

FORM OF GUARANTEE

THIS GUARANTEE is made as of the _____ day of _____, 20__.

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, having its head office at
333 Dunsmuir Street, Vancouver, B.C., V6B 5R3, Canada

(hereinafter referred to as "Beneficiary")

AND:

(hereinafter referred to as the "Guarantor")

WHEREAS:

- (A) The Beneficiary and [_____] ("Contractor") entered into a contract dated _____, 20__ for _____, BC Hydro Reference No. (the "Contract").
- (B) At the request of the Beneficiary, and as a condition of the Contract, the Guarantor has agreed to guarantee the punctual and complete performance of any and all of the present and future obligations and liabilities of Contractor under or arising out of the Contract (the "Guaranteed Obligations").

THEREFORE IN CONSIDERATION OF THE PAYMENT of ten (\$10.00) dollars by the Beneficiary to the Guarantor and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed), including the Beneficiary entering into the Contract with Contractor, the parties agree as follows:

- (1) The Guarantor absolutely, irrevocably and unconditionally guarantees to the Beneficiary the punctual and complete performance and observance of all of the Guaranteed Obligations whenever, however or wherever incurred. If at any time Contractor defaults in the performance of any of the Guaranteed Obligations in accordance with the Contract, the Guarantor shall, immediately upon the Beneficiary's written demand, remedy the default, including perform (or procure the performance of) Contractor's Guaranteed Obligations and pay any and all sums that may be payable under the Contract in consequence of the non-performance by Contractor of such Guaranteed Obligations.
 - (2) The Guarantor agrees to pay the Beneficiary, forthwith upon demand, all out-of-pocket costs and expenses, including, without limitation, legal fees on a solicitor and client basis, incurred by or on behalf of the Beneficiary in connection with the Beneficiary enforcing any of its rights against Contractor or the Guarantor in respect of the Guaranteed Obligations.
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- (3) Any obligation of the Guarantor hereunder that is not paid when due will bear interest at a rate that is equal to the annual rate of interest declared by the Bank of Montreal from time to time as the rate of interest charged to its most creditworthy commercial borrowers for loans in Canadian dollars payable on demand and commonly referred to as its "prime rate", plus 2%, from the date it becomes due to the date of payment, due and payable on demand.
 - (4) This Guarantee is a continuing guarantee and shall apply to all of the Guaranteed Obligations and remain in place until the latter of 1) the date which is 24 months after the date of completion as shown in the Completion Certificate (as defined in the Contract) issued under the Contract or 2) fulfilment or expiration of all such Guaranteed Obligations in accordance with the Contract, or if the Contract is terminated, the date which is 24 months after the Contract is terminated.
 - (5) The Beneficiary shall not be bound to seek or exhaust its recourse against Contractor or any other persons or to realize on any security (including, without limitation, any letters of credit it may hold in respect of the Guaranteed Obligations) before being entitled to exercise its rights under this Guarantee. However, the Beneficiary shall not be entitled to enforce its rights and claims under this Guarantee with respect to a Guaranteed Obligation to the extent such Guaranteed Obligation has already been satisfied through other security held by the Beneficiary in respect of the Guaranteed Obligations.
 - (6) Subject to clause (2), (3) and (12), nothing herein shall be construed as imposing greater obligations and liabilities on the Guarantor than are imposed on Contractor under the Contract. The Guarantor shall be entitled to all defences, limitations and exclusions available to Contractor under the Contract.
 - (7) This Guarantee shall extend to any variation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Beneficiary and Contractor.
 - (8) The Beneficiary may, at its election, exercise or decline to exercise any right or remedy it may have against Contractor or any other person liable on or in respect of the Guaranteed Obligations, or any security held from Contractor or any other person in respect of the Guaranteed Obligations, without affecting or impairing the liability of the Guarantor, and the Guarantor hereby waives any defence arising out of the absence, impairment or loss of any such security or right of reimbursement, contribution or subrogation.
 - (9) The Beneficiary will have the right, in its discretion, to proceed directly against the Guarantor for any and all remedies provided by law, equity or in the Contract whether by legal proceedings or otherwise, to have the Guarantor fulfil the Guaranteed Obligations.
 - (10) Until the Guaranteed Obligations have been fully and completely performed, and subject to fulfilment of the requirements of this Guarantee, the Guarantor will not be released or discharged from its obligations hereunder by any matter or thing whatsoever that would otherwise release or discharge a guarantor. Without limiting the generality of the foregoing, the Guarantor expressly agrees that none of the following circumstances or actions, whether taken by or occurring in respect of Contractor, the
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Beneficiary, the Guarantor or any other person or entity, will in any way release, affect or impair the obligations and liabilities of the Guarantor hereunder:

- (a) voluntary or involuntary liquidation, dissolution, consolidation or merger (or the sale or other disposition of all or part of a party or its assets);
 - (b) bankruptcy, receivership, insolvency, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt, or other similar proceeding affecting a party or any of its assets;
 - (c) the invalidity or unenforceability of the Contract or any security, bond, third party guarantees, or other assurances intended to be granted or provided by Contractor or any other party to the Beneficiary or any other party under the Contract;
 - (d) the failure of the Beneficiary or any other party to take, protect or preserve any rights, security or similar assurance in relation to the Contract, from Contractor or any other party, or the loss, diminution or unenforceability or impossibility to realize or abstention from realization of any such right, security or similar assurance, whether or not caused or resulting from any act or omission of the Beneficiary or any person acting for the Beneficiary;
 - (e) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing, any other circumstance that might otherwise constitute any legal or equitable defence or discharge of the obligations and/or liabilities of Contractor or the Guarantor or that might otherwise limit recourse against the Guarantor; and
 - (f) if, with or without the Guarantor's knowledge or consent, any one or more of the following occur:
 - (1) any modifications of the Contract, made by agreement of Contractor and the Beneficiary;
 - (2) any waivers by the Beneficiary or Contractor of any terms, provisions, conditions or obligations under the Contract;
 - (3) any assignment or the making of any assignment of the Contract as may be permitted under the Contract;
 - (4) any failure by the Beneficiary to enforce any provision of the Contract against Contractor; or
 - (5) any other granting of extensions or time, renewals, indulgences, waivers, releases or discharges, or the making of any compromises or transactions or arrangements, regarding the Contract.
- (11) Until the Guaranteed Obligations have been fully and completely performed, the Guarantor shall not be subrogated in any manner to any right of the Beneficiary.
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- (12) If the Guarantor or any other person is required by law to make any deduction or withholding on account of any tax or other amount from any sum paid or payable by the Guarantor under this Guarantee, the sum payable by the Guarantor in respect of which the relevant deduction, withholding or payment is required shall (except, in the case of any such payment, to the extent that its amount is not ascertainable when that sum is paid) be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, the Beneficiary receives on the due date and retains (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to what it would have received and so retained had no such deduction, withholding or payment been required or made.
- (13) Neither the Guarantor's obligations under this guarantee nor any right or remedy for the enforcement thereof will be impaired, stayed, modified, changed or released in any manner whatsoever by any order, stay, modification, release or limitation in regard to Contractor or the Guarantor resulting from the operation or effect of any provision of the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), the Winding-Up Act (Canada) or other statute, code or laws of any jurisdiction relating to debtor relief or relating to the release of the obligations of the Guarantor hereunder, or from the decision of any court or authority interpreting any of the same, and the Guarantor will be obligated under this guarantee as if no such order, stay, modification, release or limitation had occurred.
- (14) This Guarantee constitutes the entire agreement of the Guarantor with the Beneficiary relating to the subject matter hereof and supersedes all prior contracts or agreements, whether oral or written. There are no representations, agreements, arrangements or undertakings, oral or written, between the Guarantor and the Beneficiary relating to the subject matter of this Guarantee which are not fully expressed herein.
- (15) No amendment to this Guarantee will be valid or binding unless set forth in writing and duly executed by each of the Beneficiary and the Guarantor. No waiver of any breach by the Guarantor of any provision of this Guarantee will be effective or binding unless made in writing and signed by the Beneficiary and, unless otherwise provided, will be limited to the specific breach waived.
- (16) This Guarantee is in addition to and not in substitution for any other undertakings, securities and guarantees held or which may be held by or for the benefit of the Beneficiary, including without limitation any performance bonds, letters of credit, financial holdbacks under the Contract, and guarantees from any other parties.
- (17) The Guarantor shall promptly and with all due diligence perform its obligations under this Guarantee.
- (18) All notices or other communications in connection with this Guarantee shall be served:
- (a) Upon the Beneficiary, at 333 Dunsmuir Street, Vancouver, British Columbia, V6B 5R3. Attention: _____ ; and
- (b) Upon the Guarantor, at [_____] Attention: [_____].
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Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile transmission shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by facsimile transmission shall be confirmed promptly after transmission in writing by certified or registered mail or personal delivery.

- (19) The Beneficiary and the Guarantor may change their respective nominated addresses for service of communications to another address but only by prior written notice to each other. All such communications must be in writing.
 - (20) This Guarantee shall enure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and permitted assigns.
 - (21) Whenever possible, each provision of this Guarantee shall be interpreted in such manner as to be effective, enforceable and valid under British Columbia law, and Canadian law to the extent applicable, but if any provision of this Guarantee shall be found to be illegal, ineffective, invalid or unenforceable under such law, it shall be deemed severed from this Guarantee to the extent of such illegality, ineffectiveness, invalidity or unenforceability without effect on any of the remaining provisions of this Guarantee.
 - (22) This Guarantee shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.
 - (23) Any dispute arising from, connected with, or relating to this Guarantee will be resolved by the courts of British Columbia sitting in the City of Vancouver, and the Guarantor hereby irrevocably submits and attorns to the original and exclusive jurisdiction of the courts of British Columbia sitting in the City of Vancouver for those purposes.
 - (24) The Guarantor represents and warrants that:
 - (a) it is duly organized and validly existing under the laws of its jurisdiction of organization;
 - (b) it has the power, authority and legal right to execute and deliver, and to perform its obligations under, this Guarantee, and has taken all necessary action to authorize its execution, delivery and performance of this Guarantee, and this Guarantee has been duly executed by it;
 - (c) this Guarantee constitutes a legal, valid and binding obligation of the Guarantor;
 - (d) the execution, delivery and performance of this Guarantee will not violate or result in default under any applicable law, rule or regulation or any judgement, order, decree, agreement, instrument or undertaking applicable to the Guarantor;
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- (e) it is related to Contractor and directly or indirectly derives a benefit from the Beneficiary entering into the Contract with Contractor;¹
- (f) it has the financial equity and the ability and capacity as described in (a) and (b) above to carry out its obligations under this Guarantee.

(25) The Beneficiary may at any time during the term of this Guarantee request, by written notice, reasonable financial assurances of the Guarantor's continued ability to carry out its obligations under this Guarantee and the Guarantor shall provide such reasonable assurances to the Beneficiary in writing within ten (10) Days of the Beneficiary's notice.

IN WITNESS WHEREOF the Guarantor has executed this Guarantee as of the day and year first above written.

[GUARANTOR]

By: _____
(Signature)

(Print Name)

Title: _____

Date: _____

¹ If the Guarantor is not an affiliate of the Contractor, clause (e) will be deleted from the Guarantee before it is delivered.
