

**Participant Form 02-04****Form of guarantee**

- Note 1: This form is not required to be used for a guarantee provided by a bank referred to in section 2.5.5(b) of the Market Rules.
- Note 2: The version of section 17 of this form that appears in plain type is to be used for a guarantee referred to in section 2.5.5(c) of the Market Rules. The version of section 17 of this form that appears in bold-faced type is to be used for a cross-guarantee referred to in section 2.5.5(d) of the Market Rules.

**GUARANTEE AND POSTPONEMENT OF CLAIM**

TO: **New Brunswick System Operator**

IN CONSIDERATION of the New Brunswick System Operator (hereinafter called the "**SO**") accepting \_\_\_\_\_ hereinafter called the "**Market Participant**") as a market participant under the New Brunswick Electricity Market Rules made under the authority of the *Electricity Act*, as said New Brunswick Electricity Market Rules and *Electricity Act* may be amended, replaced or re-enacted from time to time, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, the undersigned and each of them (if more than one) hereby jointly and severally guarantee(s), irrevocably and unconditionally, payment on demand to the SO of all debts and liabilities of any kind, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Market Participant to the SO or remaining unpaid by the Market Participant to the SO, heretofore or hereafter arising, and however incurred or arising anywhere within or outside Canada and whether the Market Participant be bound alone or with another or others and whether as principal or surety (such debts and liabilities being hereinafter called the "**liabilities**"); provided that the liability of the undersigned hereunder shall be limited to the sum of \_\_\_\_\_ Dollars in lawful money of Canada in principal amount together with interest thereon from the date of demand for payment at a rate equal to the prime interest rate per annum in effect from time to time plus two (2) percent per annum, as well after as before default and judgment. The "**prime interest rate**" is the annual rate of interest announced from time to time by the bank where the SO's settlement accounts are maintained as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada and designated as its prime rate.

AND THE UNDERSIGNED AND EACH OF THEM (IF MORE THAN ONE) HEREBY JOINTLY AND SEVERALLY AGREE(S) WITH THE SO AS FOLLOWS:

1. If the Market Participant fails to pay all or a part of the liabilities when due, the SO may make a demand upon the undersigned (hereinafter referred to as a "**payment demand**"). No suit based on this guarantee shall be instituted until a payment demand has been made and a payment demand shall be in writing and shall briefly specify in reasonable detail what amount the Market Participant has failed to pay and an explanation of why such payment is due, with a specific statement that the SO is calling upon the undersigned to pay under this guarantee. A single written payment demand shall be effective as to any specific failure to pay during the continuance of such failure to pay, until the Market Participant or undersigned 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. Moreover, when a payment demand has been made, the undersigned shall also be liable to the SO for all legal costs (on a substantial indemnity basis) incurred by or on behalf of the SO resulting from any action instituted on the basis of this guarantee. All payments hereunder shall be made to the SO at the registered office of the SO.
2. The SO may grant and the undersigned consents to time, renewals, compromises, extensions, accelerations, indulgences, releases and discharges to, take securities (which word as used herein includes securities taken by the SO from the Market Participant and others, monies which the Market Participant has on deposit with the SO, other assets of the Market Participant held by the SO in safekeeping or otherwise, and other guarantees) from and give the same and any or all existing securities up to, abstain from taking securities from, or perfecting securities of, cease or refrain from giving credit or making loans or advances to, or change any term or condition applicable to the liabilities, including without limitation, the rate of interest or maturity date, if any, or introduce new terms and conditions with regard to the liabilities, or accept compositions from and otherwise deal with, the Market Participant and others and with all securities as the SO may see fit, and may apply all monies at any time received from the Market Participant or others or from securities upon such part of the liabilities as the SO deems best and change any such application in whole or in part from time to time as the SO may see fit, the whole without in any way limiting or lessening the liability of the undersigned under this guarantee, and no loss of or in respect of any securities received by the SO from the Market Participant or others, whether occasioned by the fault of the SO or otherwise, shall in any way limit or lessen the liability of the undersigned under this guarantee.
3. This guarantee shall be a continuing guarantee and shall cover all the liabilities, and it shall apply to and secure any ultimate balance due or remaining unpaid to the SO notwithstanding that any other security for the repayment of the liabilities to the SO may no longer be enforceable.
4. The SO shall not be bound to exhaust its recourse against the Market Participant or others or any securities it may at any time hold before being entitled to

- payment from the undersigned of the liabilities, provided that the undersigned or any of them may, by notice in writing delivered to the chief executive officer of the SO, with effect from and after the date that is 30 days following the date of receipt by the SO of such notice, determine their or his/her liability under this guarantee in respect of liabilities thereafter incurred or arising but not in respect of any liabilities theretofore incurred or arising even though not then matured, provided, however, that notwithstanding receipt of any such notice the SO may fulfill any requirements of the Market Participant based on agreements express or implied made prior to the receipt of such notice and any resulting liabilities shall be covered by this guarantee; and provided further that in the event of the determination of this guarantee as to one or more of the undersigned it shall remain a continuing guarantee as to the other or others of the undersigned. The undersigned renounce(s) to all benefits of discussion and division.
5. This guarantee shall continue to be effective or be reinstated (as the case may be) if at any time payment by the Market Participant of all or any part of the liabilities is rescinded or must otherwise be returned by the SO upon the insolvency, bankruptcy or reorganization of the Market Participant or otherwise, all as though such payment to the SO had not been made.
  6. The undersigned shall at all times and from time to time do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and every such further act, deed, transfer, assignment, assurance, document and instrument as the SO may reasonably require to accomplish and give effect to this guarantee and the provisions contained herein.
  7. All indebtedness and liability, present and future, of the Market Participant to the undersigned or any of them are hereby assigned to the SO and postponed to the liabilities, and all moneys received by the undersigned or any of them in respect thereof after a payment demand has been deemed given to the undersigned shall be received in trust for the SO and forthwith upon receipt shall be paid over to the SO, the whole without in any way limiting or lessening the liability of the undersigned under the foregoing guarantee; and this assignment and postponement is independent of the said guarantee and shall remain in full effect notwithstanding that the liability of the undersigned or any of them under the said guarantee may be extinct.
  8. The SO shall not be concerned to see or inquire into the powers of the Market Participant or any of its directors or other agents acting or purporting to act on its behalf and this guarantee and agreement shall not be affected by the death or loss or diminution of capacity of the undersigned or any of them or by any change in the name of the Market Participant or in the membership of the Market Participant's firm through the death or retirement of one or more partners or the introduction of one or more other partners or otherwise, or by the acquisition of the Market Participant's business by a corporation, or by any change whatsoever in the objects, capital structure or constitution of the Market Participant, or by the Market Participant's business being amalgamated with a corporation, but this guarantee and agreement shall notwithstanding the happening of any such event continue to apply to all the liabilities whether theretofore or thereafter incurred or

- arising and in this instrument the word "**Market Participant**" shall include every such firm and corporation.
9. This guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or times of any sum or sums of money for the time being due or remaining unpaid to the SO, and all dividends, compositions, proceeds of security valued and payments received by the SO from the Market Participant or from others or from estates shall be regarded for all purposes as payments in gross without any right on the part of the undersigned to claim in reduction of the liability under this guarantee the benefit of any such dividends, compositions, proceeds or payments or any securities held by the SO or proceeds thereof, and the undersigned shall have no right to be subrogated in any rights of the SO until the SO shall have received payment in full of the liabilities.
  10. All monies owing to the SO shall be deemed to form part of the liabilities, notwithstanding any lack or limitation of status or of power, incapacity or disability of the Market Participant or of the directors, partners or agents of the Market Participant, or that the Market Participant may not be a legal or suable entity, and no invalidity, irregularity or unenforceability (by reason of any bankruptcy or similar law, any law or order of any government or agency thereof purporting to reduce, amend or otherwise affect the Indebtedness of the Market Participant, or otherwise) of the liabilities of the Market Participant or of any security therefore shall affect, impair or be a defence to this guarantee, the whole whether known to the SO or not.
  11. The undersigned hereby waives any circumstance that might constitute a legal or equitable discharge of a surety or guarantor, including but not limited to: (a) notice of acceptance of this guarantee; (b) presentment and demand concerning the liabilities of the undersigned; (c) notice of any dishonour or default by, or disputes with the Market Participant; and (d) any right to require that any action or proceeding be brought against the Market Participant or any other person, or to require that the SO seek enforcement of any performance against the Market Participant or any other person, prior to any action against the undersigned under the terms hereof. Except as to applicable statutes of limitation, no delay of the SO in the exercise of, or failure to exercise any rights, or a release hereunder shall operate as a waiver of such rights, a waiver of any other rights, or a release of the undersigned from any obligations hereunder. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
  12. Any sum that may not be recoverable from the undersigned on the footing of a guarantee, whether for the reasons set out in section 10 or 11 of this guarantee, or for any other reason, similar or not, shall be recoverable from the undersigned and each of them as sole or principal debtor in respect of that sum, and shall be paid to the SO on demand with interest and accessories.

13. This guarantee is in addition to and not in substitution for any other guarantee, by whomsoever given, at any time held by the SO, and any present or future obligation to the SO incurred or arising otherwise than under a guarantee, of the undersigned or any of them or of any other obligant, whether bound with or apart from the Market Participant; excepting any guarantee surrendered for cancellation on delivery of this instrument.
14. The undersigned and each of them shall be bound by any account settled between the SO and the Market Participant, and if no such account has been so settled immediately before demand for payment under this guarantee any account stated by the SO shall be accepted by the undersigned and each of them as conclusive evidence of the amount which at the date of the account so stated is due by the Market Participant to the SO or remains unpaid by the Market Participant to the SO.
15. This guarantee and agreement shall be operative and binding upon every signatory thereof notwithstanding the non-execution thereof by any other proposed signatory or signatories, and possession of this instrument by the SO shall be conclusive evidence against the undersigned and each of them that this instrument was not delivered in escrow or pursuant to any agreement that it should not be effective until any conditions precedent or subsequent had been complied with, unless at the time of receipt of this instrument by the SO each signatory thereof obtains from the Manager of the chief executive office of the SO receiving this instrument a letter setting out the terms and conditions under which this instrument was delivered and the conditions, if any, to be observed before it becomes effective.
16. This instrument covers all agreements between the parties hereto relative to this guarantee and assignment and postponement, and none of the parties shall be bound by any representation or promise made by any person relative thereto which is not embodied herein.
17. This guarantee will not be diminished or affected on account of any act or failure to act on the part of the SO that would prevent subrogation from operating in favour of the undersigned. All amounts payable by the undersigned pursuant to this guarantee shall be paid without setoff or counterclaim and without any deduction or withholding whatsoever by the undersigned unless and to the extent that the undersigned shall be prohibited by law from doing so, in which case the undersigned shall pay to the SO such additional amount it would have received if no such deduction or withholding had been made. Notwithstanding the foregoing, it is acknowledged and agreed that the liabilities shall be calculated including any rights, setoffs, counterclaims and other defenses that the Market Participant may have to payment of any liabilities other than defenses arising from the bankruptcy, insolvency, dissolution, or liquidation of the Market Participant and other defenses expressly waived herein.
- 17. This guarantee will not be diminished or affected on account of any act or failure to act on the part of the SO that would prevent subrogation from operating in favour of the undersigned. All amounts payable by the**

**undersigned pursuant to this guarantee shall be paid without setoff or counterclaim and without any deduction or withholding whatsoever by the undersigned unless and to the extent that the undersigned shall be prohibited by law from doing so, in which case the undersigned shall pay to the SO such additional amount it would have received if no such deduction or withholding had been made. Notwithstanding the foregoing, it is acknowledged and agreed that (a) the liabilities shall be calculated including any rights, setoffs, counterclaims and other defenses that the Market Participant may have to payment of any liabilities other than defenses arising from the bankruptcy, insolvency, dissolution, or liquidation of the Market Participant and other defenses expressly waived herein and (b) the undersigned shall have the right to set off any and all amounts payable by the undersigned pursuant to this guarantee against any amounts owing to the undersigned by the SO under the Market Rules or under any contract entered into between the SO and the undersigned pursuant to the Market Rules, and that a set off effected by this section 17 shall fully and finally satisfy pro tanto the respective obligations of the undersigned and the SO.**

18. The SO may upon notice to the undersigned assign, transfer and deliver to any transferee of the liabilities or any part thereof, the liability of the undersigned under this guarantee and any security, documents or instruments held by the SO in respect of this guarantee provided that no such assignment, transfer or delivery shall release the undersigned from said liability; and thereafter the SO shall be fully discharged from all responsibility with respect to this guarantee and security, documents and instruments so assigned, transferred or delivered. The undersigned may assign its or their rights and obligations hereunder only with the prior written consent of the SO, which consent may be withheld in the absolute discretion of the SO.
19. This guarantee and agreement shall extend to and enure to the benefit of the SO and its successors and assigns, and every reference herein to the undersigned or to each of them or to any of them, is a reference to and shall be construed as including the undersigned and the heirs, executors, administrators, legal representatives, successors and assigns of the undersigned or of each of them or of any of them, as the case may be, to and upon all of whom this guarantee and agreement shall extend and be binding.
20. No provision of this guarantee may be amended, modified or waived without the prior written consent of the SO and the undersigned.
21. Any payment demand, notice, 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, to the addresses set forth below. Notice given by personal delivery or mail shall be effective upon actual receipt, or, if receipt is refused or rejected, upon attempted delivery. Notice given by facsimile shall be effective upon actual receipt if received during the recipient's formal business hours, or at the beginning of the recipient's next business day

after receipt if not received during the recipient's normal business hours. All Notices by facsimile shall be confirmed promptly after transmission in writing by certified or registered mail, or personal delivery. Any party may change any address to which Notice is to be given to it by giving Notice as provided above of such change of address.

in the case of the undersigned:

[NAME OF GUARANTOR]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile No. ( ) \_\_\_\_\_

[NAME OF GUARANTOR]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile No. ( ) \_\_\_\_\_

and, in the case of the SO:

New Brunswick System Operator  
P. O. Box 2020  
77 Canada Street  
Fredericton, NB  
E3B 5G4

Attention: NBSO Corporate Secretary  
Facsimile No. (506) 458-4626  
E-mail: [info@nbsso.ca](mailto:info@nbsso.ca)

22. This guarantee and agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick ("Jurisdiction"). The undersigned irrevocably submits to the non-exclusive jurisdiction of the courts of the Jurisdiction in any action or proceeding arising out of or relating to this guarantee and agreement, and irrevocably agrees that all such actions and proceedings may be heard and determined in such courts, and irrevocably waives, to the fullest extent possible, the defense of an inconvenient forum. The undersigned agrees that a judgment or order in any such action or proceeding may be enforced in other jurisdictions in any manner provided by law. Provided,

however, that the SO may serve legal process in any manner permitted by law or may bring an action or proceeding against the undersigned or the property or assets of the undersigned in the courts of any other jurisdiction.

23. The undersigned hereby acknowledges receipt of a copy of this agreement.

24. In this guarantee, words importing the singular include the plural and vice versa and words importing gender shall include all genders.

It is the express wish of the parties that this agreement and any related documents be drawn up and executed in English. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

EXECUTED as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_

[NAME OF GUARANTOR]

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the Corporation

[NAME OF GUARANTOR]

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the Corporation