



Supplier Participation Agreement

File no.

MANITOBA HYDRO
(hereinafter referred to as “MH”)

OF THE FIRST PART.

Residential Financing Programs, 360 Portage Avenue Winnipeg MB R3C 0G8
Email: SupplierAgreements@hydro.mb.ca, Telephone no.: 1-888-624-9376, Fax no.: 204-360-6157

— and —

(insert full legal name) _____

(hereinafter referred to as “Supplier”)

OF THE SECOND PART.

Business address	City/town	Province	Postal code
Mailing address (if different from above)	City/town	Province	Postal code
Contact person	Email		
Phone no.	Cell phone or secondary contact no.	Fax no.	
Business registration no. (BN)	Supplier is a <input type="checkbox"/> Retailer <input type="checkbox"/> Contractor <input type="checkbox"/> Builder <input type="checkbox"/> Other	Type of Contractor or markets serviced (check all that apply) <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial	
Description of work company performs (e.g. insulation contractor, consulting services provider, energy modeller, window installer)			

In consideration of Manitoba Hydro permitting the Supplier to participate in one or more of Manitoba Hydro’s Programs, the Supplier and Manitoba Hydro agree to the following terms and conditions:

Terms and conditions

1. Responsibilities. The Supplier shall:

- a) Process Manitoba Hydro (“MH”) Program(s) (“Program(s)”) applications with customers in accordance with the procedures and terms and conditions prescribed by MH for the applicable Program(s) (hereinafter the “Procedures”);
- b) Perform and comply with all Supplier obligations pursuant the Program(s) including, without limitation, those arising from Procedures in relation to all Program applications processed by the Supplier;
- c) Provide services and products to customers participating in Program(s) in a timely, competent, honest, and professional manner, and the Supplier shall ensure, using best professional judgment and standards, that any and all services and products provided to each customer must be necessary, suitable, sufficient, effective, and safe, for the customer and his/her property;
- d) Comply with all applicable federal, provincial, municipal, state or other applicable laws, by-laws, regulations, and codes, which are, or may hereafter become, applicable to this Agreement and/or any of the Supplier’s obligations hereunder or pursuant to any Program, and ensure that all authorization, permits, licenses, and clearances, are secured and active prior to and throughout the provision of services and products to any customer;
- e) Provide coverage for personnel providing products and/or services, with limits as required by statute and/or regulation relating to personnel-related injury, including, without limitation, those pursuant to *The Workers Compensation Act*, R.S.M. 1987, c. W200; and
- f) Be responsible for any breach of any requirement or obligation pursuant to this Agreement by it or any person or legal entity (including, without limitation, subcontractor) for whom the Supplier is responsible.

Supplier shall in no event directly or indirectly cause, participate in, or condone, any form of unethical or unfair conduct, fraud or misrepresentation, conflict of interest (anticipated, actual, or perceived), corruption or other illegal practice, and shall conduct itself professionally, honestly, and fairly, in the performance of its obligations and activities.

2. **No License.** The Supplier shall not commercially use or offer any intellectual property owned or controlled by MH. Without restricting the generality or application of the foregoing, the Supplier shall in no event reproduce, use, modify, or otherwise reference or display, any trademark or copyright owned or controlled by MH (such as the Manitoba Hydro logo and mark) in any manner unless expressly pre-authorized in writing by MH. Further, the Supplier shall not represent or in any way infer to any customer or third party that MH has approved or endorsed the Supplier or any specific products, services, or quality thereof, of the Supplier pursuant to any Program or otherwise.

3. **Term.** The term of this Agreement shall commence as at the time of mutual execution of this Agreement by both parties, and shall continue in force and effect until termination by either party made in accordance with this Agreement.

4. Suspension and Termination.

- a) Each party may, at its sole option, immediately terminate this Agreement at any time by written notice to the other party.
- b) In addition, without prejudice to any other rights or remedies available hereunder or at law or equity, MH may, at its sole discretion and option, immediately suspend or terminate this Agreement by written notice to the Supplier if:
 - i) MH receives or becomes aware of any complaint from any customer or other third party regarding the Supplier, or that the Supplier, in MH’s sole determination, fails to satisfy any requirement(s) of any customer or to serve the interest of any customer;
 - ii) the Supplier provides any application, information, or materials, that MH determines to be insufficient, false, inaccurate, misleading, fraudulent, or contrary to MH’s objective(s), intent, or interest, of any Program(s); or
 - iii) the Supplier has failed, in MH’s sole determination, to comply with any term or condition of this Agreement, any Procedure or other requirement(s) of any Program(s), or any other requirement or direction of MH.
- c) This Agreement shall terminate automatically and immediately in the event that the Supplier becomes bankrupt or insolvent, or otherwise ceases to conduct business.
- d) In the event that a majority of the Supplier’s asset or equity is sold or otherwise transferred to another legal entity, the Supplier shall promptly notify MH in writing and request MH’s written consent for continuance of this Agreement, failing receipt of written consent from MH this Agreement shall terminate automatically and immediately as at the date of the sale or transfer of the asset or equity.
- e) Upon expiry or termination of this Agreement, the Supplier shall immediately cease processing Program applications and shall return all program forms and materials in relation thereto to MH.
- f) The expiry or termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement or such part hereof prior to the time of expiry or termination, and those rights and obligations shall survive the expiry or termination of this Agreement or part hereof. Notwithstanding any other term or condition of this Agreement to the contrary, Articles 2, 4, 7, 8, 11, 12, 15, and 16, hereof, and all other provisions of this Agreement necessary to give effect thereto, shall survive the expiry or termination of all or any part of this Agreement.
- g) Any termination of this Agreement by MH as provided in this Section 4 shall be final and binding on the Supplier and shall not be justifiable in any court of competent jurisdiction.

5. **Revisions.** MH may revise these terms and conditions and any Program requirement at any time, and the Supplier hereby agrees to comply with such revised terms, conditions, and requirements upon being provided with a copy of same by MH.

6. Warranty and Representation. The Supplier represents and warrants that:

- a) The Supplier has full power and authority to enter into and perform this Agreement which constitutes a legal, valid and binding obligation of the Contractor enforceable against it in accordance with the terms hereof.
- b) The Supplier is a corporation in good standing incorporated under the laws of Manitoba or under the laws of Canada, and the Supplier shall have an active valid registered business number and GST/HST program account).
- c) All information and materials provided to MH are current, accurate, and complete.
- d) The Supplier possesses all required personnel, expertise, training, certifications, resources, experience, equipment, materials, and liability coverage, to effectively perform its obligations under this Agreement.

7. **Personal Information and Privacy.** With respect to Personal Information collected by a Supplier in relation to a Program, the Supplier shall:
 - a) collect, use, disclose, and retain/destroy such Personal Information in accordance with all applicable laws and regulations including, without limitation, the *Personal Information Protection and Electronic Documents Act*.
 - b) not use such Personal Information for any purpose other than for the processing of a Program application and as necessary for providing the Supplier’s services or products thereunder.
 - c) treat as confidential all Personal Information and shall not disclose any Personal Information to any third party without the prior written consent of the customer.
 - d) comply with the provisions of *The Freedom of Information and Protection of Privacy Act* of Manitoba which binds MH as a public body of Manitoba.

For the purposes of this Agreement, “Personal Information” shall have the meaning(s) as defined by applicable legislation, which includes, without limitation, an individual’s name, address, telephone number, facsimile number, email address, information about the individual’s education, employment or occupation, source of income or financial circumstances, activities or history.
8. **Program Documentation.** The Supplier shall, within 120 calendar days of submitting the final paperwork for a particular customer application under a Program, attend to destruction of the Supplier’s copy of the corresponding completed Program form(s) by shredding or other secure method and be prepared to certify same in writing to MH upon MH’s request.
9. **Incentive upon Completion of Customer Work.** Upon the Supplier’s and customer’s compliance with the Procedures and fulfillment of all requirements of MH for a given Program application, MH may then issue the corresponding Program incentive, as determined by MH, for and pursuant to that application. MH reserves the right to apply, in its sole determination, any incentive payable to the Supplier (if assigned by the Customer), under any Program or otherwise, to any arrears or outstanding balances (including, without limitation, interests and charges) on the Supplier’s account with MH and/or against any other amounts owing from the Supplier to MH.
10. **Supplier Identity.** The Supplier shall use its full legal name in all notices and correspondence with MH, and the Supplier shall also promptly notify and update MH in writing of any of its operating name(s) if different.
11. **Reference to Participants.** MH may from time to time reference and identify suppliers in connection with marketing of its Program(s), and MH shall have the right (albeit not obligation) to, in its publications and notices, regardless of form, format, and medium, refer to and identify the Supplier in relation to its Program(s) and any other aspect of the business encompassed thereby, and the Supplier hereby grants its express consent to same.
12. **Disputes.** The Supplier shall be solely responsible for all services and products, provided to any customer. MH will not act as a mediator in disputes between a Supplier and a customer in relation to a Program application or any Supplier services or products provided in relation thereto.
13. **Insurance.** The Supplier shall at its own cost and expense provide and maintain insurance in such amounts and coverage as are reasonable taking into consideration the nature and extent of the services and products of the Supplier. Such insurance shall include coverage for bodily injury, personal injury, death, professional liability, and property damage. Insurance policies shall be endorsed to provide MH with not less than 30 days written notice in advance of cancellation and to show MH as an additional insured. The Supplier shall be responsible for any deductible amounts under the said insurance policies, and shall, upon request by MH, provide certificates of insurance.
14. **Independent Contractor.** The Supplier is an independent contractor. Except for the processing of applications for Programs on behalf of MH, no relationship of agency, partnership or joint venture exists between the parties. The Supplier has no authority to bind MH or to incur any obligations on its behalf without the prior written authorization of MH.
15. **Liability.** In no event shall MH be liable to the Supplier, or to the Supplier’s directors, officers, employees, agents, subcontractors, or customers (actual or prospective), for any losses, costs, damages or expenses that the Supplier, or any of the aforementioned person(s), may suffer or incur as a result of the Supplier’s participation or otherwise involvement in any Program including, without limitation, for direct, indirect, special or consequential damages including loss of revenue or lost profit, whether based in contract, tort, including without limitation negligence, equity or otherwise.
16. **Indemnity.** The Supplier shall indemnify and save MH harmless from and against any and all manners of action, causes of action, losses, costs, damages, expenses, suits, claims, liabilities, debts and demands which MH may suffer or be put to, or which may be brought or made against MH by any third party (including, without limitation, any customer(s)), relating to or arising out of any product(s) or service(s) of the Supplier, any action or inaction of the Supplier or its directors, officers, employees, contractors, subcontractors (through every tier), agents, or any other person(s) for whom the Supplier is responsible, or any breach of this Agreement, or the negligence or misconduct of Supplier or its directors, officers, employees, contractors, subcontractors (through every tier), agents, or any other person(s) for whom the Supplier is responsible.
17. **Notices.** Any notice or other communication required or permitted to be given under this Agreement must be in writing and shall be given by personal service, facsimile transmission or letter sent by registered mail to:
 - a) For MH: to MH’s address set out at the commencement of this Agreement;
 - b) For the Supplier: to the Supplier’s address set out at the commencement of this Agreement,

or such other address as such party may notify the other of in writing. Notices sent by registered mail shall be deemed to be received 5 days after the date of mailing. Notices given by personal service or by facsimile transmission shall be deemed to be received on the date on which such notice was delivered or sent. In addition to the foregoing, MH may communicate with the Supplier at any time via any form, format, and medium (including without limitation electronic mail and social media) to provide information respecting MH’s program(s), product(s), service(s), and/or energy efficiency, and the Supplier hereby expressly consents to such communication(s) by MH.
18. **Assignment.** The Supplier shall not assign this Agreement or any of the rights or obligations hereunder without the prior written consent of MH. MH shall have the right to assign this Agreement, and all rights and obligations hereunder, to any third party at any time without prior notice, and the Supplier hereby expressly consents to such assignment by MH.
19. **Waiver.** 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.
20. **Severability.** If any provision of this Agreement is for any reason invalid, that provision shall be considered separate and severable from this Agreement and the other provisions of this Agreement shall continue in full force and effect as though the invalid provision had never been included in this Agreement.
21. **Amendment.** Any amendment to this Agreement must be in writing signed by each of the parties.
22. **Governing Law and Forum.** This Agreement shall be subject to, interpreted, performed and enforced in accordance with the laws of Manitoba and the applicable laws of Canada without regard to Manitoba or Federal Canadian law governing conflicts of law, even if one or more of the parties to the Agreement may be resident of or domiciled in any other province or country. The parties hereby irrevocably attorn to the exclusive jurisdiction of the Court of Queen’s Bench of Manitoba, Winnipeg Centre, and the Supplier hereby waives any defence of *forum non-conveniens*.
23. **Enurement.** This Agreement shall be binding upon, and enure to the benefit of the parties hereto and their respective permitted successors and assigns.
24. **Entire Agreement.** This Agreement constitutes the entire agreement between the Supplier and MH with respect to the subject matter hereto and supersedes all previous communications, understandings and other agreements, whether written or oral, in relation thereto.
25. **Execution.** This Agreement may be executed in any number of counterparts, including counterparts signed by fax, each of which shall be deemed an original and all of which together shall constitute one in the same instrument. A photocopied, scanned, and/or fax copy of this Agreement bearing the signature of each party, in a single document or counterparts thereof as provided herein, shall be deemed an original execution version of this Agreement.

Supplier Legal Name

Authorized Signing Representative (signature required)

Print Name

Title

Date

MANITOBA HYDRO USE ONLY
_____ Authorized Signing Representative
_____ Date