

# AGREEMENT FOR LOW INCOME DSM STRATEGIES FOR LDCS

**B E T W E E N:**

**HER MAJESTY THE QUEEN** in right of Ontario  
as represented by the Minister of Energy

(hereinafter referred to as the "**Crown**")

**- and -**

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**

(hereinafter referred to as the "**Contractor**")

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**Date: August 19, 2004**

**Crown Representative:**

Name: Gregor Robinson  
Address: 880 Bay Street 3<sup>rd</sup> Floor  
Toronto, Ontario, M7A 2C1  
Telephone Number: 416-314-0671  
Facsimile Number: 416- 325-6972  
E-Mail: gregor.robinson@energy.gov.on.ca

**Contractor Representative:**

Name: Paul Muldoon  
Address: 130 Spadina Avenue, Suite 301  
Toronto, ON M5V 2L4,  
Telephone Number: 416-960-2284 ext 219  
Facsimile Number: 416-960-9392  
E-Mail:

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In consideration of their respective obligations set out below, the parties agree as follows:

**1.0 Entire Agreement**

- 1.1 The Contract between the Crown and the Contractor incorporates all of the following: (i) this Agreement including Schedule A, and such other Schedules as required; (ii) the purchase order; and (iii) any amendments executed in accordance with the terms of this Agreement (the "**Contract**").
- 1.2 The Contract embodies the entire agreement between the parties with regard to the provision of the Services and supercedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution of this Agreement.
- 1.3 Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective nor carried out in the absence of such an amendment.
- 1.4 Any express or implied reference to the Crown providing an indemnity or assuming or otherwise incurring any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the Crown, whether at the time of execution of this Agreement or at any time during the Term of the Contract, shall be void and of no legal effect save and except for the Crown's obligations under Section 5.3 to pay the approved invoices for the work done hereunder.

**2.0 The Services**

- 2.1 The nature and scope of the work comprising the Services to which this Contract pertains and the respective duties and obligations of the Contractor and the Crown are as set out in the Contract and as more particularly described in Schedule A (the "**Services**").

- 2.2 The Contractor represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other person which would in any way interfere with the rights of the Crown under this Contract.
- 2.3 The Contractor acknowledges that it is performing the Services for the Crown on a non-exclusive basis. The Crown makes no representation regarding the volume of work to be performed under the Contract. The Crown reserves the right to contract with other parties for the same or similar goods and services as those provided by the Contractor and reserves the right to obtain the same or similar goods and services internally.
- 2.4 The Contractor shall carry out its duties and shall fulfill its obligations under this Contract diligently and expeditiously, in good faith, in a safe, reasonable and prudent manner, using qualified and experienced staff, personnel, agents, volunteers and subcontractors, in accordance with applicable standards of professionalism, standard industry practices, good business practices and management techniques and in compliance with the Contract and all requirements of applicable law. The Contractor agrees that it is liable for the acts and omissions of its staff, personnel, agents, volunteers and subcontractors.
- 2.5 Any failure by the Crown to insist in one or more instances upon strict performance by the Contractor of any of the terms or conditions of the Contract shall not be construed as a waiver by the Crown of its right to require strict performance of any such terms or conditions, and the obligations of the Contractor with respect to such performance shall continue in full force and effect.

### **3.0 Change Order**

- 3.1 The Crown may order changes to the Services, which may include altering, adding to, or deleting any part of the Services by issuing a change order. The change order shall set out the changes requested by the Crown with the corresponding Rates as defined herein. No changes shall be carried out unless the change order has been authorized in writing and signed by the Crown.
- 3.2 The Contractor shall carry out the changes in accordance with the change order as if they had appeared in and had been part of the Contract. If the Contractor has insufficient resources to do so within the Crown's time requirements as set out in the change order, the Contractor shall so notify the Crown Representative without delay. The Crown may make alternative time arrangements for the changes, or may have another person carry out the same. If the Crown requests in such change order that the Contractor supply goods or services for which the Contract has not included a corresponding Rate, the Contractor shall carry out such changes and the rate therefor shall be negotiated in good faith between the Crown Representative and the Contractor Representative within a reasonable period of time. If the parties are unable to reach a fair and equitable rate, each may, with the agreement of the other party, refer the matter to arbitration in accordance with the *Arbitration Act, 1991*, as amended.

### **4.0 Commencement of Services and Term of Contract**

- 4.1 The Contractor shall commence the Services upon receipt of a purchase order from the Crown and shall complete the Services by December 31, 2004.
- 4.2 This Agreement shall commence on August 30, 2004 and remain in full force and effect up to and including March 31, 2005 or the expiry date of any extension to the Contract (the "**Term**"). The Contract shall expire at the end of the Term of this Agreement.
- 4.3 The Crown shall have the option to extend the Contract for one further term of a duration of up to the duration of the original Term, such extension to be upon the same terms, including the Rates, conditions and agreements contained in the Contract. The option shall be exercisable by the Crown upon giving 10 days prior written notice to the Contractor, setting forth the precise duration of the extension of the Term.

### **5.0 Payment for Performance**

- 5.1 The Contractor hereby agrees with the Crown that the hourly and per diem Rates and disbursements set out in Schedule A (the "**Rates**") shall remain fixed during the Term of this Contract. Other than the Rates and disbursements set out in Schedule A there shall be no other charges payable by the Crown under the Contract to the Contractor.
- 5.2 The Contractor shall provide the Crown with invoices for work completed at the times and in the form and substance specified in Schedule A, or as otherwise agreed to by the Crown. Each invoice shall include the purchase order number and shall include a report on the part or parts of the Services completed.
- 5.3 Payments of approved invoices shall be made by the Crown within forty-five (45) business days of receipt of the invoice from the Contractor.
- 5.4 The Crown may hold back payment or set-off against payment if, in the opinion of the Crown acting reasonably, the Contractor has failed to comply with any requirements of the Contract.
- 5.5 The Crown certifies that the Services are required for the use of the Crown in right of Ontario and are therefore not subject to the federal Goods and Services Tax.
- 5.6 For two (2) years after the expiration of this Agreement, the Contractor shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Services were provided in accordance with the Contract and with the requirements of applicable law. During the Term, and for two (2) years after the Term, the Contractor shall permit and assist the Crown in conducting audits of the operations of the Contractor to verify (a) and (b) above. The Crown Representative shall provide the Contractor Representative with at least ten (10) business days notice prior to such audit.

## **6.0 Indemnity and Insurance**

- 6.1 The Contractor hereby agrees to indemnify, defend and hold harmless the Crown, its directors, officers, employees, volunteers, agents and contractors from and against any and all actions, causes of action, claims, demands, proceedings, losses, judgments, costs and expenses (including, without limitation, reasonable legal fees) and for any and all liability for damages to property and injury to persons (including death), of whatever kind and nature, by whomsoever made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to the operations described in the Contract.
- 6.2 The Contractor further agrees to, at its own expense, put into effect and maintain throughout the Term comprehensive general liability insurance to an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence on third party bodily injury, personal injury and property damage. Such insurance shall include the Crown as an additional insured and shall provide for no less than 30 days written notice of cancellation. The Contractor shall submit proof of such insurance in the form of a valid certificate of insurance to the Crown immediately following execution of this Agreement and thereafter upon demand.

## **7.0 Termination**

- 7.1 The Crown reserves the right to terminate this Agreement without cause on fourteen (14) days notice to the Contractor Representative. In the event of termination, the parties agree that the Crown shall only be responsible for the payment of those parts of the Services that have been completed up to and including the effective date of termination.
- 7.2 The following provisions of this Agreement shall survive the termination or expiry of this Agreement and will not merge and shall continue in full force and effect in accordance with the terms of this Agreement: Section 1.4, Section 5.6, Section 6.1, Article 7, Article 8, Article 9, Article 10 and Article 11.

## **8.0 Independent Contractor**

8.1 The Contractor shall have no power or authority to bind the Crown or to assume or create any obligation or responsibility, express or implied, on the Crown's behalf. The Contractor shall not hold itself out as an agent, partner or employee of the Crown. Nothing in this Contract shall have the effect of creating an employment, partnership, joint venture or agency relationship between the Crown and the Contractor or constitute an appointment under the *Public Service Act* as amended. For the purposes of this paragraph, the Contractor includes any subcontractors and any of their officers, directors, partners, employees, affiliates, agents and volunteers.

8.2 Every subcontract entered into by the Contractor shall adopt all of the terms and conditions of this Contract as far as applicable to the subcontractor's services.

## **9.0 Intellectual Property**

9.1 The Contractor represents, warrants and agrees that the Services will not infringe upon, induce infringement or violate any intellectual or industrial property of any type in any form including but not limited to copyright, patent, trademark, trade secret, moral rights (collectively "**Intellectual Property**") or any other proprietary right of any third party. The Crown shall be the owner of all Intellectual Property conceived of, produced or performed pursuant to this Agreement which shall be original and specifically developed by the Contractor for the fulfilment of this Agreement. The Contractor irrevocably assigns to and in favour of the Crown and the Crown accepts every right, title and interest in and to such Intellectual Property for all time. The Contractor shall place a copyright notice on all recorded material it provides to the Crown under the Contract in the following form: © Queen's Printer for Ontario, 2004.

9.2 At the request of the Crown, the Contractor agrees (i) to waive all moral rights, (ii) to obtain waivers of all rights of integrity and all other moral rights from its officers, directors, partners, employees, affiliates, agents, volunteers and subcontractors and from any other party in the position to assert such rights in relation to the Services, which waivers may be invoked without restriction by any person authorized by the Crown and (iii) to execute and to cause anyone in the position to assert rights of integrity or any other moral right including its officers, directors, partners, employees, affiliates, agents, volunteers and subcontractors to execute a written assignment of copyright in the applicable Services in the form provided by the Crown. The Contractor shall assist the Crown in preparing any Canadian copyright registration that the Crown considers appropriate. The Contractor will obtain or execute any other document reasonably required by the Crown to protect the Intellectual Property of the Crown.

9.3 The Contractor agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded (including images and data) provided by the Crown to the Contractor shall remain the sole property of Her Majesty the Queen in right of Ontario at all times. The Contractor shall not use any insignia or logo of Her Majesty the Queen in right of Ontario except where required to provide the Services and only if it has received the prior written permission of the Crown to do so.

## **10.0 Confidentiality**

10.1 During and following the Term of this Agreement, the Contractor agrees, and agrees to cause its officers, directors, partners, employees, affiliates, agents, volunteers and subcontractors, to keep all information it receives from the Crown confidential. The Contractor agrees to keep all confidential information secure and shall only copy confidential information if essential for the provision of the Services.

10.2 The Contractor acknowledges that the Crown is bound by the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario) ("FIPPA") and that any materials created by the Contractor in the course of providing the Services and information provided to the Contractor by the Crown may be subject to disclosure under FIPPA. The Contractor agrees to provide all such materials and information to the Crown on demand for the purposes of an access request or if a privacy issue arises.

- 10.3 The Contractor will return all personal information as defined by FIPPA and confidential information of the Crown to the Crown, and shall ensure that all copies of such information and any portions thereof are also returned or destroyed with no copy kept by the Contractor or its directors, officers, partners, employees, affiliates, agents, volunteers and subcontractors, at the request of the Crown, and in any event, prior to the termination or expiry of this Agreement. The Contractor shall, at the Crown's request, provide the Crown with written confirmation that all such information has been so returned or destroyed.

#### **11.0 Conflict of Interest**

- 11.1 Both during and for a reasonable period of time following the Term of this Agreement, the Contractor shall not engage in any activity or provide any goods or services where such activity or the provision of such goods or services creates a conflict of interest (actually or potentially in the sole opinion of the Crown) with the provision of the Services pursuant to this Agreement. The Contractor acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of the Crown relevant to the Services where the Crown has not specifically authorized such use.
- 11.2 The Contractor shall disclose to the Crown without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest and shall comply with any terms and conditions subsequently prescribed by the Crown resulting from the disclosure.
- 11.3 A breach of this Article by the Contractor shall entitle the Crown to terminate the Agreement, in addition to any other remedies that the Crown has in this Agreement, in law or in equity.

#### **12.0 Contract Binding and Crown Approval for Subcontracting, Assignment**

- 12.1 The Contract shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns. The Contractor shall neither subcontract the whole or any part of the Contract nor assign this Agreement or any monies due under it without the prior written consent of the Crown, which consent shall be in the Crown's sole discretion and subject to the terms and conditions that may be imposed by the Crown.

#### **13.0 Governing Law**

- 13.1 The Contract shall be governed by the laws in effect in the Province of Ontario and the laws of Canada applicable therein and the parties hereby agree that any dispute arising out of or in relation to the Contract shall be determined in Ontario.

#### **14.0 Force Majeure**

- 14.1 Neither party shall be liable to the other for the delay in performance of its respective obligations hereunder where such delay is caused without fault on its part, by any event beyond the reasonable control of such party, including, without limitation, explosion, flooding, civil disorder and an act of God, but excluding any insolvency, labour disputes, lack of funds or financial causes relating to such party. A delay in performance by either party of its obligations under this Agreement due to Force Majeure shall extend the period of performance of such obligation by such number of days as the Contractor and the Crown may mutually agree.

#### **15.0 Conflict in Documents**

- 15.1 Where any conflict or inconsistency appears between a provision of any of the documents listed below which form part of the Contract and a provision in another of the documents listed below, the provision in the first mentioned document shall govern:
- (a) the purchase order;
  - (b) the body of this Agreement excluding the Schedules;
  - (c) Schedule A to this Agreement; and

(d) all other Schedules, if applicable.

#### **16.0 Promotion Restrictions**

- 16.1 Any publicity or publications related to the Contract or the Services shall be at the sole discretion of the Crown. The Crown may, in its sole discretion, acknowledge the services performed by the Contractor in any such publicity or publication. The Contractor shall not make use of its association with the Crown without the prior written consent of the Crown. Without limiting the generality of the foregoing, the Contractor shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has obtained the express written authorization of the Crown to do so.

#### **17.0 Notice**

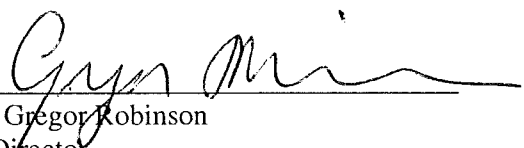
- 17.1 Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, facsimile or e-mail and shall be addressed to, respectively, the Crown address to the attention of the Crown Representative and to the Contractor address to the attention of the Contractor Representative. Notices shall be deemed to have been given (a) in the case of postage-prepaid envelope, five (5) business days after such notice is mailed; or (b) in the case of personal delivery, facsimile or e-mail one (1) business day after such notice is received by the other party. In the event of a postal disruption, notice must be given by personal delivery, facsimile or e-mail and all notices mailed within one (1) week prior to the postal disruption must be confirmed by facsimile or e-mail to be effective.

#### **18.0 Number, Gender and Headings**

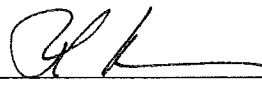
- 18.1 In this Agreement, words in the singular include the plural and visa-versa and words in one gender include all genders. The headings in this Contract are for convenience of reference only and do not form part of the Contract and in no manner modify, interpret or construe the Contract.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

**HER MAJESTY THE QUEEN** in right of Ontario as  
represented by the Minister of Energy

per:   
Name: Gregor Robinson  
Title: Director

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

per:   
Name: Paul Muldoon  
Title: Executive Director and Counsel

I have authority to bind the Contractor.

**SCHEDULE A**  
**to the Agreement between the Minister of Energy**  
**and CANADIAN ENVIRONMENTAL LAW ASSOCIATION dated August 30, 2004]**

**CONTRACTOR'S SERVICES AND RATES**

**DESCRIPTION OF SERVICES**

**A. Purpose of Assignment**

Low Income Energy Network (LIEN) will develop and mount a workshop for members of their network to develop a set of proposed DSM initiatives that could be undertaken by LDCs to assist low income households, a group negatively affected by electricity price increases.

They will draft a report outlining these DSM initiatives for submission to the Crown and distribution to LDCs.

**B. Background**

This project will be coordinated by the Low Income Energy Network (LIEN), an Ontario-wide coalition of organizations advocating on behalf of low income households. The project will be administered by the Canadian Environmental Law Association (CELA). Both organizations are based in Toronto.

LIEN is requesting \$24,900 of a total \$100,000 budget to conduct outreach to the low income housing community and social service agencies across Ontario. LIEN will assemble key players for a workshop which will form the basis of a report to be submitted to LDCs and the Ontario Government with stakeholder recommendations for DSM programs. Timeline is August - October 2004.

**C. Deliverables:**

1. LIEN workshop to be held in Fall 2004, and submission of draft report by IndEco Consulting outlining the results of the proceedings of the workshop.
2. Final report by IndEco Consulting outlining recommendations to local distribution companies.

**RATES AND DISBURSEMENTS**

Notwithstanding anything else in the Contract, the total amount payable by the Crown to the Contractor under the Contract shall not exceed \$ 24,900.

| <b>Disbursements</b><br><b>(include all travel, meal, accommodation and other disbursements as applicable)</b> | <b>Maximum</b><br><b>Amount</b> |
|----------------------------------------------------------------------------------------------------------------|---------------------------------|
| Upon completion of proposed LIEN workshop and submission of draft report by IndEco Consulting                  | \$10,000                        |
| Upon submission of a final report by IndEco Consulting                                                         | \$14,900                        |

**INVOICES**

The Contractor shall provide the Crown with one invoice for each of the two deliverables no later than December 31, 2004. Each invoice shall include (i) the purchase order number assigned to the Contract by the Crown, (ii) a brief description of the Services provided for the deliverable, (iii) the fee for the Services performed during the relevant month and (iv) taxes, if payable by the Crown, identified as separate items.

The Crown shall approve or reject the invoice within fifteen (15) business days. In the event that the Crown rejects the invoice, it shall so advise the Contractor promptly in writing and the Contractor shall provide additional information as required by the Crown to substantiate the invoice.

Each invoice must be approved by the Crown before any payment is released to the Contractor.