

MH Terms and Conditions

1. CONTRACT DOCUMENTS

1.1 This Agreement consists of the following documents and if there is a dispute, discrepancy or conflict within these documents of the Agreement, the order of priority of documents, from highest to lowest, shall be: (1) any Service Order issued pursuant to this Agreement; (2) this Agreement including any schedules, exhibits or appendices; and (3) the Prime Contract.

1.2 The Prime Contract includes all general, supplementary and special conditions, plans, amendments, modifications and all other documents forming or by reference made a part of the Prime Contract, as the case may be. Copies of the Prime Contract have been made available to Service Provider and have been examined by the Service Provider.

1.3 MH and Service Provider agree that the Prime Contract is incorporated in and forms part of this Agreement as if fully set forth in this Agreement. Without limiting the generality of the foregoing, except as expressly provided to the contrary in this Agreement or a Service Order, in relation to performance of the Services:

- (a) Service Provider shall assume and perform all the duties, responsibilities, obligations and liabilities of MH under the Prime Contract as if Service Provider was MH and MH was the Client under the Prime Contract;
- (b) Service Provider shall have the same rights, powers and remedies against MH under this Agreement as MH has against Client under the Prime Contract, as if Service Provider was MH and MH was the Client under the Prime Contract;
- (c) Service Provider shall be bound by all rulings of Client to the same extent that MH is bound; and
- (d) Service Provider will not be entitled to greater rights, entitlements or relief against MH under this Agreement than MH actually obtains from Client under the Prime Contract.

2. SERVICES & STANDARD OF CARE

2.1 The Services shall be commenced upon the issuance of a service order by MH (the "**Service Order**"). For greater certainty, MH has no obligation to issue a Service Order under this Agreement.

2.2 Unless expressly excluded in a Service Order, Service Provider agrees to perform all services specified in this Agreement, including all related work and services necessary to enable MH to satisfy its obligations under the Prime Contract.

2.3 The Services shall be performed in accordance with:

- (a) the terms and conditions of the Prime Contract, this Agreement and any Service Order issued pursuant to this Agreement;
- (b) the standards of care, skill and diligence normally practiced by members of the design, engineering or consulting profession providing services of a similar nature at the time and place that the Services are performed; and
- (c) all applicable laws, regulations, ordinances and stipulations of authorities having jurisdiction.

2.4 Before execution of this Agreement, Service Provider shall identify in writing to MH any investigations, surveys, tests, analyses and reports that may be necessary for the proper execution of the Services.

2.5 Except as expressly set out in this Agreement or a Service Order, the Service Provider may only rely on the accuracy and completeness of all information provided by MH and Client to the extent MH may rely on the accuracy and completeness of such information under the Prime Contract.

2.6 Payment or additional time for services not included in the Services under this Agreement or a Service Order ("**Additional Services**") will be permitted only when authorized by MH in advance and in writing.

3. HEALTH, SAFETY & ENVIRONMENT

3.1 Where fieldwork is involved, the Service Provider shall take all reasonable and necessary precautions to protect property, the environment and persons from damage, injury or illness arising from the performance of the Services, and comply with all applicable occupational health and safety and environmental laws and regulations and all client requirements, including any applicable Project health, safety and environment plans or policies.

3.2 Service Provider shall be solely responsible for its activity and that of the Service Provider's employees or agents on the Site with respect to Site safety and environmental protection. Neither the professional activities nor the presence of MH, or their employees shall be interpreted as control or direction of the operations of the Service Provider. Service Provider is responsible for providing, at its own expense, all personal protective clothing and equipment required for its employees to perform their work in a safe and environmentally responsible manner. Service Provider is responsible for

ensuring that such equipment is in good condition and is properly inspected and maintained.

3.3 Service Provider's personnel are required to report "fit for work", meaning its personnel are in a condition to work safely. A person may be considered unfit for work if they exhibit a physical, mental or emotional state that may compromise a safe work environment, including signs or

symptoms of being impaired or under the influence of drugs and/or alcohol.

4. TERM & TERMINATION

4.1 The term of this agreement shall commence upon the Effective Date and, unless terminated as written below, shall continue until all of MH's obligations under the Prime Contract have been discharged.

4.2 MH may suspend this Agreement upon notice if Prime Contract has been suspended.

4.3 MH may terminate this Agreement as follows:

(a) upon notice, if Service Provider becomes insolvent or files for or is put in bankruptcy or makes a general assignment in favor of its creditors, or if all or any part of its property is put under receivership, in which case MH agrees to pay Service Provider for the Services duly performed up to the date of termination;

(b) upon notice, if the Project is lawfully interrupted for more than ten (10) days pursuant to an ordinance originating with a court or public authority having jurisdiction, in which case MH agrees to pay Service Provider for the Services duly performed up to the date of termination;

(c) upon notice, if the Client terminates the Prime Contract, in which case MH agrees to pay Service Provider for the Services duly performed up to the date of termination. If termination of the Prime Contract arises due to a termination for convenience by the Client, the MH shall also reimburse Service Provider for the direct costs reasonably incurred by Service Provider as a direct result of such termination, but not to include consequential damages such as lost profits or lost opportunities, but only to the extent such reimbursement is available to MH under the terms of the Prime Contract;

(d) upon notice and subject to the Prime Contract, if Service Provider fails to cure a default in respect of any of its obligations hereunder within fifteen (15) days, or an extended rectification period if mutually agreed, following receipt of a written notice from MH specifying the nature of such default or defaults;

(e) for convenience by giving Service Provider ten (10) days prior written notice of its intention to terminate, in which case MH agrees to pay Service Provider for the Services duly performed up to the date of termination and to reimburse Service Provider for the direct costs reasonably incurred by Service Provider as a direct result of such termination, but not to include consequential damages such as lost profits or lost opportunities.

4.3 Copies of all reports, studies, conceptual designs, plans and specifications and related documents shall be handed over to MH upon the earlier of termination of this Agreement and completion of the Project. For greater certainty, in the event that Service Provider is legally obligated under applicable law to retain any item of information provided by MH or Client, Service Provider may retain one (1) copy of such information (the "**Retained Information**") which shall be treated as Service Provider would treat its own confidential information which in any event shall not be with less than reasonable care. MH shall be provided with a list of any Retained Information, upon request.

5. PRICE AND PAYMENT

5.1 For the Services, MH shall pay to Service Provider a fee as set out in Schedule "C" to this Agreement. Unless expressly set out in Schedule "C" or a Service Order, the fee is exclusive of all applicable taxes. Service Provider shall not be entitled to any additional payment for the Services or Additional Services unless authorized by MH in advance and in writing.

5.2 Payment by MH is subject to the lien legislation applicable to the Site. All payments by MH to Service Provider respecting the Services shall be subject to the terms and conditions of the Prime Contract and conditional upon MH first having received payment from the Client.

5.3 Service Provider shall submit to MH monthly invoices and a final bill upon completion of the Services. Each invoice shall be sent to MH by email to payables@morrisonhershfield.com. Subject to any requirements of the Prime Contract, each invoice shall identify the Service Order number and, if applicable, the line item of the Service Order.

5.4 An invoice shall be paid by MH within ten (10) days of receipt of payment by MH from the Client, provided that an invoice acceptable to MH has been received and is undisputed by MH. In the event that MH disputes all, or a portion of, an invoice, MH shall advise the Service Provider in writing and shall pay the undisputed portion of the invoice as specified in this Agreement, and shall resolve the disputed portion of the invoice in accordance with the dispute resolution procedures of this Agreement.

5.5 Service Provider shall maintain records of expenses and labor pertaining to Services rendered under this Agreement on the basis of generally accepted accounting principles, and shall make records available to an authorized representative of MH on request, at mutually convenient times.

6. TAXES AND DUTIES

6.1 With respect to any and all taxes, duties or remittances as may be applicable in connection with the Services, Service Provider shall be solely responsible to timely remit any such taxes, duties or remittances and to comply with the requirements of any federal, provincial, territorial or local tax legislation applicable thereto.

6.2 Upon request, Service Provider shall provide MH with applicable registration details, proof of compliance with any applicable tax legislation and with sufficient prescribed documentary information to allow MH to claim any applicable tax credits. Service Provider shall notify MH in writing of any change in Service Provider's status under applicable tax legislation.

6.3 If Service Provider is a non-resident of Canada, MH is required to deduct a 15% withholding tax from the Service Provider's invoices and remit to Canada Revenue Agency, pursuant to Section 105 of the Income Tax Act (Regulation 105), for work performed by the Service Provider while in Canada. Service Provider shall provide MH with invoices itemizing work performed in Canada and work performed outside Canada.

7. TIME FOR PERFORMANCE

7.1 Service Provider shall perform the Services in accordance with any schedule set out in a Service Order and in the Prime Contract and, in any event, in a timely and diligent manner as required to allow the MH satisfy any schedule requirements of the Prime Contract. Service Provider shall not be entitled to any additional time for performance of the Services or Additional Services unless authorized by MH in advance and in writing. Service Provider shall indemnify and hold harmless MH from and against any and all damages of any kind, including liquidated damages, suffered by MH or claimed by the Client or third parties attributable to or caused by the Service Provider's failure to perform the Services within the time fixed in a Service Order or the schedule requirements of the Prime Contract.

8. OWNERSHIP, CONFIDENTIALITY AND INTELLECTUAL PROPERTY

8.1 The plans, specifications, and other documents and electronic data produced specifically for this Project, including all intellectual property relating thereto, by Service Provider shall belong to both Service Provider and MH provided the Service Order or Prime Contract do not provide that such documents belong to the Client (in which case the provisions of the Service Order or Prime Contract shall govern). Such documents may not be reproduced for use on other projects or extensions of this Project by either party hereto unless pursuant to this Agreement without the express written permission of the other party. The Service Provider waives all moral rights with respect to the Services.

8.2 The MH and Service Provider shall keep confidential, and shall cause their respective officers, directors, employees, agents, consultants or other representatives to keep confidential, all matters respecting technical, commercial, business and legal issues relating to or arising out of the Services, the performance of this Agreement or the performance of the Prime Contract and shall not, without the prior written consent of the other party, disclose any such matters, except in strict confidence, to its professional advisors.

8.3 Service Provider represents that the designs, processes, ideas, concepts, products, recommendations, suggestions, know-how, technical expertise, methods or other intellectual property provided, suggested, employed or otherwise disclosed by Service Provider to MH in performance of the Services or in relation to the Project (the "**Service Provider IP**") do not infringe any patent, copyright, trademark or other intellectual property right of any third party. Service Provider grants the MH and Client a non-exclusive, perpetual, irrevocable, worldwide, fully paid and royalty free license, including the right to assign the license or grant sub-licenses, to any and all of the Service Provider IP.

8.4 Should any such designs, processes, ideas, concepts, products, recommendations, suggestions, know-how, technical expertise, methods or other intellectual property infringe any patent, copyright, trademark or other intellectual property right of any third party, Service Provider undertakes, at its own expense, to make the changes necessary to ensure that any patent, copyright, trademark or other intellectual property right which any third party may have in respect of such designs, processes, ideas, concepts, products, recommendations, suggestions, know-how, technical expertise, methods or other intellectual property is

not infringed, or to obtain the necessary authorizations on MH's behalf.

8.5 Service Provider shall indemnify and hold harmless the MH, its respective parent, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns with respect to any Claims for infringement or alleged infringement of any intellectual property right of a third party arising from or related to the Service Provider's performance of the Services.

9. PERMITS AND LICENSES

9.1 Except as expressly set out in a Service Order, Service Provider shall be solely responsible, at its own expense, to identify, obtain and maintain in force for the duration of this Agreement any permit, license, approval or other requirement of any authority having jurisdiction required for or in relation to the Services.

10. INSURANCE

10.1 Service Provider shall provide and maintain at its sole expense the insurance coverage stipulated in the Prime Contract for the Services as if Service Provider was MH and MH was the Client under the Prime Contract. Service Provider shall otherwise comply with the terms and conditions of the Prime Contract with respect to such insurance, including without limitation the provision of proof of insurance upon request and the inclusion of persons such as the MH as named insureds on insurance policies, provided that Service Provider shall at all times provide and maintain at its sole expense insurance coverage not less than is stipulated in Schedule "D" to this Agreement. For greater certainty, where the Prime Contract is silent or provides for lower insurance coverages than set out in Schedule "D" to this Agreement, Service Provider shall at a minimum provide and maintain the insurance coverage stipulated in Schedule "D" to this Agreement.

11. LIENS AND ENCUMBRANCES

11.1 To the extent that MH has timely paid all amounts due to Service Provider under this Agreement (including a Service Order) the Service Provider shall not register, nor shall the Service Provider permit or suffer to exist the registration of any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever ("**Encumbrance**") against the real property interest of MH or Client (a "**Service Provider Lien**"). For greater certainty, MH shall be considered to have timely paid the Service Provider if all amounts owed and not subject to dispute or to any rights of set-off or withholding under this Agreement or under the Prime Contract have been paid in accordance with the terms of this Agreement.

11.2 If the Service Provider fails to comply with its obligations in Section 11.1 within ten (10) working days of notice of the existence thereof from any source, MH shall be entitled to pay into court an amount required to obtain an order from a court of competent jurisdiction vacating the Service Provider Lien. Upon the exercise by the MH of its rights under this Section 11.2, MH shall be entitled to immediately recover from Service Provider and may exercise set-off rights with respect to:

(a) the amount paid into court pursuant to the preceding sentence, and

(b) all costs and expenses incurred by the MH (including, without limitation, legal expenses on a full indemnity basis) in the exercise of its rights under this Section 11.2.

11.3 Service Provider shall indemnify and hold harmless MH, its respective parent, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns from and against any claims, demands, losses, settlements, costs, expenses, penalties, damages, actions, suits, or proceedings (“Claims”) related to Service Provider Liens.

12. INDEMNIFICATION

12.1 Each party shall indemnify and hold harmless the other, including its respective parent, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns from and against any Claims by third parties that arise out of or are attributable to this Agreement or the Services, including Claims attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, to the extent that such Claims are attributable to or caused by the negligence or willful misconduct of the indemnifying party or anyone for whose acts the indemnifying party is responsible in law.

12.2 MH and Service Provider each waive their rights to recover from the other any consequential, indirect, or incidental damages (including, but not limited to, loss of use, income, profits, financing or reputation), arising out of, or related to, this Agreement, the Project or the performance of the Services. The parties' liability under this Agreement shall be limited to:

(a) for Claims of the type for which insurance is required to be provided under this Agreement, limited to the amount of such insurance; and

(b) for Claims of the type for which insurance is not required to be provided, the total fee paid by the MH to Service Provider under this Agreement.

Notwithstanding the foregoing, Service Provider shall be liable to MH for all Claims in relation to the Services arising under the Prime Contract to the same extent and in the same manner as MH is liable to the Client under the Prime Contract, as if Service Provider was MH and MH was the Client under the Prime Contract. For greater certainty, nothing in this Section 12 shall be interpreted to prevent MH from recovering in full from Service Provider for any and all Claims against MH under the Prime Contract to the extent such Claims are caused or contributed to by the Service Provider.

13. NON-SOLICITATION

13.1 During the term of this Agreement and for a period of one (1) year thereafter, Service Provider shall not directly or indirectly, either alone or in conjunction with any individual, firm, corporation, association or other entity, without the prior written consent of MH:

(a) solicit or attempt to solicit the employment of, or hire, employ, contract, retain or engage, or make an offer in respect of same to, any officer, director, partner, employee or

consultant of MH directly or indirectly associated with the Project that is subject to this Agreement; or

(b) compete with MH for work issued by the Client that is directly or indirectly related to the Project.

13.2 Service Provider acknowledges and agrees that monetary damages would not be an adequate remedy to compensate MH for any breach of the Service Provider's obligations under Section 13. Accordingly Service Provider agrees that, in addition to any and all other remedies available to MH under this Agreement or at law or in equity, MH shall be entitled to obtain relief by way of a temporary or permanent injunction to enforce such obligations.

14. DISPUTE RESOLUTION

14.1 Any Claims or disputes arising under this Agreement shall be pursued in a timely fashion and in accordance with the dispute resolution terms of the Prime Contract.

14.2 Upon the request of MH, Service Provider will attend any dispute resolution proceedings (including negotiation, mediation, arbitration, litigation or otherwise) initiated under the Prime Contract.

15. GOVERNING LAW

15.1 This agreement shall be governed by, construed and enforced in accordance with the laws of the province or territory of the Site.

16. REPRESENTATIONS AND WARRANTIES

16.1 Service Provider represents and warrants to MH that it is competent to perform the Services required under this Agreement, and that it has the necessary qualifications including the knowledge, skill, experience and ability to perform its obligation to the standard of care set out in this Agreement, any Service Order and the Prime Contract.

16.2 Each Party represents and warrants that the respective Party will, in the promotion and completion of its activities under this Agreement, maintain ethical standards of business conduct, will not engage in corrupt practices, including but not limited to bribery, collusion, kickbacks or other non-ethical business practices, and will comply with all applicable laws, conventions and treaties.

17. STATUS

17.1 The parties to this Agreement are independent contractors, and nothing in this Agreement shall constitute either party an agent, employee, joint venturer or partner of the other. Neither party shall, without the express written consent of the other, enter into any contract or assume any obligation or liability for or in the name of the other.

18. NOTICES

18.1 Notices in writing between the parties shall be considered to have been received by the addressee on the date of delivery, if delivered by hand or by facsimile to the individual, or to a member of the firm, or to an officer of the corporation for whom they are intended; or if sent by regular or registered post, to have been delivered within 5 working days of the date of mailing when sent to the notice address for the party as identified in the heading to this Agreement.

19. ASSIGNMENT

19.1 Neither party shall assign, in whole or in part, its interest under this Agreement without prior written consent of the other party and specifically the Service Provider shall not subcontract any portion of the services hereunder without MH's consent.

19.2 MH shall have the right at any time in its sole discretion to require the Service Provider to replace any employee with another employee acceptable to MH.

20. ENTIRE AGREEMENT

20.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior agreement, negotiations, discussions and understanding relating to it unless incorporated by reference herein.

20.2 If any part of this Agreement is held illegal, unenforceable or void, each of the remainder of the provisions shall nevertheless remain in full force and effect as a separate Agreement and shall in no way be affected impaired or invalidated.