

## **TSM Subscription Terms & Conditions**

This Agreement (the "**Agreement**") governs your subscription to The Mining Association of Canada's ("**MAC**") Towards Sustainable Mining ("**TSM**") TSM Program.

This Agreement was last updated on May \_\_\_, 2022.

### **1. Definitions**

"**First Verification Year**" has the meaning given thereto in Section 2.1(c);

"**Performance Indicators**" means a set of indicators designed to measure the quality and comprehensiveness of facility-level management systems;

"**Reporting Portal**" has the meaning given thereto in Section 2.1(b);

"**Self-Assessment**" means the Subscriber's: (i) collection of evidence through document review and interviews with its facility personnel to assess the level of Subscriber's facility(ies)'s performance for each Performance Indicator, (ii) determination of the level of performance for each Performance Indicator pursuant to the TSM rating system, published on MAC's website, ranging from C to AAA or Yes/No (the "**Indicator Scores**"), (iii) documentation of the rationale for such determination, and (iv) maintenance of a list, and where possible, copies, of evidence reviewed for each Performance Indicator;

"**Subscriber in Good Standing**" means a Subscriber of the TSM Program that has timely paid its Subscription Fee for the calendar year, continues to conduct yearly assessments, reports its TSM Results in a manner consistent with the Terms of Reference for Verifiers, adheres to its obligations under this Agreement, and adheres to the TSM Claims and Labels Policy;

"**Terms of Reference for Verifiers**" means the terms of reference developed by MAC and published on MAC's website, as amended from time to time, to ensure that Subscriber follows a clear and consistent process for hiring a Verifier and that each Verifier meets minimum standards and conforms to defined procedures to perform external verification;

"**TSM Claims and Labels Policy**" means the claims and labels policy developed by MAC and published on MAC's website, as amended from time to time, which governs Subscriber's right to use and make claims regarding TSM-related logos and imagery;

"**TSM COI Panel**" means the independent, multi-interest TSM Community-of-Interest Panel of Canada, or if deemed appropriate, that of another jurisdiction, that: (i) provides support and advice for the TSM Program, (ii) conducts a yearly review of a sample of verified results to analyze systems and practices, and (iii) is comprised of twelve to fifteen individuals from Indigenous groups, communities where the industry is active, environmental and social NGOs, and labour, financial organizations, and select members of the MAC board of directors;

"**TSM External Verification**" means a Verifier's process of reviewing and validating Subscriber's TSM Results in accordance with the Terms of Reference for Verifiers and the TSM Verification Guide;

"**TSM Guiding Principles**" means the guiding principals of the TSM Program developed by MAC and committed to by Subscriber, supported by Performance Indicators, which Subscriber publicly report against on an annual basis;

"**TSM Program**" means MAC's globally recognized sustainability program that supports mining companies in managing key environmental and social risks through its TSM Guiding Principals and sets of tools and indicators;

"**TSM Protocols**" means the protocols consisting of Performance Indicators that mining companies measure and publicly report their performance against each year developed by MAC and published on MAC's website, as amended from time to time;

"**TSM Results**" has the meaning given thereto in Section 2.1(b);

"**TSM Staff**" has the meaning given thereto in Section 2.1(b);

"**TSM Verification Guide**" means the TSM Verification Guide developed by MAC, as amended from time to time, providing detailed information on the external verifications process and related requirements to support Subscriber and each Verifier in meeting the requirements of the Terms of Reference for Verifiers; and

"**Verifier**" means a qualified professional listed on MAC's approved list of trained verification service providers, as amended from time to time, that assesses Subscriber's Self-Assessments every three years to determine if there is adequate evidence to support Subscriber's reported ratings.

## 2. TSM Assessment and Reporting Obligations of Subscriber

### 2.1. Subscriber shall:

- (a) during each calendar year that it is a Subscriber to the TSM Program, ensure its facility(ies) conduct a Self-Assessment of their performance against the Performance Indicators outlined in the TSM Protocols;
- (b) at any time on each calendar year that it is a Subscriber to the TSM Program, ensure its facility(ies) report the results of each Self-Assessment conducted in 2.1(a) (the "**TSM Results**") to staff at MAC responsible for TSM ("**TSM Staff**") by inputting the TSM Results on MAC's online reporting system (the "**Reporting Portal**"). For greater certainty, the TSM Results shall be reported on the Reporting Portal on an annual basis;
- (c) not later than during the fourth full calendar year of its subscription (the "**First Verification Year**"), choose and hire a Verifier to undertake a TSM External Verification of each of Subscriber's facility(ies) and report the outcome of the TSM External Verification and the TSM Results on the Reporting Portal; for greater certainty, Subscriber shall not be required to publicly report its first specific self-assessment facility-level TSM Results on MAC's website in the third year, prior to the First Verification Year. However, that Subscriber may choose to publish the results of the TSM Results for the first two calendar year Self-Assessments, and may also choose to proceed to verification at any time during the first four years;
- (d) during the fourth calendar year after the First Verification Year, and each third calendar year thereafter, undertake a TSM External Verification; and

(e) for each year Subscriber has a TSM External Verification conducted by a Verifier, submit to MAC a letter from Subscriber's Chief Executive Officer, or senior most officer in the jurisdiction of each reporting facility, confirming the TSM External Verification has been conducted in accordance with the Terms of Reference for Verifiers.

2.2. Subscriber shall not be automatically subject to a post-verification review of its results by the TSM COI Panel. If Subscriber and the TSM COI Panel agree that a post-verification review will be conducted effectively and provide value to both the Subscriber and MAC, the COI Panel invite Subscriber to undertake a post-verification review.

### **3. Obligations of The Mining Association of Canada**

3.1. MAC or TSM Staff shall use commercially reasonable efforts to provide the following services to Subscriber:

(a) email, telephone and video call support between 9am to 5pm EST Monday to Friday, excluding statutory holidays observed in Ottawa, Ontario;

(b) access via the internet to online training on MAC's website, which provides an overview of how the TSM Program works and case study examples to explain how the TSM Protocols are used;

(c) subject to subsection 3.2., one training workshop per calendar year, per-facility which provides an overview of how the TSM Program works, case study examples to explain how the TSM Protocols are used, and as required by Subscriber, training on specific TSM Protocols;

(d) access to the global TSM community-of-practice network for peer support and learning;

(e) access via the internet to the Reporting Portal on MAC's website to enable Subscriber to report its annual TSM Results from its Self-Assessments;

(f) access to the TSM verification system; and

(g) inclusion of Subscriber's facility(ies) Indicator Scores based on its Self-Assessment or TSM External Verification in the Reporting Portal.

3.2. For any in-person training conducted by MAC or TSM Staff pursuant to Section 3.1(c), Subscriber shall coordinate with TSM Staff to find a mutually agreeable date and time to conduct such training and Subscriber shall pay for any and all additional travel and expenses, as such costs are not covered by the Subscription Fee.

3.3. MAC shall unless otherwise published by Subscriber, use reasonable efforts to keep confidential the TSM Results from Subscriber's first full calendar year Self-Assessment and only use such results to support the identification of additional support needs.

3.4. As of the Subscriber's second full calendar year in the TSM Program and for each year thereafter, MAC may include Subscriber's TSM Results in MAC's aggregate performance data on certain TSM Protocols and publish same on its website. In the third full calendar year, MAC may publish Subscriber's TSM Results on its website and for each year thereafter.

### **4. Subscription Fee**

- 4.1. Subscriber shall pay an annual subscription fee of \$6,000 Canadian dollars (the "**Subscription Fee**") for each facility that Subscriber operates.
- 4.2. The Subscription Fee for the first year of the TSM Program shall be prorated on a monthly basis and such prorated fee shall be calculated by: (i) dividing the Subscription Fee by 12; and (ii) multiplying it by the number of months remaining in the calendar year, including the month in which the Subscriber initially subscribes.
- 4.3. MAC shall provide Subscriber with an invoice for the Subscription Fee each January and Subscriber shall pay the Subscription Fee within 60 days in the format provided in the invoice.
- 4.4. MAC shall use the Subscription Fee to support the TSM Program and apply any remaining funds from the Subscription Fee to the enhancement and promotion of TSM and the TSM Program.
- 4.5. MAC may increase the Subscription Fee with 30 days' prior written notice to Subscriber.

## 5. **Publicity Rights of Subscriber**

- 5.1. Upon completion of a Subscriber's first Self-Assessment, a Subscriber in Good Standing with the TSM Program may publicly disclose that it is implementing TSM in accordance with the TSM Claims and Labels Policy, and any other policies MAC may establish from time to time.

## 6. **Information Requirements**

- 6.1. Subscriber acknowledges that MAC relies on the accuracy of the information and materials provided to it by Subscriber and as such Subscriber agrees that all information and materials disclosed to MAC and its TSM Staff is true, accurate, complete and not misleading in any material respect.
- 6.2. Subscriber shall not: (i) upload to the Reporting Portal any data, file, software, or link that contains or redirects to a virus, Trojan horse, worm, or other harmful component; or (ii) attempt to gain unauthorized access to the Reporting Portal and online training on MAC's website.

## 7. **Indemnity by Subscriber**

- 7.1. Subscriber shall fully indemnify and hold harmless MAC and its personnel against any past, pending, or future claims of any nature whatsoever resulting from or arising in connection with the Agreement or incurred as a result of actions, omissions, or misstatements of Subscriber in relation to its TSM Results.

## 8. **Termination**

- 8.1. Either Party may terminate Subscriber's participation in the TSM Program upon 30 days' prior written notice.
- 8.2. Upon Subscriber's termination from the TSM Program, Subscriber shall not be entitled to any remittance of its Subscription Fee.

## 9. **General Terms**

- 9.1. The headings used in these terms and conditions are intended for convenience or reference only and do not affect the interpretation of the provisions of these terms and conditions.

- 9.2. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Subscriber may not assign this Agreement without MAC's prior written consent.
- 9.3. If any provision hereof is found by a court of competent jurisdiction to be unenforceable, it will be enforced to the maximum extent permissible under the circumstances so as to effect the parties' intent, and the remaining provisions hereof will remain in full force and effect.
- 9.4. MAC may modify, supplement or amend this Agreement by publishing such modification, supplement or amendment to this Agreement on the TSM website 30 days before such modification, supplement or amendment comes into effect.
- 9.5. This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the laws of Ontario, Canada.

*[Remainder of page intentionally left blank; Signature page follows]*

In witness whereof, the Subscriber has duly executed the Agreement this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**SUBSCRIBER**

Organization Name: \_\_\_\_\_

Per: \_\_\_\_\_

Name (Please Print): \_\_\_\_\_

Title (Please Print): \_\_\_\_\_

I have authority to bind the Subscriber.

Subscriber's Facility:

Name and Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subscriber's Facility:

Name and Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
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Subscriber's Facility:

Name and Address: \_\_\_\_\_

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