

**PSCAD™/EMTDC™ SIMULATION SOFTWARE
MAINTENANCE AND SUPPORT AGREEMENT**

BETWEEN:

**MANITOBA HYDRO INTERNATIONAL LTD.
("MHI")**

-and-

**LICENSEE OF PSCAD™/ EMTDC™ SIMULATION SOFTWARE
("LICENSEE")**

IN CONSIDERATION of the mutual obligations contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

1.1 Definitions. In this Agreement, the following terms shall have the following meanings:

"**Additional Services**" has the meaning set out in Article 4 - Additional Services.

"**Agreement**" means this PSCAD™/EMTDC™ Simulation Software Maintenance and Support Agreement and incorporates by reference quotations or invoices as applicable issued by MHI to Licensee for provision of Maintenance and Support as outlined therein.

"**Business Day**" means Monday through Friday, 8:30 AM through 4:30 PM Central Standard Time, excluding Manitoba holidays.

"**EULA**" has the meaning set out in Article 2 - Maintenance.

"**Force Majeure**" has the meaning set out in Article 11 - Force Majeure.

"**Information**" has the meaning set out in Article 10 - Confidentiality.

"**Licensee**" means a person or entity who installs or uses the Software.

"**MHI**" means Manitoba Hydro International Ltd.

"**MHI Representatives**" means the directors, officers, employees and subcontractors of MHI and MHI's authorized agents, resellers and distributors of the Software.

"**Maintenance**" means bug-fixes, releases to correct minor programming errors, enhancements to existing features, patches, Updates and generally available technical material provided by MHI pursuant to this Agreement.

"**Software**" means PSCAD™ and EMTDC™ simulation software in executable format.

"**Support**" means technical and engineering application assistance for the Software as set out in Article 3 - Support provided by MHI at the request of Licensee pursuant to this Agreement.

"**Term**" has the meaning set out in Article 5 - Term and Renewal.

"**Update**" means a version of the Software classified by MHI as a maintenance release that may include, but is not limited to, minor enhancements, or correction of deficiencies or bugs affecting performance of the Software.

"**Yearly Support Cap**" has the meaning set out in Article 3 - Support.

2. MAINTENANCE

2.1 Maintenance. During the Term, MHI shall provide Licensee with Maintenance for the licensed version of the Software currently used by Licensee. The amount, extent or content of any Update and the release date for any Update shall be determined by MHI, in MHI's sole discretion.

2.2 Software End-User License Agreement. Updates provided by MHI to Licensee shall be subject to the then current PSCAD™/EMTDC™ Simulation Software End-User License Agreement ("**EULA**").

3. SUPPORT

- 3.1 **Support.** During the Term, MHI shall provide Licensee with Support for the licensed version of the Software currently used by Licensee as set out in this Article 3 - Support of this Agreement. Support includes, but is not limited to:
- a) assistance during licensing, installation, and setup and for other common related issues that affect the operation of the Software;
 - b) assistance to remedy a defect in the Software attributable to MHI which significantly and functionally affects the intended use of the Software;
 - c) application support, such as engineering application troubleshooting;
 - d) provision of case examples, when available, to support Licensee's implementation of the Software;
 - e) error analysis and correction; and
 - f) diagnosis or resolution of issues or performance deficiencies of the Software.
- 3.2 **Yearly Support Cap.** During each full year of the Term, MHI shall provide to Licensee up to 10 hours of application support as set out in Section 3.1 c) - Support of this Agreement for each applicable Software license purchased by Licensee from MHI to which Maintenance and Support applies ("**Yearly Support Cap**").
- 3.3 **Internet and Telephone Support.** Subject to Section 3.2 - Yearly Support Cap of this Agreement, at the request of Licensee by email or telephone to MHI, MHI shall provide internet or telephone based Support to Licensee on Business Days.
- 3.4 **Assistance by Licensee.** Licensee shall provide to MHI any information reasonably requested by MHI to assist MHI to perform Support contemplated by this Agreement. In the case of reported Software errors, Licensee shall provide sufficient information to enable MHI to reproduce the error. Licensee acknowledges that internet based Support may require MHI to remotely access Licensee's computers, and Licensee agrees to allow MHI to remotely access Licensee's computers for the purpose of performing said Support.
- 3.5 **Additional Support.** Support outside the scope of this Agreement, and Support in excess of the Yearly Support Cap are considered Additional Services as set out in Article 4 - Additional Services of this Agreement.

4. ADDITIONAL SERVICES

- 4.1 **Requests for Additional Services.** Licensee may request MHI to perform services or provide support outside the scope of this Agreement which may include, without limitation, the provision of engineering services, power system studies, project management, power quality monitoring, real time testing of devices, commissioning of equipment, training services, data processing services, consulting work, data input and manipulation, model creation, or software customization ("**Additional Services**"). The performance of Additional Services by MHI shall be subject to a separate written agreement between the parties.

5. TERM AND RENEWAL

- 5.1 **Term.** Unless terminated earlier in accordance with Article 6 - Suspension and Termination of this Agreement, Maintenance and Support shall be provided for the term as communicated by MHI to Licensee:
- a) at the time of Licensee's purchase of a Software license from MHI; or
 - b) at the time of Licensee's purchase of Maintenance and Support for the Software from MHI ("**Term**").
- This Agreement shall come into effect on the first day of such Term.
- 5.2 **Renewals.** Licensee may request to renew its purchase from MHI of Maintenance and Support for the Software. Such renewal shall subject to a new agreement for Maintenance and Support between the parties. For any renewal, MHI reserves the right to:
- a) update its pricing for Maintenance and Support;
 - b) revise any of the terms and conditions for Maintenance and Support;
 - c) discontinue Software products or versions; or
 - d) discontinue Maintenance and Support for Software products or versions as stated in this Section 5.2 c) - Renewals above, or otherwise.
- 5.3 **Reinstatement Fee.** If Licensee:
- a) has permitted Maintenance and Support for the Software to lapse; or
 - b) has not previously purchased separate Maintenance and Support for the Software;

then, in addition to the Maintenance and Support fees payable at the then current rate for the lapsed period or the period for which separate Maintenance and Support was not previously purchased, Licensee shall pay to MHI a Maintenance and Support reinstatement fee as determined by MHI and communicated to Licensee.

6. SUSPENSION AND TERMINATION

6.1 Suspension. MHI may suspend the provision of Maintenance and Support for any one of the following reasons:

- a) Licensee's payment to MHI for such Maintenance and Support is overdue;
- b) Licensee does not have a valid license for the Software;
- c) incorrect results of the Software have occurred as a result of Licensee's negligent conduct related to the Software, the Software license or this Agreement; or
- d) in MHI's reasonable opinion, Licensee has infringed the intellectual property rights of MHI concerning the Software.

6.2 Termination by Licensee. If MHI is in material default of its obligations under this Agreement, Licensee may immediately terminate this Agreement if MHI has failed to rectify, or take adequate steps to rectify any such default within 30 days' of receipt of written notice from Licensee to MHI.

6.3 Termination by MHI. MHI may terminate this Agreement:

- a) for its convenience, and for any reason whatsoever, by giving 90 days' written notice to Licensee;
- b) immediately and without notice if Licensee fails to comply with any term or condition of this Agreement including, but not limited to, non-payment by Licensee or in the event of any negligent act or omission, fraud or wilful misconduct by Licensee in relation to this Agreement; or
- c) if Licensee becomes bankrupt or insolvent or otherwise ceases to carry on business.

This Agreement shall automatically terminate without notice in the event Licensee attempts to assign or otherwise transfer any of Licensee's rights or obligations under this Agreement without the prior written authorization of MHI. Termination is not an exclusive remedy and does not prejudice other remedies MHI may have at law or equity.

6.4 Termination of EULA. This Agreement will immediately terminate if for any reason whatsoever the EULA is terminated. Upon such termination, MHI will have no obligation to refund any fees already paid by Licensee under this Agreement or the EULA.

6.5 Obligations upon Termination. Upon termination of this Agreement:

- a) if the termination is pursuant to Section 6.3 a) – Termination by MHI of this Agreement, MHI shall refund to Licensee, as applicable, a pro-rated amount equal to the Maintenance and Support fees already paid by Licensee divided by the number of months in the Term multiplied by the number of pre-paid complete calendar months remaining in the Term after such termination;
- b) MHI shall cease to perform any further Maintenance and Support; and
- c) Licensee shall pay such fees as MHI is entitled to receive for the Maintenance and Support properly performed up to the date of any such termination.

7. PAYMENT

7.1 Payment of Fees. Licensee shall pay to MHI Maintenance and Support fees within 30 days of the date of MHI's invoice to Licensee.

7.2 Taxes. Licensee shall be responsible for the payment of all applicable taxes or duties. The fees are exclusive of all taxes or other governmental withholdings, regulatory duties or other amounts that are applicable to Maintenance and Support fees. If any such taxes or amounts are applicable to amounts payable to MHI, they will be added to amounts invoiced to and paid by Licensee. For greater certainty, all taxes or levies generally applicable to MHI's operations (e.g. property taxes, payroll taxes and levies, corporate income tax) are included in the fees, and any increases or decreases in such taxes or levies will not result in any change to the fees.

7.3 Overdue Payments. Any sum not paid by Licensee when due will bear interest from the due date until paid at an annual interest rate of 1.5% above the prime lending rate established by MHI's primary lending institution, in effect at the time the amount initially became due, calculated and payable monthly. Licensee

shall be liable for all costs of collection incurred by MHI including, without limitation, collection agency fees, reasonable lawyer's fees and court costs if Licensee fails to comply with the payment obligations set forth herein.

- 7.4 **Non-Refundable Fees.** Fees paid by Licensee are non-refundable unless:
- a) MHI is in material default of its obligations under this Agreement or has failed to take adequate steps to rectify any such breach within 30 days' written notice by Licensee to MHI, in which case, MHI may refund to Licensee a pro-rated portion of the fees paid by Licensee; or
 - b) Section 6.5 a) – Obligations Upon Termination of this Agreement is applicable.

8. WARRANTY

- 8.1 **Warranty.** MHI warrants that Maintenance and Support will be provided in a professional manner. MHI warrants that it shall make reasonable efforts to provide Support to Licensee as contemplated by this Agreement but MHI does not warrant that it can remedy any Software issue or problem experienced by Licensee.
- 8.2 **Exclusive Remedy.** THE FOREGOING WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY MADE BY MHI. MHI DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSEE'S SOLE AND EXCLUSIVE REMEDY SHALL BE MHI'S OBLIGATION TO MAKE CORRECTIONS TO MAINTENANCE AND SUPPORT TO BE IN ACCORDANCE WITH THE WARRANTY, OR REFUND TO LICENSEE THE FULL OR PRORATED MAINTENANCE AND SUPPORT FEES, IN MHI'S SOLE DISCRETION.
- 8.3 **Fees.** Licensee agrees that the fees for Maintenance and Support would be substantially higher, but for these limitations.

9. LIMITATION OF LIABILITY

- 9.1 **Limitation of Liability.** Notwithstanding any other provision of this Agreement:
- a) the aggregate liability of MHI and MHI Representatives to Licensee and any third party claiming through Licensee, whether based in contract, tort (including negligence), breach of warranty, statutory or strict liability, equity or otherwise, arising out of or in connection with Maintenance and Support, or this Agreement, shall not exceed the fees paid by Licensee to MHI for Maintenance and Support. MHI's liability shall be limited to specifically identified claims submitted by Licensee to MHI within one year following the end of the provision of Maintenance and Support to Licensee; and
 - b) in no event shall MHI or MHI Representatives at any time be liable to Licensee or to any other person for any special, indirect, incidental, punitive or consequential losses or damages whatsoever which may be sustained by them arising out of or relating to Maintenance and Support 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 Licensee'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.

10. CONFIDENTIALITY

- 10.1 **Confidentiality.** MHI shall:
- a) treat as confidential all of Licensee's information, data, documents and materials ("**Information**") acquired by or to which access has been given to MHI in the course of, or incidental to, the performance of this Agreement;
 - b) protect Information using reasonable safeguards appropriate to its sensitivity; and
 - c) not disclose Licensee's Information to a third party unless authorized by Licensee in writing or when compelled to do so as a matter of law.

11. FORCE MAJEURE

- 11.1 **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 reasonable control, such as, but not limited to, strikes, walkouts, wars or acts of government or government agencies or other authorities having jurisdiction, ("**Force Majeure**"), then such prevention, delay or interruption shall not be construed to be a

default under this Agreement. MHI shall give notice to Licensee of any such occurrence as soon as reasonably possible, and both parties shall use reasonable efforts to comply with the terms of this Agreement notwithstanding such prevention, delay or interruption. For certainty, Force Majeure includes situations when third party telecommunications lines or servers are down and, as a result, MHI is unable to provide internet or telephone based Support as contemplated by this Agreement.

12 GENERAL

- 12.1 **Notices.** Any notices or other communications required or permitted under this Agreement shall be in writing and shall be delivered personally, by registered mail, or by email to the MHI and Licensee addresses set forth in the MHI-issued quotation or invoice. Notices sent by personal delivery, or email shall be deemed received upon successful delivery or transmission. Notices sent by registered mail shall be deemed received 7 days after date of posting. Either party may revise its address for notice by providing written notification to the other party by one of the methods set out in this Section 12.1 – Notices of this Agreement.
- 12.2 **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.
- 12.3 **Waiver.** A waiver of any right under this Agreement by MHI shall not be deemed to be a waiver of any other right, and a waiver of any right in any one instance by MHI shall not be deemed to be a waiver of that right in any other instance.
- 12.4 **Amendment.** No amendment of this Agreement shall be valid unless it is in writing, signed by both parties.
- 12.5 **Assignment.** This Agreement may not be assigned by Licensee without the prior written consent of MHI. MHI may assign this Agreement to any affiliate, subsidiary or successor.
- 12.6 **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, and confidentiality, shall survive such expiry or termination.
- 12.7 **Binding Effect.** This Agreement shall be for the benefit of and be binding upon the administrators, successors and permitted assigns of the parties.
- 12.8 **Applicable Law.** This Agreement is governed by the laws of the Province of Manitoba, Canada, without regard to Manitoba or Canadian law governing conflict of laws, 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. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded from application to this Agreement.
- 12.9 **Entire Agreement.** This Agreement is the entire agreement between the Licensee and MHI with regard to the matters contained herein and supersedes all prior formal and informal agreements, proposals, promises, inducements, representations, conditions, warranties, understandings, negotiations and discussions (whether oral or written and whether made by MHI directly or by any MHI Representatives) of Licensee and MHI with respect to such matters. There are no other undertakings, representations, warranties or promises between the Licensee and MHI, 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. No additional terms or conditions in any purchase order or service order or other document issued by Licensee to MHI either before or after entering into this Agreement shall apply or be of any force or effect. This Agreement does not amend any license agreement related to the Software.