

Form of Performance Bond

Bond No:

Bond Amount: \$

as Principal (the “**Principal**”) and **Trisura Gurantee Insurance Company** a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in British Columbia as Surety (the “**Surety**”) are held and firmly bound unto BRITISH COLUMBIA HYDRO AND POWER AUTHORITY or its successors, as Obligee (“**BC Hydro**”) in the amount of _____ Dollars (\$) _____ lawful money of Canada for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a contract with BC Hydro entitled "British Columbia Hydro and Power Authority, Contract No. _____" (the “**Contract**”) which is hereby made a part hereof.

Words defined in the Contract Documents (as defined in the Contract) and not specifically defined in the Bond, whether capitalized or not, have the same meaning given to them in the Contract Documents unless the context clearly requires otherwise.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly and faithfully perform the Contract including, without limiting the generality of the foregoing, its obligation to fully indemnify and save harmless BC Hydro from all loss and damage which BC Hydro may sustain by reason of any failure or default on the part of the Principal so to do, and to fully reimburse and repay BC Hydro all outlay and expense which BC Hydro may incur in making good any such default, then this obligation shall be void; otherwise this obligation to be and remain in full force and effect.

I - Pre-Demand Conference

Prior to a Demand (as defined in Section II 2) below) under this Bond, BC Hydro may notify the Surety and the Principal in writing that it is considering declaring the Principal to be in default under the Contract and request a pre-demand conference (the “**Pre-Demand Conference**”). Upon receipt of such request the Surety and Principal shall participate in a Pre-Demand Conference meeting or telephone conference call, on a without prejudice basis, with BC Hydro which shall be arranged by the Surety and held at a mutually agreeable time and place not later than fifteen (15) calendar days after receipt of such notice, unless otherwise mutually agreed to by each of BC Hydro, Surety and Principal.

The purpose of the Pre-Demand Conference is to allow BC Hydro to express its concerns about the Principal’s performance pursuant to the Contract and to allow the Principal to respond to such concerns prior to BC Hydro exercising its rights under the Contract or this Bond. It should not be construed as an alternative to any dispute resolution provisions which may appear in the Contract. Neither the participation by any party in the Pre-Demand Conference, nor any statement or position taken by any party during the Pre-Demand Conference or any follow-up Pre-Demand Conference, may be relied on by any other party as a waiver or compromise of the rights or duties of BC Hydro, the Surety or the Principal under the Contract, this Bond or applicable law.

II - Conditions Precedent to Liability

The Surety shall have no liability under this Bond unless all of the following conditions precedent (the “**Conditions Precedent**”) have been satisfied:

1. The Principal is, and is declared by BC Hydro to be, in default under the Contract; and
2. BC Hydro has made a Demand under the Bond. In this Bond, “**Demand**” means a clear and unequivocal written statement by BC Hydro, delivered to the Surety in accordance with Section XII below, that the Principal is in default of its obligations under the Contract and requesting that the Surety fulfill its obligations under this Bond; and
3. BC Hydro has agreed to make available the Balance of the Contract Price to the Surety in accordance with the terms and conditions of the Contract. In this Bond, “**Balance of the Contract Price**” means the total amount payable by BC Hydro to the Principal under the Contract less the amount properly paid by BC Hydro to the Principal.

III - Surety’s Investigation and Response

Upon receipt of a Demand from BC Hydro, the Surety shall be entitled to a reasonable time within which to conduct an investigation of the Demand and determine its liability under the Bond, if any. Within five (5) business days of receipt of the Demand the Surety shall acknowledge receipt of the Demand in writing and request from BC Hydro the information and documentation the Surety shall require to complete its investigation (the “**Information**”) and access to the site where the work is being performed, if necessary. Upon receipt of the Surety’s acknowledgement, BC Hydro shall promptly provide the requested Information and site access to the Surety.

Upon receipt of all the Information, and completion of the site visit, if required, the Surety shall have twenty-one (21) calendar days to complete its investigation and advise BC Hydro, in writing, of its position on liability pursuant to the Bond and to choose an option for discharging its obligation hereunder, if appropriate. In the event that the Surety is unable to complete its investigation and take a position on liability within such twenty-one (21) calendar days it shall write to BC Hydro prior to the expiration of such twenty-one (21) calendar days and provide BC Hydro with an update which sets out the status of the Surety’s investigation and the Surety’s estimate of when the investigation will be completed and its position delivered to BC Hydro. In the event that the Surety denies that it has any liability pursuant to this Bond, the Surety shall explain its reasons therefor to BC Hydro in writing.

IV - Emergency Remedial Action by BC Hydro

If during the time the Surety is investigating a Demand, circumstances dictate that BC Hydro must undertake emergency remedial work which is necessary to:

- a) ensure public safety; or
- b) preserve or protect the work under the Contract from deterioration or damage,

BC Hydro may, acting with due diligence and upon giving written notice to the Surety, undertake such emergency remedial work provided that:

1. reasonable costs incurred by BC Hydro in undertaking such emergency remedial work shall be reimbursed by the Surety in accordance with the terms and conditions of this Bond and subject to the Principal's default and the Surety's liability being subsequently established. Any payments made by the Surety in respect of such work shall form part of its obligation under this Bond and shall reduce the Bond Amount by the amount of any such payments; and
2. any such emergency remedial work shall be limited to work which is within the scope of the Contract and which is reasonably required to mitigate the potential costs or damages of BC Hydro in the circumstances; and
3. any such emergency remedial work shall be undertaken without prejudice to the rights of BC Hydro, the Principal or the Surety under the Contract, this Bond or applicable law.

V - Post-Demand Conference

Following a Demand, the Surety and the Principal shall participate in a meeting or telephone conference call (the "**Post Demand Conference**") with BC Hydro, on a without prejudice basis, which shall be arranged by the Surety and held at a mutually agreeable time and place not later than ten (10) calendar days after receipt of the Demand, unless otherwise mutually agreed to by BC Hydro and the Surety.

The purpose of the Post Demand Conference shall be to determine what remedial action, if any, BC Hydro believes must be taken while the Surety is conducting its investigation. If BC Hydro reasonably believes that the work of the Contract must proceed for the benefit/protection of the Project overall and in mitigation of any damages BC Hydro intends to seek from the Surety hereunder, while the Surety is conducting its investigation and provides reasonable evidence thereof to the Surety, then BC Hydro may engage an appropriate contractor(s) to continue the work of the Contract (the "**Remedial Work**") subject to the following conditions:

1. BC Hydro shall pay the costs of the Remedial Work on terms the same as or similar to those of the Contract;
2. BC Hydro shall keep separate records of all amounts related to the Remedial Work it intends to seek as damages from the Surety hereunder; and
3. BC Hydro shall allow the Surety and/or its consultant(s) access to the Project during the course of the Remedial Work for the purpose of preserving evidence and monitoring the progress of the Remedial Work.

If the Surety objects to any part of the Remedial Work, including without limitation BC Hydro's proposed completion contractor(s), it shall immediately advise BC Hydro in writing of its objections and the reasons therefor. BC Hydro may still proceed with the Remedial Work and the Surety's objections will be addressed through negotiation with BC Hydro or at the trial of any action brought pursuant to this Bond.

The reasonable costs incurred by BC Hydro in undertaking the Remedial Work shall be reimbursed by the Surety in accordance with the terms and conditions of this Bond subject to the Principal's default and the Surety's liability being subsequently established. Any payments made by the Surety in respect of

the Remedial Work shall form part of its obligation under this Bond and shall reduce the Bond Amount by the amount of any such payments.

So long as BC Hydro has attended a Post Demand Conference and otherwise complied with all of the conditions of this Bond BC Hydro may proceed with the Remedial Work and the Surety shall not raise the mere fact that the Remedial Work proceeded as a defence to any claim by BC Hydro hereunder.

Neither the participation in the Post-Demand Conference, nor any statement or position taken by either party during the Post-Demand Conference or any follow-up Post-Demand Conference, shall be relied on by any other party as a waiver or compromise of the rights or duties of any of BC Hydro, the Surety or the Principal under the Contract or this Bond.

VI- Surety's Options

Following the completion of the Surety's investigation, if the Conditions Precedent have been satisfied by BC Hydro and the Surety has accepted liability pursuant to this Bond, subject to Sections VII and VIII below, the Surety shall promptly:

1. complete the Contract in accordance with its terms and conditions; or
2. remedy the default with a strategy reviewed and accepted by BC Hydro; or
3. obtain a Tender or Tenders for submission to BC Hydro for completing the Contract in accordance with its terms and conditions, and upon determination by BC Hydro, at its sole discretion, of the lowest responsible Tenderer, arrange for a contract between such Tenderer and BC Hydro and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or the contracts of completion, arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price, including other costs and damages for which the Surety may be liable hereunder. The term "other costs" shall mean solicitor and own client costs and the term "damages" shall mean those expenses and losses incurred by BC Hydro as a result of the default or succession of defaults under the contract or contracts of completion arranged under this paragraph; or
4. pay BC Hydro the lesser of the penal sum of the Bond Amount or BC Hydro's proposed cost of completion less the Balance of the Contract Price.

VII - Limitation on the Surety's Liability

Notwithstanding anything to the contrary contained in this Bond or in the Contract, the Surety shall not be liable for a greater sum than the Bond Amount under any circumstances. For certainty, the Surety agrees that it shall be liable for the Principal's obligation to pay Liquidated Damages as specified in the Contract, provided that the Surety's aggregate liability shall not exceed the Bond Amount.

VIII- Commencement of Action

It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of: (1) the date when the Work is ready for use or is being used for the purpose intended, or (2) the date on which the Principal is declared in default by BC Hydro.

IX- Right of Action

No right of action shall accrue on this Bond to or for the use of any person or corporation other than BC Hydro or its successors and assigns.

X- Contract Adjustments

No variation or alteration of the terms of the Contract made by agreement between BC Hydro and the Principal and no variation or alteration in the extent, nature or method of performance of the work to be constructed, maintained and completed thereunder, and no adjustment of either or both of (a) an amount required to be paid under the Contract, or (b) a time within which the Work is to be performed under the Contract taking into account the provision of the Contract and all of the circumstances surrounding the matter in question, and no waiver, forbearance or forgiveness in or in respect of any matter or thing concerning the Contract or the conduct or performance thereof by the Principal on the part of BC Hydro, shall in any way release the Surety from any liability under this Bond. Notice to the Surety of any such variation, alteration, adjustments, waiver, forbearance or forgiveness is hereby waived by the Surety.

XI- Headings for Reference Only

The headings and references to them in this Bond are for convenience only, shall not constitute a part of this Bond, and shall not be taken into consideration in the interpretation of this Bond.

XII- Notices

All Demands and notices under this Bond shall be delivered by facsimile and registered mail at the addresses set out below. All other correspondence may be delivered by any of facsimile, regular mail, registered mail, email or courier at the addresses set out below.

The Surety:

Trisura Guarantee Insurance Company

BC Hydro:

The Principal:

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond this
in the year

day of

Witnessed by:

By: _____

Name:

Title:

I have authority to bind the corporation.

Trisura Guarantee Insurance Company

Name of Witness:

Address of Witness:

By: _____

Name:

Attorney-in-Fact

By: _____

Name:

Attorney-in-Fact

**Performance Bond Requirement
(wording contained in this box does not form part of the Performance Bond)**

The performance bond should be with a surety licensed to transact the business of a surety in British Columbia, having a minimum credit rating of not less than Standard & Poor's A-, A.M Best B++, Moody's A3 or DBRS A(low). If such credit rating agencies publish differing credit ratings for the same surety, the lowest credit rating of any of the credit rating agencies shall apply for purposes of this section. If the performance bond is issued by more than one surety on a joint & several basis then the minimum credit rating requirement will be met as long as one of the joint & several sureties issuing the performance bond meets the minimum credit rating. The surety must meet these minimum credit ratings at all time during the validity period of the performance bond.