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**COAL MINING CUSTOMER PAYMENT PLAN**

- A. The Lieutenant Governor in Council issued a Direction to the British Columbia Utilities Commission Respecting COVID-19 Relief, pursuant to section 3 of the *Utilities Commission Act* (British Columbia), dated effective April 2, 2020, as amended by Order in Council No. 319 dated June 19, 2020 (collectively, the “**Direction**”);
- B. Pursuant to the Direction, Eligible Customers (as defined below) shall be permitted, upon admission to the Coal Mining Customer Payment Plan, to defer payment of a portion of their account with BC Hydro for electricity service, to support the stability/liquidity of the Eligible Customer in respect of mining operations due to the COVID-19 pandemic; and
- C. The terms and conditions of participation in the Coal Mining Customer Payment Plan are incorporated into this Supplement to the Electric Tariff.

**1.0 INTERPRETATION****1.1 Definitions**

In this Supplement:

- (a) “**Account Balance**” means, in relation to a Participating Customer, an amount determined by BC Hydro prior to issuing each bill during the Application Period, as follows:

$$\text{Account Balance} = (\text{TSA} + \text{I}) - (\text{TAA} + \text{A})$$

Where:

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- (i) **“TSA”** means the total amount that would have been payable by the Participating Customer under Rate Schedule 1611 but for the application of this Supplement, during the period beginning on the date the Supplement begins to apply to the Participating Customer and ending on the date BC Hydro makes a determination of the Account Balance;
  - (ii) **“I”** means the interest accumulated on the Account Balance as of the last day of the most recent Billing Period prior to the determination of the Account Balance, calculated in accordance with section 2.6;
  - (iii) **“TAA”** means the sum of all Adjusted Amounts paid by the Participating Customer; and
  - (iv) **“A”** means any payments made by the Participating Customer in addition to an Adjusted Amount, including payments made on account of the Account Balance, in accordance with section 2.5;
- (b) **“Act”** means the *Utilities Commission Act* (British Columbia);
- (c) **“Adjusted Amount”** has the meaning given to that term in section 2.2 or 2.3, as applicable;
- (d) **“Applicable Mine”** means any of the following mines:
- (i) Willow Creek; and
  - (ii) Wolverine;

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- (e) **“Application Period 1”** means, in respect of a Participating Customer, the period that begins on April 2, 2020, and ends on Closing Date 1 or such earlier date on which the Coal Mining Payment Plan Agreement for the Participating Customer is terminated pursuant to section 3.2;
- (f) **“Application Period 2”** means, in respect of a Participating Customer, the period that begins on Closing Date 1 or such later date the Supplement begins to apply to the Participating Customer, and ends on Closing Date 2 or such earlier date on which the Coal Mining Payment Plan Agreement for the Participating Customer is terminated pursuant to section 3.2;
- (g) **“Billing Month”** means a month in which BC Hydro issues a bill to a Participating Customer for electricity service respecting an Applicable Mine;
- (h) **“Billing Period”** means a Participating Customer’s billing period determined pursuant to Rate Schedule 1611;
- (i) **“Closing Date 1”** means the earlier of September 30, 2020 or the date immediately before the day on which BC Hydro issues to the Participating Customer a seventh monthly bill pursuant to this Supplement;
- (j) **“Closing Date 2”** means March 14, 2021;
- (k) **“Coal Mining Customer Payment Plan”** means the Coal Mining Customer Payment Plan offered by BC Hydro to Eligible Customers pursuant to this Supplement;
- (l) **“Coal Mining Customer Payment Plan Agreement”** means the Coal Mining Customer Payment Plan Agreement attached as Appendix 1 to this Supplement;
- (m) **“Commission”** means the British Columbia Utilities Commission;

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- (n) **“Direction”** means the Direction to the British Columbia Utilities Commission Respecting COVID-19 Relief issued by the Lieutenant Governor in Council pursuant to section 3 of the *Act* and dated effective April 2, 2020, as amended by Order in Council No. 319 dated June 19, 2020;
- (o) **“Eligible Customer”** means a customer of BC Hydro who, immediately before the Direction comes into force, was receiving electricity service from BC Hydro respecting an Applicable Mine;
- (p) **“Floating Interest Rate 1”** means a nominal annual interest rate calculated as follows:
- $$\text{Floating Interest Rate} = (12 \times [(1+i)^{1/12} - 1]) \times 100$$
- Where:
- (i) **“i”** means the sum of Prime + 2.5 per cent; and
- (ii) **“Prime”** has the meaning given to that term in section 1.1(t);
- (q) **“Floating Interest Rate 2”** means a nominal annual interest rate calculated in accordance with the formula set out in Floating Interest Rate 1, except that
- (i) **“i”** means the sum of Prime + 5.0 per cent;
- (r) **“Participating Customer”** means an Eligible Customer whose request referred to in section 2.1(a)(i) has been accepted and to whom this Supplement applies;
- (s) **“Party”** means either BC Hydro or a Participating Customer and **“Parties”** means both BC Hydro and the Participating Customer;

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- (t) **"Prime"** means the published per annum prime lending rate on loans denominated in Canadian Dollars made in Canada charged by the principal banker of BC Hydro as at the date the interest is calculated in accordance with section 2.6;
- (u) **"Rate Schedule 1611"** means Rate Schedule 1611 – Large General Service (150 kW and Over), as amended, supplemented or replaced from time to time;
- (v) **"Settlement Price Period"** means, in relation to a Participating Customer, a period that
- (i) Begins 30 days before the day referred to in paragraph 1.1(v)(ii)(A) or (B), as applicable; and
  - (ii) Ends on a day that is either:
    - A. The 15<sup>th</sup> day of the month that immediately precedes the Billing Month, if BC Hydro issues the bill on or before the 15<sup>th</sup> day of the Billing Month; or
    - B. The 15<sup>th</sup> day of the Billing Month, if BC Hydro issues the bill after that day;
- (w) **"Supplement"** means this supplement and includes the form of Coal Mining Customer Payment Plan Agreement attached as Appendix 1; and
- (x) **"Term"** has the meaning given to that term in section 3.1.

## 1.2 Appendices

Appendix 1 – form of Coal Mining Customer Payment Plan Agreement attached to this Supplement is incorporated into and forms part of this Supplement.

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**1.3 Interpretation**

In this Supplement, except where otherwise expressly provided or the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa, “or” is not exclusive, “including” is not limiting, whether or not non-limiting language (such as “without limitation”) is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person’s successors and assigns but, if applicable, only if the succession or assignment is permitted under this Supplement;
- (b) The inclusion of headings in this Supplement is for convenience only and shall not affect the construction or interpretation of this Supplement;
- (c) Any reference to a specific section, subsection or other subdivision is to the designated section, subsection or other subdivision of this Supplement, unless the context otherwise requires; and
- (d) All monetary amounts referred to in this Supplement are stated and shall be paid in Canadian currency.

**1.4 Obligations Supplemental**

- (a) BC Hydro’s and a Participating Customer’s obligations under this Supplement are supplemental to their respective obligations under the Electric Tariff.

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- (b) Except as specifically supplemented by this Supplement, the Electric Tariff shall continue to apply to BC Hydro and the Participating Customer in full force and effect and, in particular, shall govern billing and payment for electricity service supplied by BC Hydro. Nothing in this Supplement shall release a Participating Customer from liability for payment of any amounts owing pursuant to the Electric Tariff and Rate Schedule 1611.

## **2.0 COAL MINING CUSTOMER PAYMENT PLAN**

### **2.1 Application to Participate**

- (a) As a condition of participating in the Coal Mining Customer Payment Plan:
- (i) An Eligible Customer shall, by April 30, 2020 or such later date agreed to by BC Hydro, make a request to BC Hydro that this Supplement apply respecting amounts that will be payable by the Eligible Customer to BC Hydro for electricity service provided for the operation of an Applicable Mine by completing, executing and delivering to BC Hydro an agreement in the form attached as Appendix 1;
  - (ii) The Applicable Mine must be operating and must not be in long-term care and maintenance; and
  - (iii) The Eligible Customer must have no overdue bills with BC Hydro on the date of the request, unless otherwise agreed to by BC Hydro.
- (b) BC Hydro shall, as soon as practicable after receipt of a request referred to in paragraph 2.1(a)(i), if the Eligible Customer meets the requirements for participation in the Coal Mining Customer Payment Plan, accept the request and notify the Eligible Customer.

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**2.2 Payment of Adjusted Amount During Application Period 1**

The Participating Customer shall pay on account of each bill issued by BC Hydro during the Application Period 1, an adjusted amount for electricity service respecting the Applicable Mine (the “**Adjusted Amount**”), in Canadian dollars, equal to 50 per cent of the amount that would have been payable by the Participating Customer under Rate Schedule 1611, as applicable, on account of that bill but for the application of this Supplement.

**2.3 Payment of Adjusted Amount During Application Period 2**

The Participating Customer shall pay on account of each bill issued by BC Hydro during the Application Period 2, an Adjusted Amount for electricity service respecting an Applicable Mine, in Canadian dollars, calculated by BC Hydro as follows:

$$\text{Adjusted Amount} = \text{SA} + (\text{SA} \times \text{AP})$$

Where:

- (a) “**SA**” means the amount that would have been payable by the Participating Customer under Rate Schedule 1611 on account of that bill but for the application of this Supplement;
- (b) “**AP**” means  $[(\text{settlement price} - 134) \times 5]/100$ ;

Where the settlement price is the average of the daily settlement prices per metric tonne of Hard Coking Coal (Premium Low Vol) FOB Australia, as reported by Platts (Coal Trader International), for the most recent Settlement Price Period, converted into Canadian currency by using the average Bank of Canada daily exchange rate over that same period;

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Provided that:

- (i) If an AP is calculated to be more than 0.75, the Adjusted Amount for that bill shall be calculated using an AP of 0.75; and
- (ii) If an AP is calculated to be less than -0.75, the Adjusted Amount for that bill shall be calculated using an AP of -0.75.

#### **2.4 Deferral of Payment**

The difference between the Adjusted Amount calculated in accordance with section 2.2 or 2.3, as applicable, and the amount that would have been payable by the Participating Customer under Rate Schedule 1611, but for the application of this Supplement, shall be deferred in accordance with this Supplement and such difference shall be added to the Account Balance in accordance with section 1.1(a) upon BC Hydro issuing the bill in respect of such Adjusted Amount.

#### **2.5 Additional Amount**

The Participating Customer may, on account of the Account Balance, pay any amount in addition to an Adjusted Amount at any time without notice, interest or penalty and all such amounts paid in excess of the Adjusted Amount shall be reflected in the Account Balance as of the date the payment was made.

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**2.6 Interest**

- (a) Interest, calculated and compounded monthly, not in advance both before and after demand, default and judgment, shall accrue on the daily Account Balance, based on the number of days elapsed in a 365-day year, at the Floating Interest Rate 1 or Floating Interest Rate 2, as applicable, and such interest shall be added to the Account Balance on the last day of each Billing Period, or in the case of the Closing Date 1 on the day prior to Closing Date 1, and bear interest at the same rate:
- (i) Floating Interest Rate 1 shall apply until the Closing Date 1; and
  - (ii) Floating Interest Rate 2 shall apply thereafter until the Account Balance is zero.
- (b) The Participating Customer acknowledges that Prime was 2.45 per cent per annum on April 2, 2020. A certificate of a Managing Director of the principal banker of BC Hydro, which on the date this Supplement came into effect is the Bank of Montreal, shall be conclusive evidence as to the rate of Prime in effect from time to time.

**2.7 Final Payment**

On or before the Closing Date 2, the Participating Customer shall pay the Account Balance. If unpaid by the Closing Date 2, the Participating Customer shall pay the Account Balance, plus interest at the rates specified in section 2.6(a)(ii), as follows:

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- (a) BC Hydro shall add to the next bill issued to the Participating Customer for electricity service to the Applicable Mine, and to each monthly bill thereafter until the Account Balance is zero, an amount equal to 1/9 of the Account Balance as at the Closing Date 2 plus interest calculated and accrued in accordance with section 2.6(a)(ii). BC Hydro and the Participating Customer may agree in writing to a different period of repayment, but BC Hydro is not obligated to do so.
- (b) Any bill issued in accordance with section 2.7(a) unpaid by the Participating Customer shall become overdue in accordance with the Electric Tariff.

## **2.8 Taxes and Levies**

Amounts calculated under this Supplement do not include the Goods and Services Tax, the Provincial Sales Tax and any other tax or levy which BC Hydro may be lawfully authorized or required to collect from the Participating Customer.

## **3.0 TERM OF PAYMENT PLAN AGREEMENT**

### **3.1 Term of Payment Plan Agreement**

The term of a Coal Mining Customer Payment Plan Agreement (the “**Term**”) commences on the date the Application Period 1 commences and continues until the later of the Closing Date 2 or the date following the Closing Date 2 at which the Account Balance is zero unless terminated earlier pursuant to and in accordance with section 3.2.

### **3.2 Termination**

- (a) A Coal Mining Customer Payment Plan Agreement may be terminated in any of the following events:

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- (i) Immediately by the Participating Customer upon request to BC Hydro if at the time of the request the Account Balance is zero;
- (ii) Immediately by BC Hydro if the Participating Customer sells, transfers or assigns all or substantially all of its interest in the Applicable Mine, at which time all unpaid amounts, including the Account Balance, shall become due and payable pursuant to the Electric Tariff;
- (iii) Immediately by BC Hydro if the Participating Customer commits an act of bankruptcy, becomes insolvent, proposes a compromise or arrangement to its creditors generally, has any petition for a receiving order in bankruptcy filed against it, makes a voluntary assignment in bankruptcy and/or fails to make any payment required under the Electric Tariff as supplemented by this Supplement, and all amounts owing by the Participating Customer to BC Hydro, including the Account Balance, shall, immediately upon such notice being given, become due and payable pursuant to the Electric Tariff; and
- (iv) Immediately by BC Hydro upon any person or group of persons acting in concert acquiring, in a single transaction or a series of transactions, more than 50 per cent of the issued and outstanding shares in the capital of the Participating Customer resulting in a change of control of the Participating Customer, at which time all unpaid amounts, including the Account Balance, shall become due and payable pursuant to the Electric Tariff.

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**4.0 DISPUTE RESOLUTION****4.1 Disputes**

If any dispute, question or difference of opinion between the Parties arises out of or under this Supplement (“**Dispute**”), then a Party may give to the other Party a notice (“**Dispute Notice**”) specifying the Dispute and requiring its resolution under this section 4.0. All Disputes shall be resolved in accordance with the provisions of this section 4.0, provided however, that either Party may apply to a court of competent jurisdiction for any interim relief by way of restraining order, injunction or other equitable remedy.

**4.2 Contract Representatives to Seek Resolution**

If a Dispute Notice is given to a Party, each Party shall appoint a contract representative within five business days of a Party notifying the other Party of a Dispute and cause its contract representative to negotiate in good faith to attain a resolution of the Dispute.

**4.3 Referral to Senior Executives**

If a Dispute is not resolved within five business days of the Dispute being referred to the contract representatives, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through arbitration in accordance with section 4.4. Each Party shall appoint a senior executive to undertake such informal process within 10 business days of a Party notifying the other Party of a Dispute and the Parties shall use commercially reasonable efforts to resolve the Dispute through their appointed senior executives within 30 days after notification.

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#### 4.4 Referral to Arbitration

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives (or either party fails to timely appoint a contract representative or senior executive pursuant to sections 4.2 and 4.3), then either Party may submit the Dispute to arbitration under the *Arbitration Act* (British Columbia). The following rules shall apply to arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties or if the Parties are unable to agree to an arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Arbitration Act* (British Columbia) for the appointment of a single arbitrator;
- (b) The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any of the above in any manner;
- (c) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator; specifically, the arbitrator shall be instructed to impose time limits on the arbitration process such that a decision may be rendered within 45 days of appointment of the arbitrator;
- (d) The arbitrator shall determine the Dispute in accordance with the laws of the Province of British Columbia and applicable Canadian federal law; and
- (e) The Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs.

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**4.5 Arbitration Decisions**

The decision of the arbitrator shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the standards of the *Arbitration Act* (British Columbia) or the rules set out in section 4.4. The final decision of the arbitrator shall also be filed with the Commission.

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**APPENDIX 1**

**COAL MINING CUSTOMER PAYMENT PLAN AGREEMENT**

**THIS COAL MINING CUSTOMER PAYMENT PLAN AGREEMENT** made as of

the \_\_\_\_ day of \_\_\_\_\_, 20  
for \_\_\_\_\_.

**BETWEEN:**

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY,**  
having its head office at 333 Dunsmuir Street,  
Vancouver, British Columbia V6B 5R3  
(herein called "**BC Hydro**")

OF THE FIRST PART

**AND:**

\_\_\_\_\_ having an office in British Columbia at

\_\_\_\_\_ (herein called the "**Customer**") [, being a [**wholly owned**] subsidiary of [**PARENT**], having its head office in [**jurisdiction**]]

OF THE SECOND PART

**WITNESSES THAT** the parties declare and agree as follows:

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**1.0 INTERPRETATION**

**1.1 Capitalized Terms**

Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Supplement.

**2.0 ELIGIBILITY**

- (a) The Customer is an Eligible Customer and operates the following Applicable Mine: the \_\_\_\_\_ mine (the “**Mine**”);
- (b) On the date this Agreement has been executed by the Customer and delivered to BC Hydro, the Mine is operating and is not in long term care and maintenance; and
- (c) On the date this Agreement has been executed by the Customer and delivered to BC Hydro, the Customer has no overdue bills with BC Hydro, unless otherwise agreed to by BC Hydro.

**3.0 REQUEST FOR PARTICIPATION**

The Customer hereby requests participation as a Participating Customer in the Coal Mining Customer Payment Plan and acknowledges and agrees that the terms and conditions of the Electric Tariff, in respect of their application to the Customer, shall be amended by the addition of the Supplement and that the terms of the Electric Tariff, as supplemented by the Supplement shall apply to the supply of electricity service from BC Hydro to the Customer in respect of the Mine during the term of this Agreement.

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**4.0 APPLICATION PERIOD**

The Supplement shall begin to apply to the Customer, and the Application Period 1 shall commence on April 2, 2020.

**5.0 TERM OF AGREEMENT**

The term of this Agreement commences on the date the Application Period 1 commences and continues until the later of the Closing Date 2 or the date following the Closing Date 2 at which the Account Balance is zero unless terminated earlier pursuant to and in accordance with section 3.2.

**6.0 MISCELLANEOUS****6.1 Successors and Assigns**

- (a) The Customer shall not transfer or assign, in whole or in part, its interest in this Agreement.
- (b) This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors.

**6.2 Further Assurances**

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

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**6.3 Waiver**

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

**6.4 Amendments**

No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in accordance with its authority under the Direction and the *Utilities Commission Act*.

**6.5 Governing Law**

This Agreement and all terms and conditions contained in it shall be governed and construed in accordance with the laws of the Province of British Columbia.

**6.6 Notices**

All notices, consents, requests or demands that either Party may be required or may desire to give to the other Party under this Agreement shall be in writing and shall be deemed to be given to and received by the addressee on the business day next following when it is delivered by hand, by courier or by facsimile copier, and is deemed to be given when received if delivered by prepaid mail at the address that each Party has given notice of prior to this Agreement.

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**6.7 Counterpart Execution**

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

**6.8 Electronic Delivery**

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery, but that Party shall promptly also deliver in person to the other Party an originally executed copy of this Agreement.

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IN WITNESS WHEREOF the duly authorized representative of each party has executed this Agreement. [If the Customer is a joint venture or partnership then this Agreement shall be executed by all joint venturers or partners and all declarations and agreements of the Customer shall be deemed to be joint and several].

BRITISH COLUMBIA HYDRO AND POWER  
AUTHORITY

Per:

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Authorized Signatory (Name and Title)

**[CUSTOMER]**

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Authorized Signatory (Name and Title)

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Authorized Signatory (Name and Title)

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The undersigned hereby unconditionally and irrevocably guarantees the payment obligations of [CUSTOMER] to BC Hydro under this Agreement, and agrees that the undersigned shall be liable to BC Hydro for the performance of [CUSTOMER]'s payment obligations under this Agreement as a primary obligor as if a party to this Agreement. The undersigned further acknowledges and agrees that such guarantee will continue and survive until all payment obligations of the Customer arising during the term of the Agreement have been fully satisfied and the Account Balance determined in accordance with this Agreement is zero, notwithstanding any earlier termination of this Agreement.

[PARENT]

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Authorized Signatory (Name and Title)

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