

**STATE OF VERMONT – PUBLIC SERVICE BOARD
CONTRACT FOR PERSONAL SERVICES
AS ENERGY EFFICIENCY UTILITY**

State Contract # 0337956

Printed on February 15, 2000

1. Parties

This *State* Contract for Services is entered into by and between the *State* of Vermont, Public Service *Board* and Vermont Energy Investment Corporation (“*VEIC*” or “*Contractor*”). In consideration of the mutual promises and agreements hereinafter set forth, the parties agree as follows:

2. Definitions

When capitalized and italicized, whether in the singular or plural, the following words and phrases shall have the following meanings in constructing this *Agreement*.

- A. ***Agreement*** means this *State* Contract for Services and all Attachments hereto, as all may be amended from time to time.
- B. ***BED*** means the City of Burlington Electric Department.
- C. ***Board*** means the Vermont Public Service *Board* identified in 30 V.S.A. §3.
- D. ***Contract Administrator*** means the person or entity selected and retained by the *Board*, to manage, monitor and enforce this *Agreement* on behalf of and pursuant to the instructions of the Board.
- E. ***Contractor*** means Vermont Energy Investment Corporation or *VEIC*.
- F. ***Core Programs*** means the statewide energy efficiency programs approved in the *Order*, as revised in Paragraph 3.A of Attachment A, to be implemented by the *Contractor* serving as the Vermont Energy Efficiency Utility.
- G. ***Customized Software*** means any computer software that is not readily available for purchase and that is modified, developed, and/or written by the *Contractor* or its subcontractor(s) specifically for the purpose of performing the *Work*.
- H. ***Department*** or ***DPS*** means the Vermont Department of Public Service.
- I. ***EEU*** means the Energy Efficiency Utility identified in the *RFP*, and in the *MOU*.
- J. ***Fiscal Agent*** means the person or entity selected and retained by the *Board* to receive funds for the *EEU* from utility companies, those funds having been paid to utility companies by electricity consumers in Vermont for the provision of *Core Programs* as directed by *Board* order or rule (such programs to be implemented by the *EEU*), and to disburse those funds under the direction of the *Board*.

- K. *MOU*** means the Memorandum of Understanding approved by the *Board* in Docket No. 5980 and attached to the *Order* as Appendix A.
- L. *Order*** means the *Board's* Order of September 30, 1999 in Docket No. 5980.
- M. *RFP*** means the *Board's* Request for Proposals for a Vermont Energy Efficiency Utility and Appendices released October 19, 1999, as amended by the *Board* on October 22, October 29, and November 22, 1999.
- N. *Response*** means *VEIC's* response to the *RFP* dated November 30, 1999, titled "SavEnergy: A Proposal for Vermont's New Energy Efficiency Utility," as amended on January 10, 2000.
- O. *State*** means the *State* of Vermont including its agencies and boards.
- P. *VEIC*** means Vermont Energy Investment Corporation, a Vermont non-profit corporation with its principal offices at 255 South Champlain Street in Burlington, Vermont and whose Vermont Tax Identification Number is 19361.
- Q. *WEC*** means Washington Electric Cooperative, Inc.
- R. *Work*** means the Scope of *Work* identified in Paragraph 3 and in Attachment A. The *Work* is intended to be the Scope of *Work* that is also identified in Article VII A.1 of the *State's* Agency of Administration's Bulletin No. 3.5.

3. Scope of Work

The *Contractor* shall serve as and perform the duties of the *EEU*. The *Contractor* shall furnish all necessary personnel, office space, equipment, materials, services, licenses, transportation, and other necessary resources (except as is otherwise provided herein) to accomplish the Scope of *Work* as set forth in Attachment A. Changes to the *Work* may be made only by written agreement of both the *Board* and the *Contractor*.

WEC is directly administering a residential new construction program and a residential retrofit program within its service territory. *BED's* proposal for self-implementation of some programs is currently before the *Board*. It is possible that in the future the *Contractor* may become responsible for direct implementation of energy efficiency programs that *BED* and *WEC* are now responsible for implementing in their own service territories. In such case, the parties agree that an amendment to this *Agreement* may be necessary at that time.

4. Standards of Performance

The *Contractor* shall perform the *Work* consistent with the requirements established in Attachment B hereto, any applicable professional standards, and to the reasonable satisfaction of the *Board* as detailed in Attachment C. Unless otherwise directed or permitted by the *Board* or its designated representative, the *Contractor* shall perform the required *Work* consistent with Sections A through I of the *Response* (Attachment G), as modified in Attachment A and in compliance with the requirements of the *MOU*. The *Contractor* shall

coordinate its performance of the *Work* as appropriate, or as directed by the *Board*, with the *Contract Administrator*, the *Fiscal Agent*, the *DPS* and other entities.

5. Compensation

In consideration of the services to be performed by the *Contractor*, the *Board* shall authorize *Contractor* to receive payments for satisfactory performance of the *Work* in accordance with the payment provisions specified in Attachment B hereto. The maximum amount payable to *Contractor* over the life of this *Agreement* is \$ 28,381,083 (as shown in Attachment D) plus *BED*'s customers' contribution to the *EEU* for each year after 2000, as set by future *Board* determinations. This maximum amount is inclusive of all eligible costs, expenses and earned performance incentives. The parties agree that this amount is a cap, not a fixed price, and that this cap shall be reduced by the total dollar value of the invoices submitted by Vermont electric distribution utilities, and approved by the *Contract Administrator*, for the provision of demand-side management services, otherwise known as DSM services, from January 1, 2000 to March 15, 2000.

6. Term of Agreement

The Term of this *Agreement* shall begin on March 1, 2000 and end on December 31, 2002, unless amended or terminated earlier in accordance with the provisions of this *Agreement*. The *Board*, in its discretion, may, with the *Contractor's* concurrence, extend this *Agreement* for up to thirty-six (36) additional months upon the giving of written notice thereof to the *Contractor* not less than 180 days before December 31, 2002. The *Contractor* shall provide a written response to the *Board's* request to extend this *Agreement* not later than 150 days before December 31, 2002. Compensation for the *Work* to be provided pursuant to any extension of this *Agreement* shall be agreed upon in writing between the *Board* and the *Contractor*. If said compensation cannot be agreed upon 60 days prior to the end of the initial term of this *Agreement*, it is agreed that this *Agreement* will expire on December 31, 2002, unless extended on a month-to-month basis as described in the following paragraph. Under no circumstances does the *Contractor* have the right to compensation for investments or expenditures undertaken in anticipation of an extension of this *Agreement*.

If the *Board* elects not to extend this *Agreement* for up to thirty-six additional months, or the *Contractor* declines to agree to such extension of this *Agreement*, or compensation for the 36-month extension cannot be agreed upon no later than 60 days prior to the expiration of this *Agreement*, this *Agreement* may be extended at the *Board's* sole discretion on a month-to-month basis, for up to four months, to provide for the continuation of the performance of the *Work* while the *Board* selects a new entity to serve as the *EEU*, and the transition to the new entity is accomplished. In such case, the *Contractor* shall be paid for services provided during the extension period pursuant to the terms set forth in Paragraph 2 of Attachment B; any such payments shall not be subject to the cap on total compensation stated in Paragraph 5 of the main body of this *Agreement*.

7. Prior Approvals

Neither this *Agreement*, nor any amendment to it, is binding on either party until it has been approved by the Vermont Attorney General's Office and the Vermont Secretary of Administration.

8. Amendment

No changes, modifications, amendments or extensions in the terms and conditions of this *Agreement* shall be effective unless reduced to writing and signed by the duly authorized representatives of the *State* and the *Contractor*.

9. Termination of Agreement

A. Termination at Will

The *Board* may in its discretion terminate this *Agreement* at any time without good cause upon giving ninety (90) days written notice to *Contractor* prior to said termination date. *Contractor* may terminate this *Agreement* without good cause upon giving two hundred seventy (270) days written notice to the *Board* prior to said termination date.

B. Termination For Cause

In the event that *Contractor* materially breaches the terms of this *Agreement*, the *Board* may without prejudice to any of its other legal remedies terminate this *Agreement* upon sixty (60) days written notice to *Contractor* and be relieved of the payment of any amount due to *Contractor* for *Work* performed prior to the date of such termination, except as provided in subparagraph “D” below. Alternatively, the *Board* may, in its sole discretion, provide *Contractor* with time to cure any breach.

Contractor’s management and financial capability, including, but not limited to, audit reports and performance, may be cause for a decision to terminate this *Agreement* pursuant to this subparagraph.

In the event this *Agreement* is terminated for cause, the *Board* may proceed in any manner it deems proper. *Contractor* shall be compensated for satisfactory services rendered and eligible costs and expenses as provided in subparagraph “D” below; however, in its discretion, the *Board* may deduct from any sum due to *Contractor* under this *Agreement*, all expense, damage or other harm incurred by the *Board* or its agents as a result of *Contractor’s* failure to perform its obligation under this *Agreement*.

C. Termination – Bankruptcy

In the event proceedings in bankruptcy are commenced against the *Contractor*, it is adjudged bankrupt, or a receiver is appointed, the *Board* may terminate this *Agreement* by giving five days notice in writing to the *Contractor*.

D. Responsibility of Parties Upon Expiration or Termination of Agreement

Upon expiration or termination of this *Agreement*, *Contractor* shall provide reasonable transition assistance as requested by the *Board* to the *Board* and any entity designated by the *Board* to ensure that the functions of the *EEU* are continuously carried out without interruption. In such event, *Contractor* agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder.

Upon termination or expiration of this *Agreement*, the *State* shall pay the *Contractor*, pursuant to the compensation terms set forth in Attachment B to this *Agreement*, for all satisfactory services rendered and eligible costs and expenses prior to the notice of termination and until the end of the termination notice period. The *State* shall also pay *Contractor* for all reasonable services rendered and costs and expenses incurred by the *Contractor* subsequent to termination, but only for reasonable transition assistance which could not, by reasonable efforts of the *Contractor*, have been avoided.

All records and data related to *Work* performed under this *Agreement* in the possession of the *Contractor* and its subcontractor(s) shall be made available and turned over to the *Board* or its designated representative upon the expiration or termination of the *Agreement*, at the *Board's* or the *Contract Administrator's* request. These transfers shall be accomplished no later than ten (10) working days after the dates of notification to the *Contractor* to transfer the data and documents. However, the *Contractor* and its subcontractor(s) must be provided with any records and data that it will need to undertake any transition assistance after these records and data have been turned over to the *Board*.

10. Committed Incentive Payments

It is expected that, on the expiration or termination date of this *Agreement*, the *Contractor* will have outstanding contracts for customer incentive payments. The *Contractor* shall be relieved of those obligations, and responsibility for them will be assigned to the new entity serving as the *EEU*.

11. Notifications Required Under this Agreement

Correspondence and transmittals of formal notifications, requests, reports or other documents concerning this *Agreement*, to be effective, shall be addressed to the respective persons as follows:

<i>Contractor</i>	Beth Sachs Executive Director, <i>VEIC</i> 255 South Champlain Street Burlington, VT 05401-4717 802-658-6060 Fax 802-658-1643
<i>Contract Administrator</i>	Michael Wickenden 446 Tenney Hill Road Hyde Park, VT 05655 802-888-6231 Fax 802-888-3365

The *Board* may change its contact person at any time upon written notice to the *Contractor*. The *Contractor's* contact person shall not be changed without written approval from the *Contract Administrator*, which approval shall not be unreasonably withheld. Each submittal to be approved under this *Agreement* shall be transmitted to the *Contract Administrator*.

12. Reporting Requirements

The *Contractor* shall provide progress reports to the *Board*, *Contract Administrator*, *Fiscal Agent*, *DPS* and any other entity designated by the *Board* according to the schedule, formats, information and data, and other requirements set forth in and developed pursuant to Attachment A to this *Agreement*. The *Contractor* shall work cooperatively with the *Board*, the *Contract Administrator*, the *Fiscal Agent*, the *DPS* and any other entities designated by the *Board* to develop appropriate formats for the *EEU's* required reports under this *Agreement*. All written reports must be printed using both sides of the paper.

13. Insurance

Before commencing *Work* on this *Agreement*, the *Contractor* shall provide Certificates of Insurance to show that the following minimum coverages are in effect. It is the responsibility of the *Contractor* to maintain current Certificates of Insurance on file with the *State* through the term of this *Agreement*.

Workers Compensation: With respect to all operations performed under this *Agreement*, the *Contractor* shall carry workers compensation insurance in accordance with the laws of the *State*.

General Liability and Property Insurance: With respect to all operations performed under this *Agreement*, the *Contractor* shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises – Operations
- Independent Contractors' Protective
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability.

The policy shall be on an occurrence form and limits shall not be less than:

- \$5,000,000 Per Occurrence
- \$5,000,000 General Aggregate
- \$1,000,000 Products/completed products aggregate
- \$50,000 Fire Legal Liability.

The *Contractor* shall require all subcontractors to carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises – Operations
- Independent Contractors' Protective
- Products and Completed Operations (where appropriate)
- Personal Injury Liability
- Contractual Liability.

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Per Occurrence
- \$1,000,000 General Aggregate
- \$1,000,000 Products/completed products aggregate (where appropriate)
- \$50,000 Fire Legal Liability.

Automotive Liability: The *Contractor* shall carry automotive liability insurance covering all motor vehicles, no matter the ownership status, used in connection with this *Agreement*. Limits of coverage shall not be less than \$1,000,000 combined single limit.

Professional Liability: Before commencing *Work* on this *Agreement* and throughout the term of this *Agreement*, *Contractor* shall procure and maintain professional liability insurance for any and all services performed under this *Agreement*, with minimum coverage of \$5,000,000.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the *Contractor* for the *Contractor's* operations. These are solely minimums that have been set to protect the interests of the *State*.

14. Independent Contractor-Relationship to Board

When performing the *Work*, the *Contractor* and its agents and employees shall be acting in an independent capacity and not as officers, employees or agents of the *Board* or *State*. Except as specifically provided herein, neither party, nor its employees, agents, or representatives, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.

In order to preserve the *Board's* quasi-judicial role, the *Contractor* shall abide by ex parte requirements substantially similar to Vermont Public Service Board Rule 2.201(E). Discussions that are administrative in nature (including those related to administration of this *Agreement*), or not related to pending contested case proceedings or issues or disputes reasonably expected to be contested before the *Board*, shall not be subject to the ex parte restrictions. The limitation on communications set forth in this Paragraph is not applicable to the *Contractor's* communications with the *Contract Administrator* and/or *Fiscal Agent*. Copies of any reports or other communications from the *Contractor* to the *Board* or vice versa shall be available to the public upon request, except to the extent that the reports or communications are exempt from the public access requirements of 1 V.S.A. §§ 315 through 320.

15. Indemnification

The *Contractor* shall indemnify, defend and hold harmless the *State* and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of the *Contractor's*, its employees' or its subcontractors' acts and/or omissions in the performance of this *Agreement*.

16. Assignment or Sublet of Contract

Contractor may assign or sublet performance of the *Work* without the approval of the *Board*, except that replacement of the key organizations Optimal Energy, Inc., or Conservation Services Group, or of the key team member(s) enumerated in Attachment F to this *Agreement* may only be made after prior written notification of the *Contract Administrator* and the *Board*. The *Board* reserves the right to reject any substitution of key personnel or the key organizations identified above within 30 days after notification.

For the purpose of administering this *Agreement*, the *Contractor* shall provide the *Contract Administrator* with a copy of any executed subcontract or subcontractor contract which is related to the *Work* and which exceeds \$10,000 in amount.

The performance of the *Work* shall be the sole responsibility of and under the sole control, management, and supervision of the *Contractor*. The *Contractor* shall be responsible for all matters involving any subcontractor engaged under this *Agreement*, including contract compliance, performance and dispute resolution between itself and subcontractor(s). *Contractor* shall be responsible for all actions of subcontractor(s) and all payments to subcontractor(s). Failure of subcontractor(s) to perform for any reason does not relieve *Contractor* of responsibility for the competent and timely performance of the *Work*. The *State* shall have no responsibility for subcontractor(s)' compliance, performance, or dispute resolution hereunder. *Contractor* shall include in all subcontract agreement(s) a tax certification in a form that is substantially identical to that required for *Contractor* by Attachment B of this *Agreement* as well as all other notices to and requirements of subcontractor(s) required by this *Agreement*.

17. Records Available for Audit and Inspection

The *Contractor* shall maintain all books, documents, payroll papers, accounting records and other evidence pertaining to the costs it incurs under this *Agreement*, in accordance with Generally Accepted Accounting Principles consistently applied, and make them available at reasonable times during the period of this *Agreement* and for three (3) years thereafter for inspection by the *Board*, *Contract Administrator*, *Fiscal Agent*, *DPS* or any other authorized representative of the *State*, or agents of the federal government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit finding involving the records has been resolved. *Contractor* shall include in its subcontract(s) a provision that states that the subcontractor(s)' records and personnel related to the *Work* shall be subject to audit and examination during the term of this *Agreement* and for a period of three years after final payment under the relevant subcontract(s). *Contractor* shall cooperate with the *Contract Administrator* and *Fiscal Agent* to develop a standard format and documentation for information and records and a process to implement the requirements of this Paragraph.

The fact that such inspection or monitoring is undertaken shall in no way relieve the *Contractor* of its obligations to properly perform its duties in accordance with this *Agreement* nor from *Contractor's* full responsibility and liability for damages or loss caused by *Contractor*, its subcontractor(s), employees or agents. *Contractor's* obligations under this

Paragraph shall be continual and shall not be affected by the *Contract Administrator's* or *Fiscal Agent's* acceptance of an invoice from *Contractor*.

18. Inspection of Work by Board

The *Board*, by its *Contract Administrator*, *Fiscal Agent*, or any other authorized representative, and the *DPS* shall have the right at all reasonable times, to inspect, monitor, or otherwise evaluate the *Work*. The *Contractor* shall provide the above entities with any relevant information requested and shall permit access to its premises, upon reasonable notice, during normal business hours for all relevant purposes including, but not limited to, interviewing employees (including those of subcontractor(s)) and inspecting and/or copying such books, records, accounts, work papers, equipment and products, and any and all other materials that may be relevant to *Contractor's* performance of the *Work*. *Contractor* shall include in its subcontract(s) a provision that indicates that the subcontractor(s)' records, information, equipment, personnel and all relevant materials related to *Work* performed under this *Agreement* shall be subject to inspection during the term of this *Agreement*. *Contractor* shall cooperate with the *Contract Administrator*, *Fiscal Agent*, *DPS*, or other authorized representative designated by the *Board* to develop the process and requirements to implement the requirements of this Paragraph.

The fact that such inspection or monitoring is undertaken shall in no way relieve the *Contractor* from its obligations to properly perform its duties in accordance with this *Agreement* nor from *Contractor's* full responsibility and liability for damages or loss caused by *Contractor*, its subcontractor(s), employees or agents.

19. Ownership of Data, Records and Intellectual Property

A. Data

All data obtained by *Contractor* or any of its subcontractor(s) in the course of performing the duties outlined in this *Agreement* shall be the property of the *State* and available to the *Board* and its designated representatives for the oversight of this *Agreement*.

B. Work Product

All products of the *Contractor's* and its subcontractor(s)' *Work* including logos, trademarks, service marks, data, communications and records originated, developed or prepared by the *Contractor* or its subcontractor(s), or jointly by the *Contractor*, subcontractor(s), and the *Board* or its agents pursuant to this *Agreement*, including but not limited to papers, outlines, drawings, sketches, art work, plans, photographs, specifications, estimates, reports, charts, surveys, survey results, computer databases and spreadsheets and other similar documentation, and any *Work* product determined by the *Board* to be necessary to the success of the programs approved for implementation by the *EEU* shall be delivered to and shall become the exclusive property of the *State* and may be copyrighted by the State. The preceding sentence shall not apply to *Customized Software*, *Contractor's* and its subcontractor(s)' administrative communications, and attorney-client communications between the *Contractor* and its subcontractor(s) and its

attorneys. Other than *Customized Software*, *Contractor* and its subcontractor(s) may not copyright or resell the above *Work* product.

C. Equipment and Materials Provided by or for Use by State

All property, equipment or materials purchased directly by the *State*, or furnished to the *Contractor* by the *State*, under this *Agreement* is provided on a loan basis only and remains the sole property of the *State*. Property or equipment purchased by *Contractor* to perform this *Agreement* shall be the sole property of the *Contractor* unless specified otherwise in this *Agreement*.

Contractor agrees that all products and services used to perform this *Agreement*, including computer software, hardware and program products other than *Customized Software*, must be currently manufactured and available for general sale, lease or license on the date of consummation of or during the term of this *Agreement*.

In addition, during the term of this *Agreement*, the *State* reserves the right to use any of the equipment purchased and/or materials or programs developed by the *Contractor* or any of its subcontractor(s) to perform this *Agreement*, excluding equipment and/or material in the possession of the *Contractor* or any of its subcontractor(s) prior to the execution of this *Agreement*, and also excluding equipment, materials or programs purchased by the *Contractor* that *Contractor* uses jointly in connection with the *Work* and with *Contractor's* other activities.

The parties agree that the *Contractor* shall capitalize certain equipment and software (such capitalized costs to be amortized on a straight-line basis in accordance with Generally Accepted Accounting Principles consistently applied) purchased or placed in service solely for purposes of carrying out the *Work*, and that the amortization period for this equipment and software will end on December 31, 2002. Upon termination of this *Agreement* prior to December 31, 2002, the *State* shall pay the *Contractor* for any of this capitalized equipment or software at its then book cost (original cost less accumulated amortization).

Customized Software shall remain available for use by the *State* for the entire term of this *Agreement*, and may, at the *State's* discretion, upon expiration or termination of this *Agreement* be retained in perpetuity via a licensing agreement provided by *Contractor* and/or its subcontractor(s) without charge for use in performance of the functions of the *EEU* within the *State*.

D. Research Reports or Similar Publications

Any research report, conference presentation, journal paper or similar other publication prepared or released in written form by the *Contractor* or any of its subcontractor(s) that identifies the *EEU* or relies on data acquired from the *Contractor's* or its subcontractor(s)' performance of this *Agreement* shall be reviewed and approved by the *Contract Administrator* prior to release. The *Contract Administrator* shall not unreasonably withhold or delay such approval.

E. Extension to Subcontractor(s) and Others

Contractor shall obtain written statements from anyone it employs or contracts with to perform the *Work* that they understand and agree to be bound by the terms of this Paragraph. The *Contractor* shall obtain a separate Certificate of Acknowledgement, signed by any subcontractor who has ownership rights to *Customized Software* referenced in this Paragraph, stating that it shall comply with the terms of this Paragraph, and *Contractor* shall provide a copy of such Certificate to the *Board*.

F. Paragraph 19 Survives Expiration or Termination of This Agreement

The terms of Paragraph 19 shall continue in effect after the expiration or termination of this *Agreement*.

20. Permits, Laws, Regulations and Public Ordinances

Contractor shall secure and pay for all permits and licenses required to perform the *Work*, shall comply with all applicable federal, *State* and local laws, regulations, and ordinances governing the performance of the *Work*, and shall indemnify, defend, and save the *State* harmless from any and all liability, fine, damage, cost and expense arising from *Contractor's* failure to do so.

21. Conflict-of-Interest Provision

Contractor and its subcontractor(s) may engage in business activities, other than those described directly below, as long as these activities do not create a conflict of interest with the performance of the *Work*. *Contractor* also affirms that it, its applicable employees and subcontractor(s) shall promptly and fully inform the *Board* of any business activities and/or relationships which any person, fully acquainted with the circumstances, could reasonably conclude might unfairly disadvantage another party, and agree that they shall abide by the *Board's* reasonable determination as to whether such activities or relationships fall within the terms of this Paragraph.

Contractor affirms that neither it, nor any of its applicable personnel or subcontractor(s), have or presently expect any beneficial, contractual or business relationship with the *Contract Administrator* or *Fiscal Agent* that will be directly affected by the *Contractor's* performance of the *Work*. *Contractor* further affirms that it and its applicable personnel and subcontractor(s) shall not develop, pursue, or confirm any such beneficial, contractual, or business relationships with the *Contract Administrator* or the *Fiscal Agent* throughout the term of this *Agreement*, and for 6 months thereafter, without the written permission of the *Board*.

The *Contractor's* subcontractor(s) may work for distribution utilities, the *DPS*, or other parties that appear in proceedings before the *Board*. The *Contractor* shall require its subcontractor(s) to disclose to the *Contractor*, on an on-going basis throughout the term of their contracts with the *Contractor*, any contracts they enter into with any distribution utilities, the *DPS*, or other entities that appear in proceedings before the *Board*.

22. Legislative Testimony

The *Contractor* may provide legislative testimony on energy efficiency issues as the *EEU*. It is anticipated that the *Contractor* may also provide legislative testimony on energy efficiency and other issues in its capacity as *VEIC*. In order to prevent confusion regarding whether legislative testimony is being presented on behalf of the *EEU* or on behalf of *VEIC*, the parties agree to the following guidelines:

- A. Whenever the *Contractor* is requested to provide legislative testimony in its capacity as the *EEU*, it shall notify the *Contract Administrator*. This notification shall include the name of the Committee requesting the testimony, the date and time the testimony is scheduled, and the specific topic to be discussed. Following the hearing, the *Contractor* shall provide the *Contract Administrator* with a copy of any written materials specifically developed for, and handed out at, any appearance;
- B. Any person testifying at the legislature on behalf of *VEIC* or the *EEU* shall state on the record at the beginning of his/her testimony which entity he/she is representing;
- C. The *EEU's* Managing Director shall not provide legislative testimony on behalf of *VEIC*. *VEIC's* Executive Director shall not provide legislative testimony on behalf of the *EEU*; and
- D. Any person testifying at the legislature on behalf of *VEIC* or the *EEU* shall not provide testimony that would, in the reasonable judgment of the *Contract Administrator*, diminish the *Contractor's* effectiveness as the *EEU*.

23. Appearance in Board Proceedings

The *Contractor* may not intervene as *VEIC* in any *Board* proceedings that directly relate to the *EEU's* operation. With the permission of the *Contract Administrator*, the *Contractor* may participate as *VEIC*, or provide expert testimony as *VEIC* on behalf of other parties, in *Board* proceedings not directly related to the *EEU's* operation. The *Contractor* may request guidance from the *Contract Administrator* regarding whether a particular proceeding is directly related to the *EEU's* operation.

The *Contractor* may be required by the *Board* (on its own initiative, or at the request of a party) to provide expert testimony in *Board* proceedings, although such testimony is expected to be required infrequently, if at all.

24. Retail Sales Restriction

Contractor shall be independent from any Vermont electric or gas utility, and from any other agency of the *State*, and from any entity providing electric power to Vermont's distribution utilities during the term of this *Agreement*. This does not preclude the *Contractor* from entering into contracts under which either party would provide energy efficiency-related services. Any such contract or set of contracts constituting a commitment of \$5,000 or more in any calendar year shall be entered into only after prior notice to, and opportunity to object by, the *Contract Administrator*.

Contractor further agrees that it shall not sell electric energy at retail in the *State* prior to the expiration or termination of this *Agreement*, nor for a period of one year thereafter. The *Contractor* shall require its subcontractor(s) to agree not to sell electric energy at retail in the *State* prior to the expiration or termination of the subcontractor(s)' contract with the *Contractor*, nor for a period of one year thereafter. *Contractor* shall require its subcontractor(s) to agree in writing that subcontractor(s):

(i) shall not disclose non-public Vermont market information to any affiliate of subcontractor(s) which, during the term of the subcontractor(s)' contract with the *Contractor* and for a period of one year thereafter, is engaged in selling, or may sell, electric energy at retail in the *State* ("Competitive Affiliate"); and

(ii) shall not utilize any employee of such Competitive Affiliate to perform services under this *Agreement*.

25. Use of EEU's Name

The *EEU*'s official name shall be "SavEnergy" or such other name as the *Board* may approve after consultation with the *Contractor*. This is the name that shall appear on all *EEU* marketing materials. The *Contractor* and its subcontractor(s) shall use only the official name of the *EEU* when providing *EEU* services and making public representations on behalf of the *EEU*. The name(s) of the *Contractor's* firm, subcontractor(s) firm, or their affiliate(s)' firms shall not appear on any *EEU* marketing materials or other *EEU* documents provided to Vermont ratepayers or trade allies.

The *Contractor* or its subcontractor(s) may use the official *EEU* name for *EEU* purposes only, except that they will not be precluded from including their work with the *EEU* in their individual companies' project lists, or from describing their work with the *EEU* to other potential employers. The preceding paragraph is intended to prevent confusion among Vermont ratepayers and trade allies: the *EEU* shall have one name and one identity that will be the only name and identity used by individuals and firms when they are providing *EEU* products and services.

26. No Gifts or Gratuities

Contractor, its employees, agents or subcontractor(s) shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the *State*, the *Contract Administrator* or the *Fiscal Agent* during the term of this *Agreement*.

27. Fair Employment Practices and American Disabilities Act

Contractor agrees to comply with the requirements of Title 21, V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. *Contractor* shall also ensure, to the full extent required by the Americans With Disabilities Act of 1990, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the *Contractor* under this *Agreement*. *Contractor* further agrees to include this provision in all of its subcontracts.

28. Force Majeure

Either party's performance of any part of this *Agreement* shall be excused to the extent that it is hindered, delayed or otherwise made impractical by reason of flood, riot, fire, explosion, war, acts or omissions of the other party or any other cause, whether similar or dissimilar to those listed, beyond the reasonable control of the non-performing party. If any such event occurs, the non-performing party shall make reasonable efforts to notify the other party of the nature of such condition and the extent of the delay and shall make reasonable, good faith efforts to resume performance as soon as possible.

29. Severability

If any provision of this *Agreement* shall be adjudged to be invalid, then that provision shall be deemed null and void and severable from the remaining provisions, shall in no way affect the validity of this *Agreement*, and the remaining provisions shall be integrated so as to give the greatest effect thereto.

30. Survival of Requirements

Unless otherwise authorized in writing by the *State*, the terms and conditions of this *Agreement* shall survive the performance period and shall continue in full force and effect until the *Contractor* has completed and is in compliance with all of the requirements hereof. Any confidentiality requirements set forth in or developed pursuant to this *Agreement* and any software licensing agreement contemplated under Paragraph 19.C of this *Agreement* shall continue after the expiration or termination of this *Agreement* in perpetuity.

31. Waiver

Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

32. Applicable Law

This *Agreement* shall be governed by the laws of the *State* of Vermont.

33. Entire Agreement

This *Agreement* with the following Attachments represents the entire *Agreement* between the parties relating to the subject hereof. All prior agreements, representations, statements, negotiations, and understandings are merged herein and shall have no effect. This *Agreement* consists of the following documents totaling 478 pages listed in order of precedence from highest to lowest:

Table of Contents: (6 pages)

Main Body of the *Agreement* : (15 pages)

Attachment A: Scope of Work (13 pages)

Attachment B: Compensation, Payment, and Performance Provisions (7 Pages)

Attachment C: Performance Incentive Mechanism (15 pages)

Attachment D: Calculation of Total Cap (1 page)

Attachment E: Estimated Budget as of 3/1/00 (1 page)

- Attachment F: List of Key Personnel (1 page)
- Attachment G: Sections A – I of the Response (366 numbered pages)
- Attachment H: The RFP, excluding its Attachments (53 pages)

The above Attachments are hereby incorporated into this *Agreement* and made a part hereof for all purposes. If there is any conflict between the terms of these documents, the order of precedence indicated above shall be controlling, except that the Table of Contents shall have no substantive effect.

**WE THE UNDERSIGNED PARTIES AGREE
TO BE BOUND BY THIS CONTRACT.**

By the STATE OF VERMONT

**by Vermont Energy Investment
Corporation**

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: Michael H. Dworkin

Name: Beth Sachs

Agency: Public Service Board

Fed. ID #: 03-0304418