



## GUARANTY

Guaranty, dated as of \_\_\_\_\_, 2000 by \_\_\_\_\_ a, \_\_\_\_\_ corporation (the "Guarantor"), in favor of Delaware Electric Cooperative (the "Beneficiary").

1. **Guaranty.** In consideration of the Beneficiary having entered into, or entering into a Third Party Supplier Agreement (the "Agreement") by and between \_\_\_\_\_ (the "Company"), the Guarantor irrevocably and unconditionally guarantees to Beneficiary, its successors and assigns, the prompt payment when due, subject to any applicable grace period, of all of the Company's present and future obligations and liabilities of all kinds to Beneficiary arising out of the Agreement. Guarantor's liability under this Guaranty and the Beneficiary's right to recover under it shall be limited to an aggregate amount of \$\_\_\_\_\_. Guarantor acknowledges that it will benefit directly or indirectly from the transactions to be entered into between the Beneficiary and the Company.

2. **Nature of Guaranty.** This Guaranty constitutes a guarantee of payment when due and not of collection. In the event that any payment of the Company in respect of any Obligations is rescinded or recovered from Beneficiary as a preference or fraudulent transfer under the Federal Bankruptcy Code, or any applicable state law, the Guarantor shall remain liable hereunder in respect to such Obligations as if such payment had not been made. This Guaranty shall continue to be effective whether or not Guarantor, Company, or Beneficiary merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist. **GUARANTOR SHALL NOT BE REQUIRED TO PAY SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM A PARTY'S NEGLIGENCE) TO BENEFICIARY, EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT TO THE OBLIGATIONS UNDER THE AGREEMENT ARE DEEMED TO BE SUCH DAMAGES. IF AND TO THE EXTENT ANY PAYMENT MADE PURSUANT TO THE OBLIGATIONS UNDER THE AGREEMENT IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT CONSTITUTES A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES, AND NOT A PENALTY.**

1. **Consents, Waivers and Renewals.** Guarantor agrees that Beneficiary may, at any time and from time to time, without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) make any change in the terms of any Obligation or liability of the Company to Beneficiary, (2) take or fail to take any action of any kind in respect of any security for any Obligation or liability of the Company to Beneficiary, (3) exercise or refrain from exercising any rights against the Company or others, or (4) compromise or subordinate any Obligation or liability of the Company to Beneficiary including any security therefore.
2. **Expenses.** The Guarantor agrees to pay on demand all out-of-pocket expenses (including the reasonable fees and expenses of Beneficiary's counsel) in any way relating to the enforcement or protection of the rights of Beneficiary hereunder; provided, that the Guarantor shall not be liable for any expenses of Beneficiary if no payment under this Guaranty is due.
3. **Subrogation.** The Guarantor will not exercise any rights which it may acquire by way of

subrogation until all the Obligations to Beneficiary shall have been paid in full. Subject to the foregoing, upon payment of all the Obligations, the Guarantor shall be subrogated to the rights of Beneficiary against the Company, and beneficiary agrees to take such steps as the Guarantor may reasonably request, at the Guarantor's expense, to implement such subrogation.

4. **Setoffs and Counterclaims.** Guarantor reserves to itself all rights, counterclaims and other defenses which the Company is or may be entitled to arising from or out of the Agreement, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of the Company, the power or authority of Beneficiary to enter into the Agreement, and to perform its Obligations thereunder, and the lack of validity or enforceability of the Company's Obligations under the Agreement or any transaction thereunder.
5. **No Waiver; Cumulative Rights.** No failure or delay on the part of Beneficiary to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Beneficiary of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Beneficiary or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Beneficiary from time to time.
6. **Waiver of Notice.** The Guarantor waives notice of the acceptance of this Guaranty presentment, demand, notice of dishonor, protest, notice of any sale of collateral security and all other notices whatsoever.

**9. Representation and Warranties.**

(a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty.

(b) The execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene any provision of law or of the Guarantor's constitutional documents or any contractual restriction binding on the Guarantor or its assets.

(c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

1. **Assignment.** The Guarantor shall not assign its rights, interest or obligations hereunder to any other person without the prior written consent of the Beneficiary and any purported assignment absent such consent is void.
2. **Notices.** All notices or other communications to the Guarantor shall be in writing and shall be given in the same manner and with the same effect as set forth in the Agreement. The Guarantor's address for notices is as follows:

Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_ \_ Attn:  
 \_\_\_\_\_

The Beneficiary's address for notices is as follows:

**Delaware Electric Cooperative Attn. Energy Supply Coordinator PO Box 600  
 Greenwood, DE 19950**

or such other address as either the Guarantor or Beneficiary shall from time to time specify to the other party.

1. **Termination.** This is a continuing Guaranty of all present and future Obligations of the Company to the Beneficiary. This Guaranty shall terminate the earlier to occur \_\_\_\_\_ or at any time upon written notice by Beneficiary to Guarantor, which termination shall become effective on the eleventh (11th) day after the date of receipt by the Guarantor of such notice. Notwithstanding the foregoing, this Guaranty shall continue to apply to all Obligations of the Company to the Beneficiary pursuant to the Agreement entered into before the effective date of termination.
2. **GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. GUARANTOR AND BENEFICIARY JOINTLY AND SEVERALLY AGREE TO THE NON-EXCLUSIVE JURISDICTION OF STATE AND FEDERAL COURTS LOCATED IN THE STATE OF DELAWARE OVER ANY DISPUTES ARISING OR RELATING TO THIS GUARANTY.**
3. **Waiver of Right to Trial by Jury. Each party hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty or any Obligations arising under the Agreement.**

**IN WITNESS WHEREOF**, the Guarantor has caused its duly authorized officer to execute and deliver this Guaranty as of the date first above written. The Guaranty becomes effective concurrent with the effective date of the Agreement according to its terms.

Guarantor: \_\_\_\_\_

By:

Name:

Title: