keep confidential;
- (b) enters or entered the public domain by other than unauthorized disclosure;
- (c) was subsequently lawfully obtained by the Receiving Party from a third party not obligated to hold such information in confidence;

- (d) is used, released or disclosed by the Receiving Party with the Disclosing Party's prior express written approval;
- (e) is required to be disclosed in a proceeding of any court or regulatory agency of competent jurisdiction provided that, in such instance, such information shall be provided subject to a request that it be treated in confidence by the court or regulatory agency; or is independently developed by the Receiving Party.

14 Miscellaneous

- 14.01 In accordance with paragraph 123 of Order CRTC 2000-13, the Attachment provides diagrams to demonstrate the manner in which the monthly strand rental unit rate is applied.

*** End of Document ***