

## **BRITISH COLUMBIA UTILITIES COMMISSION**

### **Rules for Gas Marketers**

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Section 71.1(1) of the *Utilities Commission Act* (Act) requires a person who is not a public utility and who performs a gas marketing activity for low-volume consumers to hold a Gas Marketer License issued by the Commission. The following Rules for Gas Marketers (Rules) have been developed pursuant to subsection 71.1(10) to assist the administration of Gas Marketer licensing.

#### **1.0 LOW-VOLUME CONSUMER**

A “low-volume consumer” means a person who, for the applicable period, either:

- a. has, or is expected to have, a normalized annual consumption at one premise of less than 2,000 gigajoules of gas per year; or
- b. has chosen the unbundled commodity service option, whatever the person’s annual consumption of gas.

#### **2.0 APPLICATION FOR A GAS MARKETER LICENCE**

Application for a Gas Marketer Licence must be made using Form A: Application for a Licence to Market Natural Gas, and must be submitted to the Commission at least 60 days prior to the date that the licence is required together with a cheque in the amount of \$1,000 made payable to the Ministry of Finance. The term of a Gas Marketer Licence will be specified in the licence and will be for a November through October gas contract year or such other period as the Commission may determine.

Applications for a licence renewal will follow the procedure for a new licence, and must be submitted to the Commission at least 60 days prior to the expiry date of the Gas Marketer’s current licence. The Application for renewal must identify the Gas Marketer’s current level of complaints, disputes, and cancellations. If the Gas Marketer is currently experiencing a level of complaints, disputes and cancellations that is significantly high, the Application for renewal must address the reason for the high level and the actions that the Gas Marketer has taken or will implement to remedy the problem.

#### **3.0 AGENT FOR SERVICE**

If the Licensee does not have a registered office or other place of business in British Columbia, the Licensee must file with the Commission the name of a person who is to act as the Licensee’s Agent for Service in British Columbia and upon whom service of process, notices or other documentation may be made. The Licensee’s Agent for Service in British Columbia must be either an individual who is a resident of British Columbia and is at least 18 years old, or a corporation that has its head office or registered office in British Columbia.

#### **4.0 STANDARD FORM OF GAS SUPPLY CONTRACT**

The standard form of gas supply contract between the Gas Marketer and the public utility is subject to Commission approval. Section 71 of the Act requires that a copy of the gas supply contract between a Gas Marketer and a public utility must be filed with the Commission. Gas Marketers must incorporate, in their contracts with gas suppliers, appropriate clauses to ensure adequate security of supply.

## **5.0 AGREEMENTS WITH CUSTOMERS**

Gas Marketers must use a form of Notice of Appointment of Marketer that has been approved by the Commission to set out the arrangements between the consumer, the Gas Marketer and the public utility.

Gas Marketers also must include in their natural gas supply contract documents with consumers the requirements related to term, price and disclosure of other information as set out in the Rules, the Code of Conduct for Gas Marketers, the Code of Conduct and Transfer Pricing Policy for Provision of Utility Resources and Services, and tariff schedules for unbundled commodity service.

The Customer's form for signature, in accompaniment with the Notice of Appointment of Marketer, will be clearly designated as an "Agreement" or a "Contract."

## **6.0 STANDARD INFORMATION BOOKLET**

Each public utility that has an approved gas unbundled commodity service tariff must, in cooperation with Gas Marketers, develop a standard information booklet for its service area which outlines the procedures for commodity purchase and discloses potential benefits and risks. A Gas Marketer must distribute the standard information booklet prepared by the public utility to all prospective clients (and include a reference to the booklet in their Notice of Appointment of Marketer). The public utility will make the booklet available in both hard copy and electronic form.

## **7.0 LIMITATION ON DIRECT SALES**

Except for conventional utility gas sales under its approved tariff, a public utility must not sell natural gas other than through a non-regulated subsidiary which is subject to the Rules. A public utility is required to demonstrate to the satisfaction of the Commission a complete operational separation from any such subsidiary. The relationship between the public utility and its non-regulated subsidiary is subject to the utility's Code of Conduct and Transfer Pricing Policy for Provision of Utility Resources and Services.

## **8.0 CODE OF CONDUCT**

All Gas Marketers must comply with the Rules and the Code of Conduct for Gas Marketers approved by the Commission and as may be amended by the Commission from time to time. Gas Marketers in violation of the Rules or the Code of Conduct may be subject to penalties and licence suspension or cancellation. Gas Marketers will reference the Code of Conduct for Gas Marketers and its availability to customers in their Notice of Appointment of Marketer and make a copy available to the customer.

## **9.0 PERFORMANCE SECURITY**

In order to receive a Gas Marketer Licence an applicant must provide proof of performance security in the amount of \$250,000 (or such other amount as the Commission may determine) and file with the Commission proof of that security. The performance security must be in the form of a bond, letter of credit or other security acceptable to the Commission, be payable to the Minister of Finance and must permit the Minister of Finance to draw upon the security in whole or in part at the discretion of the Commission in the event of a Commission finding pursuant to subsection 71.1(8) of the Act.

**10.0 INFORMATION REPORTING REQUIREMENTS**

In order to maintain compliance with licence requirements, the following information must be provided as it becomes available:

- a. Unaudited quarterly financial statements;
- b. The most recent version of those documents that the Gas Marketer provided to demonstrate that it continues to satisfy the Section 7, Financial Qualifications, under Licence Requirements;
- c. The most recent version of the documents submitted under sections (8), (9), (10), (11) and (12) of the Licence Requirements.

**11.0 ENFORCEMENT OF RULES AND CODE OF CONDUCT AND LICENCE CONDITIONS**

If the Commission finds, after notice and opportunity for the Gas Marketer to be heard in an oral or written hearing, that a Gas Marketer has failed to comply with the Act, the Rules, the Code of Conduct for Gas Marketers or conditions in its Gas Marketer Licence, and in addition to any other remedies or actions that may be applied, the Commission may:

- a. Suspend or cancel the Gas Marketer Licence.
- b. Amend the terms and conditions of, or impose new terms and conditions on the Gas Marketer Licence until the deficiencies are resolved.
- c. Apply penalties pursuant to section 106(4) and (5) of the Act not to exceed \$10,000 for each day such violation continues.
- d. Order that a portion or all of the performance security (referred to in Rule 9.0) be paid out to consumers, public utilities or other persons that the Commission considers to have been harmed by an act or omission of the Gas Marketer including a breach of the Act, the Rules, the Code of Conduct for Gas Marketers, or conditions of the Gas Marketer Licence.

- 12.0** Failure by a Gas Marketer to comply with its gas delivery obligations as outlined in the gas supply agreement between the Gas Marketer and the public utility may result in the suspension or revocation of the Gas Marketer Licence.

**Application for a Licence to Market Natural Gas**

**Licence Requirements and Application Instructions**

**Licence Requirements**

To apply to obtain or renew a Licence as a Natural Gas Marketer, **all of the following items must be submitted:**

1. A completed Application for a Licence to Market Natural Gas (Form A), at least 60 days prior to the requested effective date of the licence sought;
2. A \$1,000 Application Fee made payable to the Minister of Finance;
3. Copies of all licences to carry on business in British Columbia (BC);
4. Proof of security in the amount of CAD \$250,000. Proof of security may be provided by way of a bond, irrevocable letter of credit or security for CAD \$250,000 acceptable to the Commission.
  - a. The proof of security must include within it or be accompanied by all terms and conditions. The terms and conditions must contain the Required Terms in the wording provided by the Commission and attached as Appendix C to this Order;
  - b. This provision will be waived in the event that security (bond or irrevocable line of credit) is provided as specified below in (7c) provided that the Required Terms as described in (4a) above are included in the terms and conditions of the instrument provided;
5. A copy of the Annual Report for the most recently ended fiscal year filed with the Registrar of Companies in BC or a copy of the last Registration Certificate filed in BC;
6. Financial Statements:

If the applicant has audited financial statements for itself, submit the following:

- a copy of the applicant's audited financial statements for the most recently ended financial year;
- copies of all of the applicant's subsequent unaudited quarterly statements for each concluded financial quarter following the most recently ended fiscal year; and,
- evidence that the applicant meets one of the conditions outlined in Section 7 below.

If the applicant does not have audited financial statements for itself, submit the following:

- a copy of the audited financial statements of the applicant's parent company for the most recently ended financial year;
- a parental guarantee, where the parent takes on all of the applicant's obligations. The parental guarantee must be in the amount that is the greater of \$500,000 or 5% of the applicant's gross revenue based on the most recently ended financial year, valid for a period of not less than the term of the license sought;
- copies of all of the parent company's subsequent unaudited quarterly statements for each concluded financial quarter following the most recently ended fiscal year; and
- evidence that the parent company meets one of the conditions outlined in Section 7 below.

Applicants may request that the Commission hold these financial statements confidential.

7. Proof that the applicant, or the parent company, where the applicant does not have audited financial statements for itself, possesses sufficient financial resources to be able to serve its customer base, any one of the following criteria will satisfy this condition:
  - a. Maintain a short-term credit rating of at least: A-2 from Standard & Poor's, P-2 from Moody's Investors Service, or R-2 from DBRS;

- b. Maintain a long-term credit rating of at least: BBB- from Standard & Poor's, Baa3 from Moody's Investors Service, or BBB from DBRS;
- c. Provide a payment bond or irrevocable letter of credit in the amount that is the greater of \$500,000 or 5% of the applicant's gross revenue based on the most recently ended financial year, valid for a period of not less than the term of the licence sought;
- d. Maintain a line of credit or revolving credit agreement in the amount that is the greater of \$500,000 or 5% of the applicant's gross revenue based on the most recently ended financial year, valid for a period of not less than the term of the licence sought;
- e. Provide confirmation that it meets or exceeds, based on the most recently ended financial year, the following ratios:

Ratio	Method of Calculation	Target
(i) Pre-Tax Interest Coverage Ratio	EBIT <sup>1</sup> / Interest	3.4x
(ii) Cash Flow from Operations Interest Coverage Ratio	EBITDA <sup>2</sup> * / Interest	3.8x
(iii) Cash Flow from Operations to Total Debt	EBITDA / Total Debt <sup>3</sup> **	28%
(iv) Total Debt to Total Capitalization	Total Debt / Total Capitalization**	54%

\* Provide the amount of and a rationale for any additional adjustments made to earnings.

\*\* If amounts due to related parties, due to parent, or due to shareholder are to be excluded from debt and/or treated as equity, confirm that the amounts meet the following conditions:

- no interest;
- no repayment terms; and
- guaranteed for the period of the licence term sought (i.e. not on call).

If any of the above conditions are not met, provide rationale for excluding the amounts from debt and/or treating as equity.

8. All training plans, procedures, and manuals, including door-to-door sales and customer service scripts that are being used and are planned to be used by the applicant and its employees to market and sell natural gas;
9. All marketing materials that are being used and/or are planned to be used by the applicant and its employees in the sale of natural gas via door-to-door marketing, direct mailing, print advertisement, and mail-outs (including electronic means) as a result of telemarketing and internet marketing;
10. Copies of all customer gas supply Agreements/Contracts and Notice of Appointment for all rate classifications including all corresponding terms, conditions and schedules;
11. All procedure documentation for handling disputes and complaints received by the applicant, FortisBC or the Commission;
12. The process documentation for handling Agent conduct related disputes and complaints, including the disciplinary action taken by the applicant to ensure compliance with the Code of Conduct;
13. Customer statistics (applicable to application for licence renewal):
  - a. Cumulative total number of enrolled customers;
  - b. Total number of customers that were enrolled, per month, in the last 12 months, separated by new, positively renewed, and evergreen renewed customers;

<sup>1</sup> Earnings before interest and taxes

<sup>2</sup> Earnings before interest, taxes, depreciation and amortization

<sup>3</sup> Total Debt = short-term borrowings, long-term debt and current portion of long-term debt

- c. Total number of customers, per month, who were enrolled in the last 12 months and cancelled within their 10 day cancellation period;
  - d. Total number of customers, per month, whose contracts were cancelled after the 10 day cancellation period, including anniversary drops or early terminations outside of anniversary dates categorized as new, positively renewed, and evergreen renewed;
  - e. Total number of disputes for adjudication, per month, that were logged in GEM in the last 12 months;
  - f. Total number of 'cancellation requests' (courtesy drops), per month, that were logged in GEM in the last 12 months including the main reasons for the requests;
  - g. Total number of Operational Correction Drops, per month, that were submitted through GEM in the last 12 months and the reason for each drop request;
  - h. Total number of complaints, per month, that were received in writing in the last 12 months;
  - i. Outline the most common reasons for the disputes and complaints and identify what actions have been or will be taken to remedy the root cause of the issue.
14. Information on the applicant's gas supply arrangements with its suppliers. Applicants must confirm that they have the gas contract capability to meet the existing and future commitments to its customers by outlining its operating structure on how it secures and hedges its gas supply;
15. Such other information that the Commission may require.

**Instructions:**

**Incomplete applications will not be processed by the Commission and will be returned to the applicant.** If in the applicant's view the application contains confidential material, the applicant must identify those sections it wishes be held confidential and provide reasoning for the Commission to hold the section(s) confidential, in accordance with the Commission's Confidential Filings Practice Directive. If the proof of security will not accompany the application, applicants must ensure that the proof of security is received by the Commission at least two weeks prior to the requested effective date of the licence sought. Type or print clearly all information in black ink. Please send the completed application to:

British Columbia Utilities Commission  
Sixth Floor, 900 Howe St.  
Vancouver, BC., V6Z 2N3

Attention: Manager, Gas Marketing Programs

Email: [Customer.Choice@bcuc.com](mailto:Customer.Choice@bcuc.com)  
Facsimile: 604-660-1102

**Form A - Application for a Licence to Market Natural Gas**

**A. General Information**

1. Name of Business (Name to appear on Licence)			
2. If there has been a change of name, show all previous names			
3. Primary Contact for this Licence (British Columbia Contact)			
Mr.	<input type="checkbox"/>	Last Name:	Full First name:
Mrs.	<input type="checkbox"/>		Initial:
Ms.	<input type="checkbox"/>	Position Held:	
Other	<input type="checkbox"/>		
Contact Address			
City		Postal	
Phone Number		Fax Number	E-mail Address

4. Type and Period of Licence Applied for	
Initial Licence to Market Natural Gas	<input type="checkbox"/>
Renewal Licence to Market Natural Gas	<input type="checkbox"/>
Requested Licence Term	
Type of Service: <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial & Residential	
5. Business Classification	
Sole Proprietor	<input type="checkbox"/>
Partnership	<input type="checkbox"/>
Corporation	<input type="checkbox"/>
Other (describe): _____	<input type="checkbox"/>

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**B. Information about the Applicant Organization**

<b>1. Applicant Organization (Corporation, Partnership, Sole Proprietorship, Other)</b>			
Full Legal Name of Organization		Date of Formation	
Business Address			
City	Province	Country	Postal/ZIP
Phone Number	Fax Number		E-mail Address

<b>2. Licensing History</b>			
Has your organization or an affiliate of your organization ever been granted a licence to market gas in British Columbia?		Yes <input type="checkbox"/>  No <input type="checkbox"/>	
If your response is yes to the above, please provide the following information:			
Licence Type		Licence No.	
Please provide a summary with reasons and results of any investigation for any situations where gas has not flowed as required in the Gas Marketer's gas supply contracts with local distribution companies for corresponding direct sale to customers.			
Please provide character references from local distribution companies who are familiar with the activities of the Gas Marketer.			
Has your organization has ever marketed or sold electricity or natural gas in any other jurisdiction? If so, please provide the following information:			
Organization	Jurisdiction	Licence Type	Licence/Registration No.



**3. Please provide the requested details of all legal proceedings as attachments to this Application.**

	Yes	No
Has your organization ever made a proposal to its creditors under the Bankruptcy and Insolvency Act, been declared bankrupt or is it presently party to bankruptcy or receivership proceedings?	<input type="checkbox"/>	<input type="checkbox"/>
1. Where your organization is an undischarged bankrupt, provide a copy of the Assignment in Bankruptcy and a list of creditors 2. Where your organization is a discharged bankrupt, provide full proof of discharge 3. Where your organization has submitted a proposal to creditors or is in receivership provide a copy of the proposal or receivership order together with a list of creditors.		
Are there any unpaid judgments against your organization? If yes, provide a copy of each judgment. State amount outstanding and repayment arrangements.	<input type="checkbox"/>	<input type="checkbox"/>
Has your organization ever been found guilty or convicted of an offence under any law, Regulation or Act or are any charges now pending? This includes where a conditional discharge or an absolute discharge has been ordered. If yes, provide particulars in a separate, signed and dated statement.	<input type="checkbox"/>	<input type="checkbox"/>
Has your organization ever had a licence or registration of any kind refused, suspended, revoked or cancelled? If yes, attach particulars	<input type="checkbox"/>	<input type="checkbox"/>
Has your organization ever been subject of a regulatory investigation or proceeding? If yes, attach particulars.	<input type="checkbox"/>	<input type="checkbox"/>
Has your organization ever been reprimanded, fined or otherwise disciplined by a regulatory/licensing body? If yes, attach particulars.	<input type="checkbox"/>	<input type="checkbox"/>

### C. Information About Each Key Individual

Attach a copy of this sheet for each Sole Proprietor, Partner, Officer and Director

1. Personal Information			
Mr. <input type="checkbox"/>	Last Name:	Full First name:	Initial:
Mrs. <input type="checkbox"/>	Position Held:		
Ms. <input type="checkbox"/>			
Other <input type="checkbox"/>			
Contact Address			
City	Prov.	Country	Postal/ZIP
Phone Number	Fax Number	Birthdate mm/dd/yy	

### 2. Personal Experience in Energy Industry

	Yes	No
Has this person been a proprietor, partner, officer, director of an organization that was granted a licence to market natural gas in British Columbia? If yes, provide licence number.	<input type="checkbox"/>	<input type="checkbox"/>
Has this person been a proprietor, partner, officer, or director of an organization that marketed or sold electricity or natural gas other than for a regulated distribution utility in any other jurisdiction? If yes, please provide company name, jurisdiction, or location and licence or registration type, identifier and date issued.	<input type="checkbox"/>	<input type="checkbox"/>
Has this person been a proprietor, partner, officer, or director of an organization that had a registration or licence of any kind refused, suspended, revoked or cancelled? If yes, provide particulars.	<input type="checkbox"/>	<input type="checkbox"/>

### 3. Legal Proceedings

Is this person now or has this person been involved in personal bankruptcy proceedings. If yes, attach Assignment or Discharge papers.	<input type="checkbox"/>	<input type="checkbox"/>
Is this person now or has this person been an officer, director, or majority shareholder of a corporation which has been declared bankrupt has made a proposal to its creditors under the Bankruptcy and Insolvency Act, or is in receivership, or is presently party to bankruptcy proceedings? <div style="margin-left: 20px;"> 1. Where this person is an undischarged bankrupt, provide a copy of the Assignment in Bankruptcy and a list of creditors  2. Where this person is a discharged bankrupt, provide full proof of discharge  3. For corporate bankruptcies, proposals or receiverships provide related documents. </div>	<input type="checkbox"/>	<input type="checkbox"/>
Are there any unpaid judgments against this person? If yes, submit a copy of each judgment. State amount outstanding and repayment arrangements.	<input type="checkbox"/>	<input type="checkbox"/>
Has this person ever been fined, reprimanded, disciplined or otherwise subject to penalties or been investigated by a regulatory body or government agency arising out activities relating to the marketing of gas or electricity? If yes, attach full particulars on a separate, signed and dated statement.	<input type="checkbox"/>	<input type="checkbox"/>
Has this person ever been found guilty or convicted of an offense under any law or are any charges now pending? This includes where a conditional discharge or an absolute discharge has been ordered. If yes, attach full particulars on a separate, signed and dated statement.	<input type="checkbox"/>	<input type="checkbox"/>

**D. Confirmation and Understanding**

As evidenced by signing this Application, you understand that the Commission may deny, suspend or revoke a licence, or fine or otherwise discipline a licence holder, for reasons it considers sufficient, and that the following may constitute sufficient cause:

1. Misrepresentations in this Application.
2. Failure to carry out undertakings set out in this Application.
3. Failure to comply with the Code of Conduct for Gas Marketers, any applicable legislation, the Rules for Gas Marketers or conditions in the Gas Marketer Licence.
4. Failure to maintain a satisfactory performance bond.
5. Past performance in BC or other jurisdictions in respect to Items 1 to 4 above may be sufficient cause for denial of licence.

By signing this application, you confirm and warrant the following:

1. Your sales people/agent will provide all customers, at time of the sale, with a standard information booklet and a copy of the Notice of Appointment of Marketer agreement and any other contract signed by that customer.
2. You have read the Rules for Gas Marketers pursuant to Section 71.1 of the Utilities Commission Act and the Code of Conduct for Gas Marketers, and accept the obligations set out therein.
3. The Licensee shall notify the Commission of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee as soon as practicable, but in any event no more than (20) calendar days past the date upon which such change occurs.

By signing this Application, and to verify the information provided on this form, you authorize the Commission to collect additional information from some or all of the following sources: federal, provincial/state and municipal governments; licensing bodies; law enforcement agencies; sheriffs' offices; credit bureaus; professional and industry associations; and former and current employers. In order to determine whether your organization can reasonably be expected to be financially responsible in the conduct of business, a credit review (in accordance with standard business practices) may be undertaken by the Commission. **Only information relevant to your application will be collected.**

**The applicant certifies that the foregoing information and materials accompanying this Application are correct.**

Note: The proprietor or at least one partner, officer or director of the organization must sign this Application. In addition, each individual who has provided information in Section "C" must sign this Application.

Print Name and Title	Signature of Applicant	Date Signed

**Required Terms – Proof of Security**

Beneficiary:  
Minister of Finance  
Province of British Columbia  
c/o British Columbia Utilities Commission  
Box 250, 900 Howe Street  
Vancouver, BC  
Canada V6Z 2N3

"This **\*Letter of Credit/Bond\*** is available for payment to the Minister of Finance upon **\*Financial Institution\***'s receipt of a dated and signed demand statement. The demand statement from the British Columbia Utilities Commission addressed to **\*Financial Institutions\*** will request withdrawals from the **\*Letter of Credit/Bond\*** to be payable to the Minister of Finance and will state as follows:

'We the undersigned British Columbia Utilities Commission hereby demand payment of the sum of Canadian Dollars (Amount in words and figures to be inserted) under **\*Letter of Credit/Bond No.\_\_\_\_\*** and confirm that monies drawn will be retained and used by us at our discretion to meet obligations as may be determined by us pursuant to British Columbia *Utilities Commission Act* Section 71.1(8).'

Partial drawing and multiple presentations are permitted hereunder and any amounts payable under this **\*Letter of Credit/Bond\*** will be made payable to the Minister of Finance, Province of British Columbia.

This **\*Letter of Credit/Bond\*** shall be reduced automatically by the amount of each drawing paid hereunder, or by amendment, or by amount of reduction that may be authorized by the beneficiary from time to time by its written request given to **\*Financial Institution.\***

We hereby agree with you to honour each drawing drawn under and in compliance with the terms and conditions of this **\*Letter of Credit/Bond\*** if presented, together with the documents specified at **\*Financial Institution\*** on or before expiry date of **\*expiry date\*.**"

**Terms – Parental Guarantee**

GUARANTEE

THIS GUARANTEE, effective the \_\_\_\_\_ day of \_\_\_\_\_, YEAR, is entered into by \_\_\_\_\_, (the “Guarantor”), a [describe as Canadian or British Columbia etc.] corporation, to and in favour of the BRITISH COLUMBIA UTILITIES COMMISSION, (the “Commission”), an independent regulatory agency of the British Columbia Government continued under the *Utilities Commission Act* (British Columbia) (the “Act”) and which operates under and administers the Act.

WHEREAS:

A. \_\_\_\_\_ (the “Marketer”) has made an application to the Commission for a licence (the “Licence”) to be issued under the Act to market natural gas in British Columbia pursuant to Section 71.1(1) of the *Utilities Commission Act*;

B. The Commission has requested that the Guarantor provide this guarantee in order to support the Marketer’s ability to maintain sufficient financial resources to be able to serve its customer base in British Columbia;

C. The Guarantor has agreed to execute these presents to secure the due performance on the part of the Marketer of the Licence and any consumer contracts entered into pursuant to the Licence and the payment of monies due the Commission from time to time thereunder; and

D. The Marketer is an affiliate of the Guarantor and the Guarantor will directly or indirectly benefit from the grant of the Licence.

NOW THEREFORE in consideration of the Commission issuing the Licence to the Marketer and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Guarantor, the Guarantor hereby covenants and agrees with the Commission as follows:

1. GUARANTEE

The Guarantor hereby agrees to perform all the obligations of the Marketer under the Licence, including the due performance on the part of the Marketer of the consumer contracts entered into thereunder, and unconditionally guarantees payment to the Commission, and its successors and assigns, of all present and future debts and liabilities, direct or indirect, absolute or contingent, matured or not, now or any time and from time to time hereafter due or owing to the Commission by the Marketer and unconditionally guarantees payment to the Commission, on behalf of consumers, its successors and assigns, of all present and future debts and liabilities, direct or indirect, absolute or contingent, matured or not, now or any time and from time to time hereafter due or owing to the consumers by the Marketer as may be determined by the Commission pursuant to the *Utilities Commission Act* (British Columbia) Section 71.1(8), and whether incurred by the Marketer alone or jointly with any other corporation, person or persons, or otherwise.

The Guarantor hereby further agrees that if the Marketer shall fail to pay when due any of its obligations under the License (as may be determined by the Commission or otherwise), the Guarantor will promptly pay the same, without any demand or notice whatsoever from the Commission.

PROVIDED that the liability of the Guarantor under this Guarantee is limited to \$ [amount] together with interest thereon from the date of demand at the rate of [percentage] % per annum calculated [specify period; for example, monthly] not in advance.

Further provided that if this Guarantee is expressed to be made in respect of a limited amount, the undersigned shall, in addition to the limited amount be liable for all amounts received by the undersigned as trustee for the Commission in accordance with paragraphs 13 or 15 and all costs, charges and expenses (including legal fees on a

solicitor and client basis) incurred by the Commission, its receiver, receiver-manager or agent of the Marketer, or the agent of the Commission in the perfection and enforcement of this Guarantee.

(collectively, the "Obligations")

**2. GUARANTEE ABSOLUTE**

The liability of the Guarantor hereunder shall be absolute and unconditional irrespective of, and shall not be released, discharged, limited, or otherwise affected by anything done, suffered, or permitted by the Commission in connection with the Marketer, the Obligations or any security held by or granted to the Commission to secure payment or performance of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations and liabilities of the Guarantor hereunder shall be absolute and unconditional and shall not be released, discharged, limited or otherwise affected by:

- (a) any lack of validity or enforceability of any agreement between the Commission and the Marketer relating to the Obligations or any other agreement or instrument relating thereto;
- (b) any change in the time, manner, or place of payment of, amount of credit available to the Marketer under, or in any other term of, or any renewal, extension, other amendment or waiver of or any consent to or departure from, any agreement between the Commission and the Marketer relating to the Obligations;
- (c) any change in the name, objects, capital stock, constating documents or bylaws, ownership or control of the Marketer, if the marketer is a corporation;
- (d) any change in the name of the Marketer's firm or in the membership of the Marketer's firm through the death, retirement or introduction of one or more partners or otherwise. or by the disposition of the Marketer's business in whole or in part, if the Marketer is a partnership;
- (e) any amalgamation, merger, consolidation, or other reorganization of the Marketer or of its business or affairs;
- (f) the dissolution, winding up, liquidation, or other distribution of the assets of the Marketer, whether voluntary or otherwise;
- (g) the Marketer becoming insolvent or bankrupt or subject to the provisions of any insolvency legislation;
- (h) the Commission enforcing or realizing upon any security granted to or held by the Commission on or over the property of the Marketer, whether to secure payment or performance of the Obligations or otherwise;
- (i) any right or alleged right of set off, counterclaim, appropriation or application or any claim or demand that the Marketer or the Guarantor may have or may allege to have against any Commission or any other person, which rights the Guarantor hereby waive to the fullest extent permitted by law;
- (j) any agreement or decision made by the Marketer, whether it be to dispose of a part of, or all of or substantially all of its assets, or to change its form of business, or otherwise;
- (k) any amendment to the Licence, by agreement or otherwise, including legislative change; or

- (l) any other circumstances which might otherwise constitute a legal or equitable defence available to the Marketer, or complete or partial discharge of the Marketer, in respect of the Obligations or of the Guarantor in respect of its guarantee hereunder.

**3. DEALINGS WITH THE MARKETER AND OTHERS**

- (a) The Guarantor hereby waives any circumstance which might constitute a legal or equitable discharge of a surety or guarantor, and without limiting the generality of the foregoing, the Commission may, without releasing, discharging, limiting, or otherwise affecting in whole or in part the Guarantor's Obligations and liabilities hereunder and without the consent of or notice to the Guarantor:
  - (i) grant time, renewals, extensions, indulgences, releases, and discharges to the Marketer;
  - (ii) take or refrain from taking securities or collateral from the Marketer or from perfecting securities or collateral of the Marketer;
  - (iii) release, discharge, compromise, realize, enforce, or otherwise deal with or do any act or thing in respect of (with or without consideration) any and all collateral, mortgages, or other security given by the Marketer or any third party with respect to the Obligations;
  - (iv) accept compromises or arrangements from the Marketer;
  - (v) exercise any right or remedy which it may have against the Marketer or with respect to any security for the Obligations, including judicial and non judicial foreclosure;
  - (vi) apply all monies at any time received from the Marketer or from securities upon such part of the Obligations as the Commission may see fit or change any such application in whole or in part from time to time as the Commission may see fit; or
  - (vii) otherwise deal with, or waive or modify its right to deal with, the Marketer and all other persons and securities as the Commission may see fit.
- (b) The Commission shall not be obliged to give the Guarantor notice of default by the Marketer, and upon any default by the Marketer under the Licence (and including any default under any consumer contracts made pursuant to the Licence) the Guarantor shall be held bound directly to the Commission as principal debtor and not as surety in respect of the payment of the amounts hereby guaranteed.

**4. DEALING WITH SECURITY**

The loss of or failure to obtain, perfect, or maintain any security held by the Commission, whether occasioned through the fault of the Commission or otherwise, shall not discharge, limit, or lessen the liability of the Guarantor hereunder.

**5. RECOURSE AGAINST MARKETER**

The Commission shall not be bound to exhaust its recourse against the Marketer or others or under any security or take any other action or legal proceeding before entitled to payment from the Guarantor under this Guarantee.

**6. MARKETER'S CORPORATE STATUS AND AUTHORITY**

The Guarantor represents and warrants to the Commissions as follows:

- (a) **Organization and Good Standing.** Guarantor is a corporation validly existing under the laws [of Canada or of the Province of \_\_\_\_\_] and has the legal right, power, authority and qualifications to execute and deliver this guarantee and perform its obligations hereunder;
- (b) **Due Authorization; Non-Contravention.** The execution, delivery and performance by Guarantor of this guarantee has been authorized by all necessary corporate action on the part of Guarantor and do not and will not violate any provision of law or any rule, regulation, order, writ, judgment, decree or other determination presently in effect applicable to the Guarantor or the constating documents of the Guarantor.
- (c) **Binding Obligation.** This guarantee constitutes a legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms.

**7. ACCOUNTS SETTLED**

Any account stated by the Commission to be due to it by the Marketer shall be accepted by the Guarantor as conclusive evidence that the said amount is so due, in the absence of manifest error.

**8. WAIVER**

No delay on the part of the Commission in exercising any of its options, powers, or rights, or any partial or single exercise thereof, shall constitute a waiver thereof. No waiver of any of its rights hereunder, and no modification or amendment of this Guarantee, shall be deemed to be made by the Commission unless the same shall be in writing, duly signed by the Commission and each such waiver, if any, shall apply only with respect to the specific instance involved, and shall in no way impair the rights of the Commission or the liabilities of the Guarantor hereunder in any other respect at any other time.

**9. FOREIGN CURRENCY OBLIGATIONS**

The Guarantor shall make payment to the Commission relative to any Obligations due to it in the currency (the "Original Currency") in which the Marketer is required to pay such Obligations. If the Guarantor makes payment relative to the Obligations in a currency other than the Original Currency (whether voluntarily or pursuant to an order or judgment of a court or tribunal of any jurisdiction), such payment shall constitute a discharge of the liability of the Guarantor to the Commission in respect of such Obligations only to the extent of the amount of the Original Currency which the Commission is able to purchase at Vancouver, British Columbia with the amount it receives on the date of receipt in accordance with its normal practice. If the amount of the Original Currency which the Commission is able to purchase is less than the amount of such currency originally due to it in respect to the relevant Obligations the Guarantor shall indemnify and save the Commission harmless from and against any loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other Obligations contained in this Guarantee; shall give rise to a separate and independent cause of action; shall apply irrespective of anything done, suffered or permitted by the Commission in connection with the Marketer; and shall continue in full force and effect notwithstanding any judgment or order in respect of any amount due hereunder or under any judgment or order.

**10. CONTINUING GUARANTEE**

This guarantee shall be a continuing guarantee and shall cover the Obligations and this guarantee shall apply to and secure any ultimate balance due or remaining unpaid to the Commission. The Guarantor may determine its further liability under this continuing guarantee by 90 days' notice in writing to be given to the Commission upon the expiry of the Licence or thereafter but not before the expiry of the Licence and the liability hereunder of the Guarantor shall continue until the expiration of 90 days after the giving of such notice notwithstanding the expiry of the Licence, and after the expiry of such notice the Guarantor shall remain liable under this guarantee in respect of any sum or sums of money owing to the Commission as aforesaid on the date such notice expired and also in respect of any contingent or future liabilities incurred to or by the Commission on or before such date but maturing thereafter, but in the event of the determination of this guarantee as to one or more of the Guarantor it shall remain a continuing guarantee as to the other or others of the Guarantor.



**11. ASSIGNMENT**

The Commission may from time to time and without notice to, or the consent of, the Guarantor assign or transfer the Obligations due to it or any interest therein to any person; and notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, any such Obligations or part thereof so transferred or assigned shall be and shall remain part of the Obligations for the purposes of this Guarantee and any immediate and successive assignee or transferee of any Obligations or any interest therein shall, to the extent of the interest so assigned or transferred, be entitled to the benefit of, and the right to enforce, this Guarantee to the same extent as if such person were the Commission.

**12. REVIVAL OF INDEBTEDNESS AND LIABILITY**

If at any time all or any part of any payment previously applied by the Commission to the Obligations is or must be rescinded or returned by the Commission for any reason whatsoever (including, without limitation, the insolvency, bankruptcy, or reorganization of the Marketer or the Guarantor), to the extent that such payment is or must be rescinded or returned such Obligations shall be deemed to have continued in existence notwithstanding such application by the Commission, and this Guarantee shall continue to be effective or be reinstated, as the case may be, as to such Obligations, all as though such application by the Commission had not been made.

**13. POSTPONEMENT AND SUBROGATION**

All present and future indebtedness and liability of the Marketer to the Guarantor is hereby postponed to the Obligations of the Guarantor hereunder, and all monies received by the Guarantor in respect thereof shall be received in trust for and shall be paid over to the Commission forthwith. If the Commission receives from the Guarantor a payment or payments in full or on account of the liability of the Guarantor hereunder, the Guarantor shall not be entitled to claim repayment against the Marketer unless and until all amounts owing by the Marketer to the Commission have been paid in full. In the case of any liquidation, winding up, or bankruptcy of the Marketer (whether voluntary or involuntary), the Commission shall have the right to rank for its full claims and receive all dividends or other payments in respect thereof in priority to the Guarantor until its claims have been paid in full, and the Guarantor shall continue to be liable hereunder for any balance which may be owing to the Commission by the Marketer. The foregoing provisions of this paragraph are all without prejudice to or without in any way limiting or lessening the liability of the Guarantor whether this Guarantee is expressed to be made in respect of a limited amount or otherwise

**14. EXPENSES**

The Guarantor shall from time to time forthwith upon demand pay to the Commission all expenses (including legal expenses on a solicitor and own client basis) incurred by it in the preservation or enforcement of any of its rights hereunder.

**15. BANKRUPTCY ETC.**

The Guarantor shall file all claims against the Marketer in any bankruptcy or other proceedings in which the filing of claims is required by law or upon any indebtedness of the Marketer to the Guarantor and will assign to the Commission all of the Guarantor's rights thereunder. In all such cases, whether an administration, bankruptcy, or otherwise, the person or persons authorized to pay such claims shall pay to the Commission the full amount payable on the claim in the proceeding before making any payment to the Guarantor: all without in any way limiting or lessening the liability of the Guarantor to the Commission whether this Guarantee is expressed to be made in respect of a Limited Amount or otherwise. All moneys received by the Guarantor in all such cases shall be received in trust for the Commission and forthwith upon receipt shall be paid over to the Commission until the Marketer's indebtedness is fully paid and satisfied. To the fullest extent necessary for the purposes of this paragraph the Guarantor hereby assigns to the Commission all the Guarantor's rights to any payments or distributions to which the Guarantor otherwise would be entitled.

**16. INDEMNITY**

In addition, and as a separate and distinct obligation, the Guarantor, for valuable consideration, hereby agrees to indemnify and save harmless the Commission in respect of any loss or damage which the Commission may suffer as a result of non-payment or non-fulfillment of any of the Obligations by the Marketer.

**17. ADDITIONAL SECURITY**

This Guarantee is in addition to and without prejudice to any security of any kind (including, without limitation, other guarantees) now or hereafter held by the Commission and any other rights or remedies that the Commission might have. All the rights, powers and remedies of the Commission hereunder and under any other agreement now or at any time hereafter in force between the Commission and the undersigned shall be cumulative and shall be in addition to and not in substitution for all rights, powers and remedies of the Commission at law or in equity.

**18. SET-OFF**

The Commission may, to the full extent permitted by law, set-off and apply any and all deposits and other monies at any time held by the Commission or its agents and any other indebtedness at any time owing by the Commission to or for the credit or the account of the Guarantor against any and all of the Obligations of the Guarantor now or hereafter existing under this Guarantee irrespective of whether or not the Commission has made any demand hereunder and although such Obligations may be contingent and unmatured.

**19. NO SUIT UNTIL DEMAND**

No suit based on this Guarantee shall be instituted until demand for payment has been made under this Guarantee by written notice to the Guarantor.

**20. NO CONDITION PRECEDENT**

The obligations of the Guarantor under this Guarantee shall be complete and binding upon the execution of this Guarantee by it and shall not be subject to any condition precedent and the Guarantor acknowledges that this Guarantee has been delivered free of any conditions and that no statements, representations, agreements, collateral agreements or promises have been made to or with the Guarantor affecting or limiting the liability of the Guarantor under this Guarantee or inducing the Guarantor to grant this Guarantee except as specifically contained herein in writing, and agrees that this Guarantee is in addition to and not in substitution for any other guarantees or other security held or which may hereafter be held by the Commission.

**21. GOVERNING LAW**

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 therein and shall be deemed to have been made in such Province and to be performed there, and the Courts of such Province shall have jurisdiction over all disputes which may arise under this Guarantee, provided that nothing herein contained shall prevent the Commission from proceeding at its election against the Guarantor in the courts of any other province or country.

If the Guarantor becomes resident outside the Province referred to in this paragraph then the Guarantor hereby submits to the jurisdiction of the courts of competent jurisdiction of the Province referred to in this paragraph in respect of any proceeding hereon. Service of any process upon the Guarantor may be made by ordinary mail in an envelope addressed to the address contained in the paragraph entitled "Notice" or in any other manner permitted by law.

**22. JOINT AND SEVERAL**

The Obligations of the Guarantor, if more than one, hereunder shall be joint and several.

**23. NOTICE**

Any notice, demand or court process may be served by the Commission on the Guarantor either personally or by posting the same by ordinary mail postage prepaid, in an envelope addressed to the address of the party to be served last known to the Commission set out below, and the notice or demand so sent shall be deemed to be served on the day following that on which it is mailed.

To the Guarantor:            [insert address]

24.        SUCCESSORS AND ASSIGNS

This Guarantee shall extend and enure to the benefit of the Commission and its successors and assigns and shall be binding upon the Guarantor and the personal representatives, successors, and assigns of the Guarantor; “successors” includes any corporation resulting from the amalgamation of a corporation with any other corporation.

25.        INTERPRETATION

- (a)        The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof;
- (b)        Any word importing the singular number shall include the plural, and without restricting the generality of the foregoing, where there is more than one party comprising the Guarantor any reference to the Guarantor refers to each and every one of those parties, and any word importing a person shall include a corporation, partnership and any other entity; and
- (c)        If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision shall be deemed to be severable and the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF this Guarantee has been given under seal and delivered by the Guarantor, this \_\_\_\_ day of \_\_\_\_\_ of YEAR.

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per: _____	)	C/S
Authorized Signatory	)	