

## BETA SOFTWARE LICENSE AGREEMENT

### ARTICLE 1. ACKNOWLEDGEMENT, LICENSE AND SERVICES

1.1 **Prohibition.** IF YOU, THE USER ("YOU", "YOUR") DO NOT AGREE TO THE TERMS OF THIS BETA SOFTWARE LICENSE AGREEMENT, DO NOT INSTALL THIS SOFTWARE. BY INSTALLING, ACCESSING OR OTHERWISE USING THIS SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS BETA SOFTWARE LICENSE AGREEMENT.

1.2 **Agreement.** By clicking on "I accept the terms of the License Agreement" or "I agree" when prompted in this Software, You, as licensee, confirm Your agreement to all terms and conditions of this Beta Software License Agreement (hereinafter referred to as "**Agreement**") with Manitoba Hydro International Ltd., 211 Commerce Drive, Winnipeg, Manitoba, Canada, R3P 1A3 (hereinafter referred to as "**MHI**"). If You do not agree with the terms and conditions of this Agreement, click on "Quit" or "I do not accept the terms of the License Agreement" and do not install or use this Software. This Agreement also applies to any updates, supplements, add-on components, or services for the Software that MHI may subsequently provide to You, unless other terms accompany those items. In that case, to the extent they conflict or are inconsistent with this Agreement, those other terms will apply.

1.3 **Acknowledgement.** You understand that the the Software (the "**Software**") has been developed by MHI but has not yet been tested in a working environment and You have agreed to use and evaluate the Software, with the understanding that You will report any bugs or issues to MHI.

1.4 **License.** MHI grants to You a revocable, personal, non-transferable, non-exclusive license to use the Software and all documentation ("**Documentation**") which may be provided by MHI in connection with the Software, if any, solely for Your internal purposes or personal use and for the purpose of evaluating the Software, as described in this Agreement.

1.5 **Term.** The term of the license granted hereunder shall be until the expiration of Your trial period as designated by MHI, in its sole discretion.

1.6 **Additional Material.** During the term of this Agreement, MHI shall provide to You such additional materials, updates, fixes and other material that are deemed appropriate by MHI, or none of such things, in its sole discretion, to assist You in performing the testing services hereunder.

1.7 **Ownership.** MHI Software is licensed, not sold. MHI retains all rights, title, proprietary interest in, and ownership of the Software. Your license to use the Software is granted on condition that You comply with the terms of this Agreement. MHI may terminate this Agreement immediately and without notice if You fail to comply with any term of this Agreement. Termination is not an exclusive remedy and all other remedies otherwise entitled by law or equity shall remain.

1.8 **Intellectual property.** The Software is protected by intellectual property laws, copyright laws and treaties worldwide, and may contain trade secrets of MHI. MHI reserves all rights not expressly granted.

## ARTICLE 2. EVALUATION OF SOFTWARE

2.1 **Evaluation.** You agree to install and evaluate the Software, and provide reporting and input to MHI, solely in exchange for the license to use the Software granted by MHI, subject to the terms and within the scope of this Agreement.

2.2 **Software Deficiencies.** You shall have a continual expectation to promptly report to MHI any malfunctions, bugs, errors, functional deficiencies or inaccurate calculations (“**Software Deficiencies**”) in the Software, or if the Software is not performing in accordance with specifications.

2.3 **Reports.** You shall provide MHI with any and all reports and feedback, in such form and with such substance, as MHI may, in its sole discretion, determine from time to time. You agree that MHI shall have no obligations of confidentiality with respect to Your feedback and You hereby grant to MHI a worldwide, non-exclusive, perpetual, irrevocable, royalty free, fully paid up license to use, copy, modify, create derivative works of, publicly display, disclose, distribute, license and sublicense, the feedback (as well as any modifications of or improvements to the Software, proposed in or resulting from such feedback), for any and all purposes whatsoever.

2.4 **Non-Disclosure.** You shall not disclose to any party that You are evaluating or have evaluated the Software, or publicly release the results of any testing of the Software you may conduct, except at the request of or with the written approval of MHI; provided, however, that at the request of MHI, You agree to provide to any party designated by MHI and in form directed by MHI, a summary report describing the evaluations of the Software and their results.

## ARTICLE 3. NO LICENSE FEE

3.1 **No License Fee.** You and MHI agree that there shall be no monetary license fee payable during the term of this Agreement, and that Your evaluation of the Software shall be the sole and exclusive manner of compensating MHI for the license to use the Software granted herein. MHI and You further agree that there shall be no fee payable to You for evaluating the Software hereunder and that the grant of the license to use the Software during the term hereof shall be the sole and exclusive compensation to You for evaluating the Software hereunder.

## ARTICLE 4. USE OF SOFTWARE

4.1 **Installation.** You shall install, use and operate the Software in compliance with Documentation, specifications, and testing standards and procedures which may be supplied by MHI from time to time during the term hereof, in its sole discretion.

4.2 **Authorized Persons.** Only You or Your contracted personnel (individually, defined as “**Authorized Person**”; collectively, defined as “**Authorized Persons**”) shall be authorized to use this Software.

4.3 **Authorized Use.** You shall ensure that only an Authorized Person may use the Software in compliance with specifications and testing standards supplied by MHI. If You become aware of any unauthorized use of the Software, You must immediately advise MHI.

4.4 **No reliance on other information.** No oral or written information or advice given by

MHI, its dealers, distributors, agents or employees shall create a warranty, and You may not rely upon such information or advice.

4.5 **No Copying.** You shall not copy, duplicate, reproduce, sell, license, sublicense, transfer, assign, lease, rent or convey the Software or any right in the Software to anyone else without the prior written consent of MHI; provided that You may make copies of the Software for backup purposes. The copies must contain the same proprietary notices as appear in the original copy of the Software.

4.6 **No modifications.** You may not modify, adapt, translate or create derivative works based upon the Software. You may not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software. You may not circumvent any technological measures that (i) control access to the Software, (ii) limit the number of simultaneous instances of the Software, or (iii) limit features.

## **ARTICLE 5. CONFIDENTIAL INFORMATION**

5.1 **Confidentiality.** The Software contains proprietary and confidential information of MHI, which shall not be disclosed to any third party. The dissemination of the Software and the information therein, or any portion thereof, within Your internal organization shall be limited to those Authorized Persons whose duties justify their need to know such Software and information, or portion thereof, and then only on the basis of a clear understanding by such Authorized Persons of their obligation to maintain the confidentiality of the Software, Documentation and information or portion thereof.

## **ARTICLE 6. PROPRIETARY RIGHTS**

6.1 **Ownership.** This Agreement does not transfer from MHI to You, the Software or the Documentation or any intellectual property rights of MHI or its licensors therein. You acknowledge and agree that the Software is the proprietary property of MHI or its licensors, and that MHI or its licensors is the owner of all copyrights, trademarks, patents, trade secrets and other proprietary information related to the Software. You understand and agree that You are receiving a beta copy of the Software which has not been released to the general public. As such, all information related directly or indirectly to the Software, its development and evaluation are trade secrets of MHI or its licensors and may not be disclosed or used by You for any purpose except for the purpose of Your evaluating the Software for MHI hereunder. Upon expiry or termination of this Agreement, You shall forthwith discontinue such use, without any right of compensation for such discontinuation. You shall use Your best efforts to protect the Software and the Documentation from unauthorized use, reproduction, distribution or publication. You shall not during or at any time after the expiry or termination of this Agreement in any way question or dispute the ownership of the Software or the Documentation by MHI or its licensors.

## **ARTICLE 7. SECURITY OF YOUR ACCOUNT AND PASSWORD**

7.1 **Account, Password and Access.** You are solely responsible for safeguarding all information relating to Your account with MHI and are further responsible for all activities that occur under Your account with MHI, including the activities that occur under any subsequent

accounts You create for Authorized Persons or others. You agree not to publish or make known information for Your account or any subsequent accounts You create. You further agree to take reasonable security precautions, at least as great as the precautions You take to protect Your own confidential information. You shall notify MHI immediately upon learning of any unauthorized use of Your account or any other breach of security. You acknowledge and consent to MHI logging into Your account and using Your account information to provide assistance to You with technical issues, and to maintain or improve the Software or Documentation.

## **ARTICLE 8. PRIVACY**

8.1 **Your Privacy.** Your personal information and the personal information of Your Authorized Persons is never shared outside of MHI without Your permission, unless required to do so by law or in the good faith belief that such action is necessary to conform to the law or comply with legal process served on MHI, protect and defend the rights or property of MHI, and act in urgent circumstances to protect the personal safety of users of the Software or the public.

## **ARTICLE 9. OPEN SOURCE**

9.1 The Software may include third party open source, free or public domain software components ("**Open Source Software**"), which are provided under their own copyright and licence terms (each, an "**Open Source Licence**"). A list of Open Source Software, and the respective Open Source Licence for each, can be found in the "Legal" folder included as part of the Documentation. You are permitted to use the Open Source Software as it forms part of the Software, provided that your use of the Open Source Software is consistent with the terms of this Agreement. You may have broader rights to use the Open Source Software under the applicable Open Source Licence. Nothing in this Agreement is intended to impose further restrictions on your use of the Open Source Software in accordance with any applicable Open Source Licence. Without limiting the terms of this Agreement, MHI expressly disclaims any warranty or other assurance to you regarding the Open Source Software.

## **ARTICLE 10. INJUNCTION AND EQUITABLE REMEDIES.**

10.1 **Injunction and Damages.** You hereby recognize that the Software is a valuable asset of MHI and that any remedy contemplating, *inter alia*, the award of monetary damages in the event of a violation or impending violation of any of the terms and conditions of this Agreement, shall be difficult to quantify and inadequate. As a result, MHI shall, in addition to any other relief available to it (including, without limitation, monetary damages), be entitled to the remedy of injunction and other equitable remedies, without having to establish the inadequacy of any other remedy available to it. You hereby undertake not to make any defence in proceedings regarding the granting of an injunction or specific performance which refer to the availability to MHI of other remedies.

## **ARTICLE 11. TERMINATION.**

11.1 **Termination.** Upon termination of this Agreement, for any reason, You shall certify that the original and all copies of the Software and Documentation in computer memory or otherwise has been destroyed, and that no copies of the Software or Documentation, in any form, remain in Your possession, use or control. All terms and conditions relating to

confidentiality, proprietary rights, non-disclosure, and limitation of liability shall survive the termination of this Agreement.

#### **ARTICLE 12. NO WARRANTY.**

**12.1 Software Deficiencies.** You understand and agree that You are accepting the Software on an experimental basis for testing purposes only. The purpose of the relationship established in this Agreement is to determine to what extent there are Software Deficiencies. You further understand and agree that it is anticipated that there are likely to be Software Deficiencies and that the occurrence of such Software Deficiencies is inherent in the beta testing relationship established hereunder. Given the nature of this Agreement, as well as the current experimental stage of development of the Software, You agree that the Software should not and will not be relied upon to correctly function or perform, nor in connection with any aspect of Your business or life. You agree that You are solely responsible for determining the appropriateness of use of the Software and assume any and all risks associated with its use.

**12.2 “As Is” Acceptance.** You accept the Software on an “as is” basis and “with all faults and defects”. You understand and agree that MHI does not warrant the Software in any way, express or implied.

**12.3 No Technical Support.** MHI shall not be obligated to provide technical support for the Software and provides no assurance that any reported issues with respect to the Software will be corrected. MHI will, in the best interests of the Software and as it sees fit, attempt to remedy such reported issues.

#### **ARTICLE 13. LIMITATION OF LIABILITY**

**13.1 Limitation of Liability.** MHI DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, IN RESPECT OF THE SOFTWARE OR THE OPEN SOURCE SOFTWARE INCLUDING BUT NOT LIMITED TO WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

**WITHOUT LIMITING THE FOREGOING, MHI SHALL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT UNDER THIS AGREEMENT OR IN TORT, INCLUDING NEGLIGENCE OR PRODUCT LIABILITY, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL LOSSES OR DAMAGES OF ANY NATURE OR KIND WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF OR RESULTING FROM LOSS OR DELAY OR USE OR MODIFICATION OF THE SOFTWARE OR THE OPEN SOURCE SOFTWARE, RELIANCE ON THE SOFTWARE OR THE OPEN SOURCE SOFTWARE, LOST OR CORRUPTED USER OR THIRD PARTY DATA, LOST PROFITS OR LOST GOODWILL, FAILURE TO REALIZE SAVINGS, OR FOR ANY CLAIM OR DEMAND AGAINST YOU BY ANY OTHER PARTY, EVEN IF MHI MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.**

#### **ARTICLE 14. INDEMNITY**

**14.1 Indemnity.** You shall indemnify and hold, MHI, and its parents, subsidiaries, affiliates, officers, directors, employees, sub-contractors, agents and successors, harmless from any claim

or demand, including, without limitation, reasonable legal fees, made by any third party due to or arising out of Your use of the Software.

## ARTICLE 15. MISCELLANEOUS

15.1 **Assignment.** This Agreement and the license granted hereunder may not be assigned, sub-licensed, rented, leased, distributed or otherwise transferred by You. MHI may assign, sublicense, rent, lease distribute or otherwise transfer this Agreement and the license granted hereunder.

15.2 **Successors and Assigns.** This Agreement and the license granted hereunder shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns, as the context may require.

15.3 **Survival.** The provisions of **Sections 1.1, 1.7, 1.8, 2.4, 3.1, 4.3, 4.4, 4.5, 4.6, 5.1, 6.1, 7.1, 8.1, 10.1, 11.1, 12.1, 12.2, 12.3, 13.1, 14.1, 15.11** and this **Section 15.3** , shall survive any termination of this Agreement.

15.4 **Modifications.** MHI reserves the right to change or modify any of the terms and conditions contained in this Agreement, including, without limitation, fees and payment policies for the Software. MHI reserves the right to modify the terms of this Agreement. In the event that MHI modifies the terms of this Agreement, it will provide general notice to You of such modifications. You will be deemed to have accepted and be bound by such modifications upon Your continued use of the Software following such modifications to this Agreement. If You do not agree to such modifications to the Agreement, You must immediately stop using the Software and notify MHI that You are terminating this Agreement.

15.5 **Waiver.** A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.

15.6 **Governing Law.** This Agreement shall be governed the laws of the province of Manitoba and the laws of Canada applicable in Manitoba, and you agree to submit to the exclusive jurisdiction of the courts of the province of Manitoba. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded from applying to this Agreement and the Software.

15.7 **Severability.** If any provision of this Agreement or a portion thereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision or such portion thereof to any other person or circumstance shall not be affected thereby.

15.8 **Headings.** The headings in this Agreement are to be used for convenience only and should have no substantive meaning.

15.9 **Entire Agreement.** You acknowledge that You have read and understand this Agreement and the terms and conditions contained herein and agree to be bound by them. You further acknowledge that this is the complete and exclusive statement of the Agreement

concerning the Software and supersedes all previous oral or written proposals, representations or agreements and all other communications between the parties relating to the subject matter hereof.

**15.10 No Export.** The Software must not be shipped, transferred or exported into any country or used in any manner prohibited by Canada, the United States Export Administration Act, or any other applicable export laws, restrictions or regulations.

**15.11 Further Assurances.** You shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, documents, instruments, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions

**15.12 Force Majeure.** In the event that MHI is prevented, delayed or interrupted in performing its obligations under this Agreement due to any occurrence beyond its control, such as, but not limited to, strikes, walkouts, wars or acts of governments or government agencies or other authorities having jurisdiction, then such prevention, delay or interruption shall not be construed to be a default under this Agreement. MHI shall give notice to You of such events as soon as reasonably possible and both parties shall use their commercially reasonable efforts to comply with the terms of this Agreement notwithstanding such prevention, delay or interruption.