

GUARANTEE

This Guarantee ("Guarantee") dated as of the ____ day of _____, 20__ is made and entered into by **[Name of Guarantor]**, a corporation incorporated or a legal entity duly organized under the laws of _____, and having its head office at _____ [Address of Guarantor] ("**GUARANTOR**"), in favour of British Columbia Hydro and Power Authority ("BC HYDRO").

WITNESSETH:

WHEREAS GUARANTOR's subsidiary **[Name of Subsidiary]** ("SUBCO") has entered into an agreement dated _____ with BC HYDRO for the provision of transmission service (such agreement, as amended from time to time, being herein called the "Agreement"); and

WHEREAS SUBCO has requested that GUARANTOR guarantee its obligations under the Agreement (the "Guaranteed Obligations") in accordance with the terms of this Guarantee.

NOW THEREFORE, in consideration of the premises, the agreement of BC HYDRO to provide transmission service to SUBCO pursuant to the Agreement, the payment of \$10 in lawful money of Canada by BC HYDRO to GUARANTOR and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by GUARANTOR, GUARANTOR hereby covenants and agrees with BC HYDRO as follows:

1. **GUARANTEE.** Subject to the provisions hereof, GUARANTOR hereby absolutely, irrevocably and unconditionally guarantees the due and punctual performance, satisfaction, payment and discharge of the Guaranteed Obligations to BC HYDRO in accordance with the Agreement. If SUBCO fails to pay any Guaranteed Obligations, GUARANTOR shall forthwith pay to BC HYDRO the amount due in the same currency and manner provided for in the Agreement. This Guarantee shall constitute a guarantee of payment and not of collection. GUARANTOR shall have no right of subrogation with respect to any payments it makes under this Guarantee until all of the Guaranteed Obligations have been paid in full. GUARANTOR's liability hereunder shall be and is specifically limited to payments expressly required to be made in accordance with the Agreement (even if such payments are deemed to be damages) and, except to the extent specifically provided in the Agreement, in no event shall GUARANTOR be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort or any other damages or, subject to Section 10 hereof, costs. GUARANTOR's obligations under this Guarantee hereunder shall be absolute and unconditional, shall not be subject to any counterclaim, set-off, deduction or defense based upon any claim GUARANTOR may have against BC HYDRO or SUBCO and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected for any reason whatsoever until the complete performance of the Guaranteed Obligations, including without limitation by reason of:
 - (a) Any amendment or modification of any provision of the Agreement or any of the Guaranteed Obligations or any assignment or transfer thereof, including any extension of the time for payment of or compliance with any of the Guaranteed Obligations, whether or not consented to by the Guarantor;

- (b) Any waiver, consent, extension, granting of time, forbearance, indulgence, renewal or other action or inaction under or in respect of the Agreement or any of the Guaranteed Obligations, or any exercise or non-exercise of any right, remedy or power in respect thereof, whether or not consented to by GUARANTOR;
 - (c) Any informality in, omission from, invalidity or unenforceability of, or any misrepresentation, irregularity or other defect in, the Agreement, any of the Guaranteed Obligations or any other agreement or instrument;
 - (d) any lack or limitation of capacity, status, power or authority of either SUBCO or GUARANTOR or any of their respective directors, officers, employees, partners or agents, acting or purporting to act on their behalf, and any defect or failure to comply with a formal legal requirement in the execution or delivery of any document;
 - (e) any transfer of any assets to or from SUBCO or GUARANTOR, any consolidation, amalgamation or merger of SUBCO or GUARANTOR with or into any person, or any change whatsoever in the name, objects, capital structure, corporate or other legal existence, membership, constitution, or business control of GUARANTOR, SUBCO or BC HYDRO;
 - (f) any failure on the part of SUBCO or any other person to perform or comply with any terms of the Agreement, any of the Guaranteed Obligations or any other agreement or instrument;
 - (g) the assignment of all or any of the part of the benefits of this Guarantee, the Agreement or any other agreement or instrument; and
 - (h) any other circumstance which might otherwise constitute a defense available to or a discharge of GUARANTOR or SUBCO or any other person in respect of the Guaranteed Obligations, or GUARANTOR in respect of this Guarantee.
2. LIMIT OF LIABILITY. Notwithstanding any other provision of this Guarantee, the aggregate liability of GUARANTOR under this Guarantee hereunder shall not exceed \$XX,000,000.
3. DEMAND. If SUBCO fails to pay or cause to be paid all or any portion of the Guaranteed Obligations, as and when the same shall become due and payable pursuant to the Agreement, BC HYDRO shall be entitled, by notice to the Guarantor, to make a demand upon GUARANTOR for the payment of the Guaranteed Obligations or that portion thereof which SUBCO has failed to pay (hereinafter referred to as a "Payment Demand"). A Payment Demand shall be in writing and shall briefly specify in reasonable detail what amount SUBCO has failed to pay and an explanation of why such payment is due, with a specific statement that BC HYDRO is calling upon GUARANTOR to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to GUARANTOR that it must pay the Guaranteed Obligations. A single written Payment Demand shall be effective as to any specific failure to pay during the continuance of such failure to pay, until SUBCO or GUARANTOR has cured such failure to pay, and additional written Payment Demands concerning such failure to pay shall not be required until such failure to pay is cured. The amount specified in a Payment Demand shall become

immediately due and payable by GUARANTOR under this Guarantee upon such Payment Demand given to the GUARANTOR.

4. RECOURSE. BC HYDRO may, at its option, proceed against GUARANTOR to enforce any of the Guaranteed Obligation when due without first proceeding against SUBCO or any other person and without first resorting to any other remedy.
5. TERM. This Guarantee shall remain in full force and effect so long as there may be Guaranteed Obligations under the Agreement or until they are earlier terminated by the written agreement of BC HYDRO. When this Guarantee is terminated in accordance with the foregoing, GUARANTOR shall have no further liability hereunder, except as provided in the last sentence of this section. No such termination shall affect GUARANTOR's liability with respect to any Guaranteed Obligations arising prior to the effective date of such termination.
6. REPRESENTATIONS AND WARRANTIES. GUARANTOR represents and warrants to BC HYDRO that:
 - (a) it is a corporation or other legal entity duly organized and validly existing under the laws of its jurisdiction of incorporation or formation and has the power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;
 - (b) none of the execution, delivery and performance of this Guarantee violates or conflicts with any law applicable to it, any provision of its constating documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
 - (c) this Guarantee has been duly authorized by all necessary action on the part of GUARANTOR and no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over GUARANTOR is required on the part of GUARANTOR for the execution and delivery of this Guarantee or for the performance by GUARANTOR of its obligations hereunder;
 - (d) this Guarantee constitutes a valid and legally binding agreement of GUARANTOR enforceable against GUARANTOR in accordance with its terms, subject to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;
 - (e) there is not pending or, to its knowledge, threatened against it any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Guarantee or its ability to perform its obligations under this Guarantee; and
 - (f) GUARANTOR is familiar with the business of SUBCO.
7. SETOFFS. BC HYDRO may at any time set-off and apply indebtedness owing by BC HYDRO to or for the credit of GUARANTOR against that portion of the Guaranteed Obligations owing

pursuant to a Payment Demand. The rights of BC HYDRO in this section are in addition to any rights and remedies, including other rights of set-off, that it may have.

8. EFFECT OF BANKRUPTCY. GUARANTOR's obligations under this Guarantee shall not be prejudiced or affected in any way by the bankruptcy or insolvency of SUBCO or by any bankruptcy, reorganization, moratorium or similar insolvency proceeding relating to SUBCO or other relief sought or obtained in respect of SUBCO under any bankruptcy or insolvency law affecting creditor's rights or a petition for SUBCO's winding-up or liquidation, including any discharge of any of the Guaranteed Obligations as a result of any bankruptcy or insolvency proceeding. In the case of liquidation, winding-up or bankruptcy of SUBCO (whether voluntary or compulsory) or any composition with creditors or scheme or arrangement relating to SUBCO, BC HYDRO shall have the right to rank in priority to GUARANTOR for its full claims in respect of the Guaranteed Obligations and receive all dividends and other payments in respect thereof until its claims in respect of the Guaranteed Obligations have been paid in full, and GUARANTOR shall continue to be liable for any balance which may be owing to BC HYDRO by SUBCO in respect of the Guaranteed Obligations.
9. AMENDMENT. No term or provision of this Guarantee shall be amended, modified, altered, waived, or supplemented except by an agreement in writing signed by GUARANTOR and BC HYDRO.
10. WAIVERS. GUARANTOR hereby unconditionally waives: (a) notice of acceptance of this Guarantee and, except as otherwise specifically provided in this Guarantee, any other notices whatsoever; (b) presentment and demand concerning the liabilities of GUARANTOR, except as set forth in section 3; (c) any right to require that any action or proceeding be brought against SUBCO or any other person, or except as expressly hereinabove set forth, to require that BC Hydro seek enforcement of any performance against SUBCO or any other person, prior to any action against GUARANTOR under the terms hereof.

Except as to applicable statutes of limitation, no delay of BC HYDRO in the exercise of, or failure to exercise, any rights or remedy hereunder shall operate as a waiver of such right or remedy, or a waiver of any other rights or a release of GUARANTOR from any obligations hereunder. Nor shall any single or partial exercise of any right or remedy under this Guarantee preclude any other or further exercise thereof or the exercise of any right or remedy, nor shall any waiver of one provision be deemed to constitute a waiver of any other provision. No waiver of any of the provisions of this Guarantee shall be effective unless it is in writing duly executed by the waiving party.

GUARANTOR consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Guaranteed Obligations, or any part thereof or any changes or modifications to the terms of the Agreement, and none of the foregoing shall in any way release GUARANTOR from any obligations hereunder.

11. EXPENSES. GUARANTOR shall pay for or reimburse BC HYDRO for any and all reasonable fees and expenses (including without limitation all legal fees) incurred in connection with the successful enforcement of its rights under this Guarantee.

12. INTEREST. Any obligation of GUARANTOR not paid when due will bear interest at a rate that is equal to the rate of interest declared by the lead chartered bank in Canada used by BC HYDRO as the rate of interest charged by such bank 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.
13. ASSIGNMENT. GUARANTOR shall not assign this Guarantee without the express written consent of BC HYDRO. BC HYDRO shall be entitled to assign its rights under this Guarantee in its sole discretion.
14. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified or registered mail, postage prepaid and return receipt requested, or by facsimile, as follows:

To BC Hydro: British Columbia Hydro and Power Authority

 <address; attention; fax no.>

To GUARANTOR: GUARANTOR

 <address; attention; fax no.>

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile 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.

14. GOVERNING LAW. This Guarantee shall in all respects be governed by, and construed in accordance with, the laws of the Province of British Columbia. GUARANTOR hereby attorns and submits to the non-exclusive jurisdiction of the courts of British Columbia in respect of any legal action or proceeding commenced in respect of this Guarantee. Each of GUARANTOR and BC HYDRO, to the fullest extent permitted by law, hereby waives its rights to a trial by jury.

15. MISCELLANEOUS.

- (a) This Guarantee shall be binding upon GUARANTOR, its successors and assigns and enure to the benefit of and be enforceable by BC HYDRO, its successors and assigns.
- (b) The Guarantee embodies the entire agreement and understanding between GUARANTOR and BC HYDRO and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (c) The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof.

- (d) The rights, remedies and recourse of BC HYDRO under this Guarantee are cumulative and do not exclude any other rights, remedies and recourse that it may have.
- (e) If any payment of SUBCO in respect of Guaranteed Obligations is rescinded or must otherwise be returned for any reason whatsoever, GUARANTOR shall remain liable hereunder in respect of such Guaranteed Obligations as if such payment had not been made.
- (f) The provisions of this Guarantee are intended to be severable. If any provision of this Guarantee shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.
- (g) Time is of the essence of this Guarantee and all of its provisions.

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

GUARANTOR

By: _____
Name: _____
Title: _____