

Schedule D

(full legal name
and address of the organization)

Measurement Canada Online Reporting Application Web Services Terms and Conditions of Use

Introduction

The Company agrees to abide by the Measurement Canada Online Reporting Application web services terms and conditions of use (“these Terms and Conditions”) and to upload inspection (examination¹) data directly from its inspection database into Measurement Canada’s database. The inspection data uploaded to Measurement Canada’s database must be recorded and captured in accordance with the Weights and Measures Act and Regulations, Online Reporting Application (ORA) User Manual, the Online Reporting Application Terms and Conditions of Use and these Terms and Conditions.

Purpose

The purpose of these Terms and Conditions is to delineate responsibilities for access to the web services features of the Online Reporting Application.

Definitions

Agreement: Accreditation Agreement or Registration Agreement as applicable.

Authorized service provider: organization that has been designated as an inspector to carry out inspections under the Weights and Measures Act.

Authorized user: authorized representative of the Company who requires access to the Authentication Parameters to enable the Company to make modifications to its database in order to upload its inspection data into Measurement Canada’s database.

Device: measuring machine as defined in the Weights and Measures Act and Regulations.

Device Examination Certificate: certificate issued to a device owner by fax, email or regular mail once the device inspection data is successfully submitted in the Online Reporting Application. Device examination certificates are commonly referred to as device inspection certificates.

Establishment: business location of a device owner. For the purposes of the Online Reporting Application, it is the physical location of a device being used in trade.

Inspection: activity of measuring, examining, evaluating, testing or gauging one or more characteristics of a device to determine its acceptability pursuant to the Weights and Measures Act, as well as documenting results.

Inspector: designates, in the context of the Accreditation Program or Registration Program, an organization that has entered into an agreement with Measurement Canada and has been delegated inspection powers pursuant to the Weights and Measures Act.

Online Reporting Application: Measurement Canada web application that enables device inspection data to be submitted to Measurement Canada. Once the inspection data is reported and successfully submitted, a device examination certificate is issued under the authority of the Weights and Measures Act.

¹ The term “inspection” has the same meaning as the term “examination”.

Recognized technician: as per Measurement Canada's Accreditation Program and Registration Program, an individual, employed by an authorized service provider, whose competencies have been successfully assessed and who is recognized by Measurement Canada to inspect devices and to submit device inspection data for the issuance of device examination certificates pursuant to the Weights and Measures Act.

Access to web services

Measurement Canada will make the Online Reporting Application available to the Company through web services.

Measurement Canada will only provide the technical specifications it deems necessary for the Company to develop its own means of: (1) requesting the establishment and device data in accordance with Measurement Canada's specifications, and (2) uploading completed inspection data to the Online Reporting Application (the "Technical Specifications"). Measurement Canada reserves the right to revise the Technical Specifications at any time, as it deems necessary, and will communicate these revisions to the Company as required.

Subject to these Terms and Conditions, Measurement Canada will provide the Company with a username and password (the "Authentication Parameters") required to access the Online Reporting Application via web services. The Company shall not transfer the Authentication Parameters, other than to an Authorized User.

The Company is solely responsible for:

1. maintaining the strict confidentiality of its Authentication Parameters
2. not allowing unauthorized representatives or other persons to use the Authentication Parameters
3. any damages or losses that may be incurred or suffered as a result of its failure to maintain the strict confidentiality of the Authentication Parameters
4. promptly informing Measurement Canada of any need to deactivate the Authentication Parameters

Failure to comply could result in Measurement Canada suspending access to the Online Reporting Application. Under section 10 of the agreement, Measurement Canada may also declares that an event of default has occurred which could result in suspension or revocation the designation of the Company as inspector.

The Company Authorized Users who request access to the Online Reporting Application via web services shall meet the same requirements found in section 18.13 of the Agreement and applicable standards that are required for recognized technicians.

Measurement Canada shall have the right, at its sole discretion, to interrupt access to the Online Reporting Application, without notice to the Company. Access to the system is unavailable daily between 4 a.m. and 5 a.m. (EST) for scheduled maintenance (system backup). In addition, application updates are occasionally scheduled, generally on Tuesdays or Thursdays between 7 a.m. and 8 a.m. (EST). Advance notice will be provided to users when these updates are scheduled.

Ownership

Measurement Canada is and remains the sole and exclusive owner of all rights, titles and interests in and to the Online Reporting Application, including all its systems, any and all Measurement Canada trademarks and proprietary markings in or on the Online Reporting Application, and in each case all related intellectual property rights that may exist in the inspection data uploaded to the application by the Company (collectively, the "Measurement Canada Property").

Permitted and restricted uses

Measurement Canada hereby authorizes the Company to use the web services features of the Online Reporting Application. The Company shall use the Online Reporting Application in accordance with the *Weights and Measures Act* and Regulations, Online Reporting Application (ORA) User Manual, Online Reporting Application Terms and Conditions of Use, and these Terms and Conditions.

In addition to the requirements stated in section 15 of the Agreement, the Company shall not sell, license, assign, convert, alter, publish, disclose, display, or otherwise make available the Online Reporting Application data to any third party. The Company shall not use, or permit the use of, the Online Reporting Application for unsolicited communications.

No property, ownership or real right or interest in the Measurement Canada Property, or any component thereof, is granted, assigned, conveyed or sold to the Company by virtue of these Terms and Conditions or otherwise.

Representations and warranties

The Online Reporting Application is provided “as is” and “as available”. Measurement Canada makes no representation and gives no warranty of any kind with respect to the accuracy, validity, completeness, currency or availability of the Online Reporting Application, and expressly disclaims any implied warranty of merchantability or fitness for a particular purpose of the Online Reporting Application.

Liability and indemnity

The Company shall have no recourse against Measurement Canada, whether by way of any suit or action, for any loss, liability, damage, or cost that the Company may suffer or incur at any time, by reason of the Company’s use of the Online Reporting Application or arising out of the performance or non-performance of the Company’s rights and obligations under these Terms and Conditions. In no event shall Measurement Canada be liable to the Company for any lost profits or business opportunities, loss of use, access interruption or cessation, business interruption, loss of data, or any other direct, indirect, special, consequential or incidental damages arising out of these Terms and Conditions or resulting from the Company’s use of the Online Reporting Application, under any theory of liability whether arising in contract, tort, including negligence, or otherwise.

The Company shall indemnify and hold harmless Measurement Canada, its directors, officers, employees, agents and representatives, from any and all claims, demands, losses, damages, fees, expenses, actions, liability and costs for damages caused by or resulting from any actions, omissions or conduct of the Company, its directors, officers, employees, agents and representatives, arising out of the performance or non-performance of the Company’s rights and obligations under these Terms and Conditions, or otherwise in connection with the Company’s use of the Online Reporting Application.

Security requirements

The Company’s security policy relating to the development and use of the Online Reporting Application’s web services features must be reflective of Government of Canada security policies.

The Company shall adhere to the following technical security safeguards to ensure that the integrity of the data being provided to Measurement Canada via web services is secure:

1. Reasonable precautions to protect data from the point of collection until it is submitted to the web reporting system to ensure that data is not manipulated (e.g. encrypted Wi-Fi etc.).
2. Physical or digital signature for all forms being submitted to the Government of Canada to ensure individual accountability for the data being provided to Measurement Canada.
3. Encryption standard for Transport Layer Security (TLS) should conform to Government of Canada security standards.

Termination

Measurement Canada shall have the right to terminate these Terms and Conditions upon notice in writing to the Company to take effect immediately in the event that, in the opinion of Measurement Canada:

1. The Company assigns or purports to assign these Terms and Conditions or any of the rights under these Terms and Conditions; or
2. The Company commits or permits a breach of any of its covenants or obligations under these Terms and Conditions.

Notwithstanding termination or expiration of these Terms and Conditions, the provisions regarding restrictions on use, ownership, confidentiality, representations and warranties, liability and indemnity, and any other provisions which by their nature survive the termination or expiration of these Terms and Conditions, shall survive such termination or expiration as indicated in the Agreement.

The Company shall have the right to terminate these Terms and Conditions upon 30 day notice in writing to Measurement Canada. The termination of these Terms and Conditions will result in the requirement for the Company to report inspection data in accordance with other Measurement Canada approved reporting using the Online Reporting Application.

General

If any provision of these Terms and Conditions, whether in whole or in part, is held by a court of competent jurisdiction to be void or unenforceable, such provision or portion thereof declared invalid or unenforceable shall be deemed to be severable and shall be deleted from these Terms and Conditions and all remaining provisions will continue to be valid and enforceable.

Where in these Terms and Conditions any notice or other communication is required to be given or made by either party, it shall be in writing and is effective if sent by registered mail, email, facsimile, postage prepaid or delivered in person, addressed to the President, Measurement Canada. Any notice or other communication shall be deemed to have been given: if by registered mail when the postal receipt is acknowledged by the other party; by email or facsimile on the day after the email or facsimile was sent; if by mail on the eighth (8th) calendar day following the day of mailing.

These Terms and Conditions shall not be assigned in whole or in part by the Company without the prior written consent of Measurement Canada, and any assignment made without such consent shall be void and of no effect.

Any tolerance or indulgence demonstrated by one party to the other, or any partial or limited exercise of rights conferred on a party, shall not constitute a waiver of rights, unless expressly waived in writing by that party.