



MHRC TRAINING SERVICES STANDARD TERMS AND CONDITIONS

- Definitions.** In this **Agreement**, the following terms shall have the following meanings and shall be indicated in bold, italicized text beginning with a capital letter:
"Agreement" means collectively, the **Training Proposal**, as signed by both **MHRC** and **Client**, and these MHRC Training Services Standard Terms and Conditions.
"Client" means the entity so named in the **Training Proposal**.
"Fees" means **MHRC's** fees and expenses for the delivery of the **Training Services** as set out in the **Training Proposal** under the heading of the same name.
"MHRC" means Manitoba Hydro International Ltd.
Training Materials means those documents, handouts, case studies, manuals and certificates and other like materials to be provided by **MHRC** to **Client** as part of the **Training Services** as set out under such heading in the **Training Proposal**.
"Training Proposal" means the document entitled "Proposal for Training Services" forming part of this **Agreement** which sets out the **Training Services**, schedule, **Fees**, **Training Materials** and other details of the arrangement between the parties hereto.
"Training Services" means all training and related services, training software and **Training Materials** to be undertaken or provided by **MHRC** to **Client** as set out in the **Training Proposal**.
- Acceptance.** Notwithstanding anything to the contrary contained in any other related document, the **Client** accepts that **MHRC's** offer to perform the **Training Services** as set out in the **Training Proposal** shall be based solely on the terms and conditions contained in this **Agreement** and no additional terms or conditions in any purchase or service order or other similar documents issued by **Client** to **MHRC** either before or after the signing of this **Agreement** shall apply unless expressly agreed to by **MHRC** in a formal amending agreement signed by both parties.
- Services.** **MHRC** will provide the **Training Services** identified in the **Training Proposal**, for the period, at the location(s) and for the **Fees** expressly set out in the **Training Proposal**.
- Standards of Performance.** **MHRC** will perform the **Training Services** using qualified personnel in a professional and workmanlike manner using the degree of skill, care and diligence customarily associated with accepted professional practices for services similar in nature and scope to the **Training Services**. Except for the foregoing, the **Training Services** and **Training Materials** are provided "as is" and there are no warranties or conditions (express or implied, arising by statute or otherwise in law or from a course of dealing or usage of trade) for the **Training Services** or **Training Materials** provided pursuant to this **Agreement**. **MHRC** disclaims all implied warranties or conditions of title, non-infringement, merchantability or fitness for any purpose in relation to the **Training Services** and **Training Materials**. **MHRC** makes no warranty as to any results to be attained by Client or its designated attendees receiving the **Training Services**, attending training sessions, receiving certification or using the **Training Materials** provided hereunder nor does **MHRC** warrant that the **Training Services** or **Training Materials** will meet **Client's** requirements or that the operation of the **Training Materials** or **Training Services** will be uninterrupted or error free.
- Payments.** **Fees** are payable in full in advance of the schedule date for the delivery of the **Training Services** by the date and by one of the methods as set out in the **Training Services Proposal**. Except as expressly set forth herein, **Fees** for **Training Services** are non-refundable. Unless otherwise specified in the **Training Services Proposal**, all payments must be made in Canadian currency.
- Taxes.** **Fees** are the net amount due which amount is exempt from Canadian tax changes. **Fees** do not include any duties, taxes or withholdings levied by **Client's** country which, if applicable, would be to the account of and payable by **Client** to **MHRC** in addition to **Fees**.
- Overdue Payments.** Any sum not paid by **Client** when due will bear interest from the due date until paid at an annual interest rate of 18%, calculated and payable monthly.

8. **Rescheduling or Cancellation.** *Client* may cancel or postpone its participation in part or all of the **Training Services** using the method set out in the **Training Services Proposal**. *MHRC* may cancel or postpone part or all of the delivery of the **Training Services** using the method set out in the **Training Services Proposal**.
9. **Access and Conduct.** While at the other party's (the "**Hosting Party**") facilities, the other party and its personnel (the "**Attending Party**") shall have the right to use and access only those facilities of the **Hosting Party** that may be reasonably necessary in the performance of this **Agreement** and shall have no right to use or access any other facilities of the **Hosting Party**. The **Attending Party** and all of its personnel shall comply with all of **Hosting Party's** safety and security rules and procedures while at **Hosting Party's** facilities, as advised by **Hosting Party** and shall conduct themselves in a professional, safe and prudent manner so as to avoid damage to property and injury to people. *MHRC* reserves the right, in its sole discretion to dismiss (without refund) an attendee from any instance of the **Training Services** to maintain a safe, professional and productive classroom environment. For all **Training Services** taking place at a **Hosting Party's** facilities, the **Attending Party** agrees that it (and its attendees or personnel as applicable) will leave all facilities in the same condition as initially provided.
10. **Ownership of Intellectual Property.** *MHRC* shall retain all title, copyright and other proprietary and intellectual property rights of any nature and howsoever created or developed by *MHRC* in or related to the **Training Services** and **Training Materials**, including any software, documentation, data, technical information and all modifications, and in all copies of all or any portion thereof. *Client* agrees that it must obtain *MHRC's* prior written consent before it may: (i) copy any of the **Training Materials** or use any of the **Training Materials** other than for its own internal business purposes, (ii) use any recording equipment (including, but not limited to audio recorders, video recorders, and cameras) during the **Training Services**; or (iii) use *MHRC's* trademarks, trade names, logos or other designations in any promotional or other public materials.
11. **Confidential Information.** "**Confidential Information**" means information belonging to or in the possession or control of a party (the "**Disclosing Party**"), its customers or its supplier which is of a confidential, proprietary, or trade secret nature, including without limitation all business information, technological information, intellectual property, software and other information related to **Disclosing Party's** business, technology, products, customers, personnel or finances, that the other party (the "**Receiving Party**") has access to under this **Agreement** and that are not readily available to the general public (collectively, "**Confidential Information**") As between **Disclosing Party** and **Receiving Party**, **Confidential Information** will remain the property of **Disclosing Party**. **Receiving Party** will preserve and protect all **Disclosing Party's Confidential Information** and **Receiving Party** will not disclose the existence, source, or content of **Confidential Information**, except to its employees or subcontractors with a need to know and under obligation of confidentiality at least as stringent as under this **Agreement**. **Receiving Party** will not copy or reverse-engineer any **Confidential Information** received from the **Disclosing Party** or use any of **Disclosing Party's Confidential Information** except in relation to the **Training Services** to the extent necessary for own internal business purposes.
12. **Injunctive Relief.** Each party acknowledges and agrees that unauthorized disclosure of **Confidential Information** or other violation or threatened violation of this **Agreement** by such party with respect to Section 10 Ownership of Intellectual Property and Section 11 Confidential Information of this Schedule A will cause irreparable harm to the other party for which damages would not be an adequate remedy. Without prejudice to any other rights or remedies available to a party, each party shall have the right to apply for equitable relief by way of injunction against the anticipated, present or continuing breach by the other party of such provisions of this **Agreement** without the necessity of proving damages or furnishing a bond or other security.
13. **Indemnification.** *Client* will indemnify and hold harmless *MHRC* and its directors, officers, employees, agents, subcontractors and affiliates (the "**Indemnitees**") from and against any and all losses, costs, damages and expenses suffered or incurred by the **Indemnitees** or payable to any third party arising from any breach of this **Agreement** by the *Client* or its directors, officers, employees or other invited training attendees, or the negligent acts or omissions or willful misconduct of the *Client* and/or its directors, officers, employees or other invited training attendees in connection with the **Training Services** or this **Agreement** except to the extent that such losses, costs, damages or expenses are caused by the breach of contract, negligent act or omission or willful misconduct of one or more of the **Indemnitees**.
14. **Limitation of Liability.** Notwithstanding any other provisions of this **Agreement**:
 - (a) *MHRC's* (including its directors, officers, employees, agents and subcontractors) total aggregate liability to *Client* and to any person or entity claiming through *Client* for any breach of this **Agreement**, claim of infringement of intellectual property rights, negligent act or omission or gross negligence in relation to the **Training Services** or this **Agreement**, whether based in tort (including without limitation,

- negligence), breach of contract, statutory or strict liability, equity or otherwise, shall not exceed the total cumulative sum of the **Fees** received by or payable to **MHRC** for performance of the **Training Services**;
- (b) in no event shall **MHRC** (including its directors, officers, employees, agents and subcontractors) at any time be liable to the **Client** or to any other person for any special, indirect, incidental or consequential damages whatsoever which may be sustained by them arising out of or relating to the **Training Services** or this **Agreement**, including but not limited to loss of revenue, loss of profit, loss of production, loss of use of any equipment, cost of any replacement equipment, cost of capital, claims by or through **Client's** end-clients, loss of business reputation or opportunity or any other commercial or economic loss, whether such liability arises out of contract, tort (including negligence), strict liability, warranty, equity or any other legal theory; and,
 - (c) **MHRC's** liability shall be limited to specifically identified written claims submitted by **Client** to **MHRC** within one (1) year from the completion date of the **Training Services**.
15. **Force Majeure.** **MHRC** shall not be liable for any expense, loss or damage resulting from delay or prevention of performance of the **Training Services** caused by illness or injury of its trainers or speakers, fires, floods, acts of God, unusual weather events, public health risks, quarantine, epidemic, pandemic, strikes, labor disputes, labor shortages, inability to secure materials or equipment, fuel or other energy shortages, riots, thefts, accidents, transportation delays, acts or failure to act of **Client**, acts or failure to act of governmental authorities, **Client's** delay in obtaining facilities or equipment required in the performance of the **Training Services** or any other cause whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of **MHRC**. In the event of any delay arising by reason of any of the foregoing, the schedule for performance of the **Training Services** shall be equitably adjusted by the parties as may be required.
 16. **Term and Termination.** Upon signature by both parties, this **Agreement** shall continue until completion of **Training Services** unless terminated earlier in accordance with this **Agreement**. **MHRC** may terminate this **Agreement** by written notice to **Client** in the event **Client** neglects or fails to perform or observe any material term or obligation of this **Agreement** and fails to remedy such neglect or failure within a period of ten (10) days after written notice thereof from **MHRC**. Notwithstanding anything to the contrary in this **Agreement**, such termination shall not relieve **Client** of any accrued obligations to pay **Fees** to **MHRC** nor entitle **Client** to any refund of **Fees**.
 17. **Non-Solicitation.** During the term of this **Agreement** and for a period of two years after its expiration or termination, **Client** will not, either directly or indirectly, hire or solicit for employment (or as an individual independent contractor) any personnel of **MHRC** or any of its affiliates. If this paragraph is breached by **Client**, damages for such breach are agreed to be equal to the demonstrated cost of training a replacement for such individual. This paragraph does not apply to the hiring or solicitation of any individual who did not become known to **Client** as a result of the relationship between **Client** and **MHRC** created by this **Agreement** and does not prevent either party from generally advertising for recruitment of employees or personnel.
 18. **Notices.** Any notice to be given hereunder by either party to the other will be in writing and will be deemed given upon delivery, if sent by email, facsimile or by overnight courier, or five (5) days after such notice is sent if sent by certified mail, return receipt requested to each party at the address set out in the **Training Proposal**, unless such address is updated by a party by written notice to the other.
 19. **Export Controls.** **Client** agrees to comply fully with all relevant export laws and regulations of the United States, Canada or any other applicable government ("**Export Laws**") to assure that neither the products, **Training Materials**, documentation, nor any direct product thereof are (1) exported, directly or indirectly, in violation of the **Export Laws**; or (2) are intended to be used for any purposes prohibited by the **Export Laws**, including, without limitation, nuclear, chemical or biological weapons proliferation.
 20. **Independent Contractor.** **MHRC** is an independent contractor. This **Agreement** shall not create, nor shall it be deemed to create, the relationship of employer and employee, principal and agent, partnership, or joint venture between **Client** and **MHRC** or between **Client** and any directors, officers, employees, agents or subcontractors of **MHRC**. **MHRC** is responsible for any deductions or remittances which are or may hereafter be, required by law. Neither party has any authority to make any representation, enter any commitment, or incur any expenses, debts or liability on behalf of the other party, except with its prior written consent.
 21. **Publicity.** **Client** shall not disclose, advertise, or publish the terms and conditions of this **Agreement** without the prior written consent of **MHRC**. **Client** consents to **MHRC's** inclusion of **Client's** name and type of service received from **MHRC** in **MHRC's** promotional materials. Inclusion of any other **Confidential Information** of **Client** shall require the advance written consent of **Client**.

22. **Severability.** If any provision of this **Agreement** is for any reason found to be unenforceable at law, it shall be deemed severed from this **Agreement** and the remaining provisions of this **Agreement** shall remain in force and continue to be binding upon the parties as though the unenforceable provision had never been included in this **Agreement**.
23. **Waiver.** No waiver of any provision of the **Agreement**, or of a breach hereof, is valid unless it is in writing, signed by the waiving party. A waiver of any right under this **Agreement** on the part of either party shall not be deemed to be a waiver of any other right, and a waiver of any right in any one instance shall not be deemed to be a waiver of that right in any other instance.
24. **Amendments.** No amendment of this **Agreement** shall be valid unless it is in writing, signed by both parties.
25. **Assignment.** Neither party may assign or transfer this **Agreement** or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.
26. **Survival.** The expiry or termination of this **Agreement** shall not affect or prejudice any rights or obligations that have accrued or arisen under this **Agreement** prior to expiry or termination, and those rights and obligations shall survive such expiry or termination. Any provision contained within this **Agreement** which by its very nature is intended or reasonably intended to survive expiry or termination of this **Agreement** and all other provisions of this **Agreement** necessary to give effect thereto, including but not limited to provisions with respect to payment, liability, indemnity, confidentiality and intellectual property shall survive such expiry or termination.
27. **Enurement.** This **Agreement** shall enure to the benefit of and be binding upon the administrators, successors and permitted assigns of the parties.
28. **Applicable Laws.** This **Agreement** shall be subject to, interpreted, performed and enforced in accordance with the laws of Manitoba without regard to Manitoba or Canadian law governing conflicts of law, even if one or more of the parties to this **Agreement** may be resident of or domiciled in any other province or country. The parties irrevocably submit to the exclusive jurisdiction of the Court of the Queen's Bench at Winnipeg, Manitoba. This **Agreement** shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.
29. **Entire Agreement.** This **Agreement** is the entire agreement between the parties. There are no other undertakings, representations, warranties or promises between the parties, express or implied with respect to the subject matter of this **Agreement**. All other terms, expressed or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
30. **Signing of this Agreement.** This **Agreement** may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same document. Counterparts may be executed either in original or facsimile form. The parties adopt any facsimile signatures received as original signatures of each party without requirement for delivery of the original document.