



This PSCAD™/EMTDC™ SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT is made between MANITOBA HVDC RESEARCH CENTRE, a division of Manitoba Hydro International Ltd., 211 Commerce Drive, Winnipeg, Manitoba R3P 1A3 CANADA, ("Licensor")

-and-

Licensee of PSCAD™/EMTDC™ software ("Licensee")

Licensor will provide Licensee with the software maintenance and support services described in this Agreement.

## DEFINITIONS

"Additional Services" shall have the meaning ascribed thereto in the section entitled ADDITIONAL SERVICES.

"Agreement" shall mean this Software Maintenance and Support Agreement.

"Business Day" means 8:30 AM through 4:30 PM Central Standard Time, excluding holidays and weekends.

"Information" shall have the meaning ascribed thereto in the section entitled CONFIDENTIALITY.

"Licensee" means the customer who purchased a license to use the software.

"Licensor" means the MANITOBA HVDC RESEARCH CENTRE, a division of Manitoba Hydro International Ltd., 211 Commerce Drive, Winnipeg, Manitoba R3P 1A3 CANADA (hereinafter referred to as "MHRC").

"Maintenance" means bug-fixes, releases to correct minor programming errors, enhance existing features, patches, and generally available technical material to be provided by Licensor pursuant to this Agreement.

"Software" means all computer programming code, entirely in binary form, which is directly executable by a computer, of a specific version of the PSCAD™/EMTDC™ software product, including related documentation and explanatory written materials, but not including source code.

"Support" means technical support for the Software, provided pursuant to the terms of this Agreement, for rectifying issues when the software does not operate in accordance with its written specifications.

"Term" shall have the meaning ascribed thereto in the section entitled TERM AND RENEWAL.

"Update" means a version of the Software, which is classified by Licensor as a "maintenance" release that corrects deficiencies or bugs affecting performance to the Software description.

"Upgrade" means a version of the Software as classified by Licensor which has been enhanced, improved or modified and replaces the existing version of the Software.

"Yearly Support Cap" shall have the meaning ascribed thereto in the section entitled SUPPORT.

## SUPPORT

Support consists of general answers to technical questions posed by email or telephone call to Licensor. Licensor will provide Licensee with reasonable access to Support of up to ten (10) hours per year, for each Software license purchased by Licensee from Licensor (the "Yearly Support Cap"). Support in excess of the Yearly Support Cap, shall be charged as Additional Services at Licensor's then current hourly rate.

Subject to the time limitation imposed by the Yearly Support Cap, Licensor will provide to Licensee Support, including:

- a) licensing, installation setup and other common issues that inhibit Licensee from operation of the Software;
- b) assist Licensee in remedying any defect in the Software attributable to Licensor, which defect significantly and functionally affects the intended use of the Software;
- c) application support, such as troubleshooting with engineering, power systems, and applications;
- d) provide, when available, case examples to support Licensee's implementation of the Software;
- e) error analysis and correction;

- f) diagnosis of problems or performance deficiencies of the Software;
- g) resolution of a problem or performance deficiencies of the Software;
- h) notification of difficulties identified (but not yet experienced by Licensee) in the Software and information regarding the impact of third party Software changes where such third party Software interfaces with the Software.

Subject to the time limitation imposed by the Yearly Support Cap, Licensor will provide internet based and telephone Support on business days. Licensee acknowledges that such internet based Support may require Licensor to remotely access Licensee's computer(s), and Licensee agrees to allow Licensor to remotely access Licensee's computers for the purpose of performing the Maintenance and Support contemplated by this Agreement.

Subject to the time limitation imposed by the Yearly Support Cap, Licensor will make a member of its Support staff available by internet or telephone to assist Licensee in the standard business use of the Software. Licensor will make reasonable efforts to resolve reported and reproducible errors in the Software. Licensee shall provide to Licensor with any information reasonably requested by Licensor to understand and describe such errors, in order to allow Licensor to perform the Maintenance and Support contemplated by this Agreement.

This Agreement is not intended as a consulting agreement for services. Support does not include training services, data processing services, consulting work, keying information, manipulating data, creating models or software customization, all of which shall be considered Additional Services (as such term is defined below).

#### **MAINTENANCE**

During the Term, Licensor will provide Licensee with all released Updates, including:

- a) bug-fixes identified and corrected since the last release or certain enhancements;
- b) releases to correct minor programming errors;
- c) patches;
- d) Updates; and
- e) other generally available technical material.

Release dates for Updates will be determined by Licensor, in Licensor's sole discretion.

All bug-fixes, releases, patches, Updates, fixes or workarounds shall be subject to the current PSCAD™/EMTDC™ Software End-User License Agreement.

Licensor makes no warranties, expressed or implied, concerning the amount, extent or content of any Updates provided under this Agreement.

Maintenance does not include Upgrades, which may be provided for additional fees, such additional fees to be determined in Licensor's sole discretion.

#### **ADDITIONAL SERVICES**

Licensee may request application support outside the scope of this Agreement ("**Additional Services**"). Additional Services 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, keying information, manipulating data, creating models or software customization. The scope and costs of such Additional Services will be separately agreed upon by the parties, in writing, on a case by case basis. Additional Services will be billed on an hourly basis at the then current rate, with a one-hour minimum. Each additional hour or fraction thereof will be charged in fifteen minute increments.

#### **TERM AND RENEWAL**

This Agreement is effective for a term (the "**Term**") to be communicated by Licensor to Licensee, (1) at the time of Licensee's initially purchasing from Licensor a license for the Software, and/or (2) at the time of Licensee's first purchasing from Licensor maintenance and support services for the Software, and/or (3) at the time of Licensee's renewing its purchase from Licensor of maintenance and support services for the Software.

If Licensee elects to renew its purchase from Licensor of maintenance and support services for the Software, Licensor reserves the right to change the terms and conditions as well as the prices of this Agreement, including, without limitation,

discontinuing Software products or versions and stopping support of Software products or versions after discontinuance, or otherwise discontinuing any Support. In such cases, Licensor shall inform Licensee by a written notice sixty (60) days before the expiration of the then current Term

In the event Licensee has allowed Maintenance and Support for the Software to lapse or if Licensee did not elect Maintenance and Support at the time of Software licensing, Licensee must pay a Maintenance and Support reinstatement fee. This fee shall be the monthly Maintenance and Support fee times the number of months since Maintenance and Support was last in effect for the Software (or the Software licensing date in the event that Maintenance and Support was never purchased for the Software).

#### **TERMINATION**

If either party is in material default of its obligations under this Agreement, the other party may terminate this Agreement upon thirty (30) days' written notice to the other party, provided that in the event the material default is non-payment by Licensee, Licensor may terminate this Agreement effective immediately.

#### **PAYMENT**

Fees and charges shall be payable within thirty (30) days of the date of invoice.

Licensee shall be responsible for the payment of all applicable taxes or duties.

Payments provided for in this Agreement shall, when overdue, be subject to a late payment charge calculated at a rate of one-half percent (0.5%) per month until paid; provided, however, that if the amount of such late payment charge exceeds the maximum permitted by law for such charge, such charge shall be reduced to such maximum amount. Licensee shall be liable for all costs of collection incurred by Licensor including without limitation collection agency fees, reasonable attorney's fees and court costs if Licensee fails to comply with the payment obligations set forth herein.

Fees paid or due are non-refundable unless Licensor has materially breached this Agreement and has

failed to cure the breach after thirty (30) days' written notice.

#### **LIMITATIONS**

Licensor may refuse to provide Maintenance and Support for the following reasons:

- a) Payment is overdue. Licensor, at its sole discretion, may suspend the Maintenance and Support until full payment is made.
- b) It is determined that Licensee does not have a valid license and/or does not have the requisite number of licenses for the users in Licensee's organization who are actually using the Software.
- c) An error of the Software has occurred as a result of Licensee's negligent conduct or use of the Software does not comply with the specifications of the documentation provided with the Software.
- d) The intellectual property rights concerning the Software have been infringed.
- e) An error in the Software is caused by incompatible or malfunctioning hardware or other incompatible software, such compatibility being set out in the Getting Started document or other document available on Licensor's website at <https://hvdc.ca/knowledge-library/reference-material>, as it may be amended from time to time.
- f) Licensee wishes to use the Maintenance and Support provided under this Agreement, for the purpose of completing an academic assignment.

#### **WARRANTY**

Licensor warrants that Maintenance and Support will be provided in a professional manner.

Licensor will undertake commercially reasonable efforts to provide technical assistance under this Agreement and to rectify or provide solutions to problems where the Software does not function as described in the Software documentation, but Licensor does not guarantee that the problems will be solved or that any item will be error free. Licensor will provide Licensee with substantially the same level of service throughout the Term. Licensor may, from time to time, discontinue Software products or versions and stop supporting Software products or

versions after discontinuance, or otherwise discontinue any Support.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE LICENSOR'S OBLIGATION TO MAKE CORRECTIONS OR GIVE A FULL OR PRORATED CREDIT OR REFUND.

Licensee agrees that the pricing for the Maintenance and Support would be substantially higher, but for these limitations.

#### **LIMITATION OF LIABILITY**

LICENSOR SHALL NOT BE LIABLE TO LICENSEE OR ANY PERSON OR ENTITY USING ANY SERVICE SUPPLIED UNDER THIS AGREEMENT FOR ANY LOSS OF TIME, REVENUE, PROFITS, BUSINESS INTERRUPTION, INCONVENIENCE, LOSS OR DAMAGE OF DATA, LOSS OF USE OF ANY PRODUCT OR EQUIPMENT OR PROPERTY DAMAGE, OR FOR ANY OTHER INDIRECT, SPECIAL, RELIANCE, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE ARISING OUT OF THIS AGREEMENT OR ANY OBLIGATION RESULTING THEREFROM, WHETHER IN AN ACTION FOR, OR ARISING OUT OF, ALLEGED BREACH OF WARRANTY, ALLEGED BREACH OF CONTRACT, DELAY, NEGLIGENCE (ACTIVE OR PASSIVE), STRICT TORT LIABILITY OR OTHERWISE. LICENSOR'S ENTIRE LIABILITY FOR ANY CLAIM OR LOSS, DAMAGE, OR EXPENSE, FROM ANY CAUSE WHATSOEVER, SHALL NOT EXCEED THE FEES ACTUALLY PAID BY LICENSEE. NO ACTION OR PROCEEDING AGAINST LICENSOR MAY BE COMMENCED MORE THAN ONE YEAR AFTER THE SERVICES ARE PROVIDED, EXCEPT FOR LICENSOR'S CLAIMS RELATING TO COLLECTION OF FEES DUE AND PAYABLE BY LICENSEE. The foregoing limitations will apply even if the above-stated warranty fails its essential purposes.

#### **CONFIDENTIALITY**

Licensor and its officers, employees, agents and subcontractors shall:

- (a) treat as confidential all of Licensee's information, data, documents and materials (hereinafter collectively referred to as "**Information**") acquired or to which access

has been given in the course of, or incidental to, the performance of this Agreement;

- (b) protect Information using reasonable physical, administrative and procedural safeguards appropriate to its sensitivity; and
- (c) not release Licensee's Information to a third party unless authorized by Licensee or requested by a court order. All Information collected can be disclosed to judicial or government agencies subject to warrants, subpoenas or other governmental orders.

#### **FORCE MAJEURE**

Except with respect to Licensee's obligation to make timely payments, neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosions, earthquakes, floods, wars, water, the elements, labor disputes, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure materials or transportation, facilities, acts or omissions of carriers or suppliers, or other causes beyond its control whether or not similar to the foregoing. Force majeure includes failure to provide internet based or telephone Support when third party telecommunications lines or servers are down.

#### **ENTIRE AGREEMENT AND PARAMOUNTCY**

This Agreement, together with any orders or other documents referencing this Agreement, constitutes the complete and exclusive understanding and agreement of Licensor and Licensee relating to the subject matter hereof and supersedes all prior or contemporaneous understandings, agreements and communications with respect to the subject matter hereof, including, but not limited to, the terms set forth in any standard Licensee purchase order. This Agreement does not amend any license agreement related to the Software.

In the event of a conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any license agreement applicable to the Software or any standard Licensee purchase order, then the terms of such license agreement or customer purchase order, as the case may be, shall prevail and govern.

#### **AMENDMENT**

This Agreement may not be modified or altered except by written instrument duly executed by both parties.

#### **NONWAIVER**

No course of dealing, course of performance, or failure of either party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right, or condition. No waiver of breach of any provision of this Agreement shall be construed to be a waiver of any subsequent breach of the same or any other provision.

#### **CHOICE OF LAW**

This Agreement is governed by the laws of the Province of Manitoba, Canada, without reference to its conflict of law principles and without regard to the U.N. Convention on Contracts for the International Sale of Goods. The parties hereby consent to the jurisdiction of the courts located in the Province of Manitoba, Canada in any action arising out of or relating to this Agreement, and agree that any action arising out of or relating to this Agreement, shall be maintained in Manitoba.

In the event of a dispute arising out of or in connection with this Agreement, the party prevailing in such dispute shall be entitled to recover its reasonable expenses, costs and attorneys' fees, in addition to all other appropriate relief.

#### **ASSIGNMENT**

This Agreement may not be assigned by Licensee without the prior written consent of Licensor. Licensor may assign this Agreement to any affiliate, subsidiary or successor.

#### **PARTIES BOUND**

This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective legal representatives, successors, and assignees.

#### **NOTICES**

All notices under this Agreement (except for requests for service) shall be in writing and shall be given by mail, postage prepaid or by overnight delivery addressed to the respective parties, if to Licensee, at Licensee's address set forth in the signature block below or to Licensor at the address set out on the first page of this Agreement.

Such notice shall be deemed to have been given when received. Either party may change its notice address upon notice to the other party pursuant to this provision.

#### **SEVERABILITY**

If any provision of this Agreement shall be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, then the meaning of such paragraph or clause shall be construed so as to render it enforceable, to the extent feasible; and if no feasible interpretation would save such paragraph or clause, it shall be severed from this Agreement and the remainder shall remain in full force and effect. However, in the event such paragraph or clause is considered an essential element of this Agreement, the parties shall promptly negotiate a replacement thereof. If the parties are unable to agree upon a replacement term within thirty (30) days of the final ruling, either party may terminate this Agreement upon ten (10) days' prior written notice to the other party.