



# Reference Guide for Project Proponents on the Cost Recovery of Environmental Assessment Review Panels



# **Reference Guide for Project Proponents on the Cost Recovery of Environmental Assessment Review Panels**



**March 2000**



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# 1. INTRODUCTION

## 1.1 PURPOSE OF THE GUIDE

This reference guide has been prepared to inform project proponents and other interested parties about the federal government's Cost Recovery and Charging Policy and the Canadian Environmental Assessment Agency's (the Agency) procedures for recovering costs related to the provision of certain services by environmental assessment review panels established under the *Canadian Environmental Assessment Act* (the Act).

The Guide:

- presents background information on the federal government's policy on cost recovery and charging;
- reviews the scope and applicability of cost recovery charges for environmental assessment review panel services;
- summarizes the panel costs that are covered by the policy;
- explains the role of the Agency in administering the policy;
- reviews the role of the Service Level Agreement between the Agency and proponent; and
- outlines the Agency's approach to monitoring implementation of the cost recovery policy to ensure that the implementation remains fair and effective.

## 1.2 THE FEDERAL GOVERNMENT'S POLICY ON COST RECOVERY AND CHARGING

The recovery of costs of certain services provided to project proponents during environmental assessment review panels is part of a broader initiative of the federal government to introduce greater efficiency, fairness and accountability into the provision of federal services.

Work on a cost recovery policy for environmental assessment review panel services began in 1995, when the federal budget instructed the Minister of the Environment to "develop in consultation with concerned ministers, provinces and stakeholders, proposals for recovering all costs attributable to environmental assessments as well as options for streamlining procedures and timelines for the environmental assessment process." In response,

the Agency led an interdepartmental effort to look at the costs of federal environmental assessments, examine opportunities to recover certain costs and make the process more efficient. Public consultations were held across Canada in 1996 with business interests, Aboriginal and environmental groups, and provincial and federal departments and agencies.

In 1997, the federal government approved a general Cost Recovery and Charging Policy for services provided by the federal government. The policy allows fees to be charged for direct services that provide identifiable recipients with benefits beyond those received by the general public. The policy also provides for the regular review of the initiative and an evaluation of its effects on competitiveness.

The Minister of the Environment approved guidelines on Procedures for an Assessment by a Review Panel and the *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements*, both designed to introduce greater efficiency and predictability into the federal environmental assessment process.<sup>1</sup>

In August 1998, the *Environmental Assessment Review Panel Service Charges Order* (the Charges Order) received Governor-in-Council approval and was published in the *Canada Gazette, Part II*. The Charges Order (Appendix 1) gives the Minister of the Environment legal authority to recover certain costs incurred by the Agency for review panels.



<sup>1</sup> Copies of the Ministerial Guidelines and *Federal Coordination Regulations* may be obtained from the Agency or through its Web site, [www.ceaa.gc.ca](http://www.ceaa.gc.ca).

## 2. COST RECOVERY FOR ENVIRONMENTAL ASSESSMENT REVIEW PANEL SERVICES

The Charges Order seeks to establish a fair, transparent and accountable system for cost recovery of environmental assessment review panel services by ensuring:

- only the costs directly attributable to the conduct of the assessment are able to be recovered from the proponent (indirect costs such as overhead, general administration and ministerial support services are not recoverable by the Agency);
- a cost estimate document (Service Level Agreement) is signed by the Agency and the proponent after the referral of the project to the review panel;

- costs incurred by the review panel are carefully tracked and reported, and may be verified by an independent third-party audit; and
- a clearly defined mechanism is in place to resolve disputes about costs in a fair and timely manner.

The Agency will manage all cost recovery initiatives for panel reviews, independent of the panel.

### 2.1 WHEN DOES COST RECOVERY APPLY?

Under the Charges Order, cost recovery applies to a project when the trigger for an environmental assessment under the Act is a *land transfer* [paragraph 5(1)(c) of the Act], a *regulatory decision* [paragraph 5(1)(d)], or both.

Cost recovery under the Charges Order *does not* apply when the project proponent is a federal authority, a province, a territorial government (i.e. Northwest Territories and the Yukon) or a band council under the *Indian Act* [paragraph 5(1)(a)]. The Charges Order, however, does apply to Crown corporations. Where the involvement of the federal government is limited to the provision of funding [paragraph 5(1)(b)], the Agency will not recover costs from the project proponent who is receiving the funding. Instead, the Agency will recover costs from the funding department in accordance with the Treasury Board Policy on Interdepartmental Charging.

The Agency's share of costs for review panels conducted jointly with a jurisdiction other than a federal authority is recoverable by the Agency under the Charges Order. For instance, costs associated with a federal-provincial joint panel are recoverable; however, a federal-federal joint panel is excluded from cost recovery. These assessments, referred to as joint or harmonized panel reviews, are the subject of agreements that define the roles and responsibilities of each jurisdiction and cost recovery will be integrated into these agreements.

Costs associated with review panels conducted under the environmental assessment process of another regime (such as the Inuvialuit Impact Review Board), known as substitute review panels, are not recoverable under the Charges Order (although certain regimes may have their own cost recovery authorities).

## 2.2 WHAT COSTS ARE COVERED BY THE POLICY?

The scope of the Cost Recovery and Charging Policy is based on the beneficiary of the services. The costs of any goods or services that benefit the general public are not recoverable by the Agency. However, the costs of any goods or services provided by the Agency are recoverable if they provide a direct benefit to a specific group, such as a project proponent, beyond any benefit enjoyed by the general public.

In the case of reviews, only direct, actual costs incurred by the Agency *during* the panel's operations are eligible for recovery. That is, the Agency cannot recover the cost of any services provided *before* a review panel has been appointed by the Minister of the Environment, (such as the Agency's activities to coordinate various federal authorities, or the negotiation of agreements) or *after* the panel has submitted its final report to the Minister (unless the federal government requests the panel to clarify its recommendations).

### Table 1

#### Applicability of the Cost Recovery and Charging Policy to Environmental Assessment Panel Review Services

| Costs Covered by the Policy <sup>2</sup>   | Costs Not Covered by the Policy   |
|--|---|
| <p>All goods and services in <i>direct</i> support of a review panel, including:</p> <ul style="list-style-type: none"> <li>• panel member fees;</li> <li>• Agency salaries and benefits (including regional staff);</li> <li>• analysis fees;</li> <li>• travel and accommodations;</li> <li>• publication and printing;</li> <li>• translation;</li> <li>• distribution;</li> <li>• telecommunications;</li> <li>• public hearing / meeting room facilities;</li> <li>• simultaneous translation and transcription;</li> <li>• court reporting and sound systems;</li> <li>• information office facilities;</li> <li>• communications;</li> <li>• public notice, announcement and release costs; and</li> <li>• costs incurred when a review panel is asked to clarify recommendations in its final report [paragraph 37(1.1)(b) of the Act].</li> </ul> | <p>Any good or service that provides a direct benefit to the public, including:</p> <ul style="list-style-type: none"> <li>• preparing briefing notes for the Minister and / or Agency executive;</li> <li>• responding to parliamentary inquiries and Ministerial correspondence;</li> <li>• negotiating joint review panel agreements with provinces and other jurisdictions;</li> <li>• developing cost recovery arrangements with project proponents or other jurisdictions;</li> <li>• maintaining the Participant Funding Program, including committee member fees and awards to recipients;</li> <li>• activities undertaken prior to the review panel appointment; and</li> <li>• activities undertaken after the panel report has been submitted (e.g. assisting in developing the federal government's response to the panel report, conducting project-related follow-up activities).</li> </ul> |

<sup>2</sup> The Goods and Services Tax (GST) or Harmonized Sales Tax (HST) are also applicable.



Table 1 summarizes the types of costs associated with panel reviews that are eligible for recovery by the Agency. It also lists many of the common goods and services provided during a panel review that are not recoverable by the Agency.

The costs of many of the services covered by the Cost Recovery and Charging Policy, such as panel member fees, support staff salaries, travel, printing and distribution, can be determined in advance of the panel review by using the prescribed fees and rates listed in the Charges Order. The costs of other services, such as technical experts and the translation of documents and proceedings into Aboriginal languages, may be more difficult to determine before the panel review is initiated, because they depend largely on the location and complexity of the project.

The Service Level Agreement will provide a budget estimate of actual costs under the Charges Order and additional charges for special services that can only be ascertained after a review panel has been established. Should circumstances arise that require a major change in the budget estimate, such as a significant extension of timelines for additional meetings, the Agency will negotiate with the proponent, should these costs fall outside the fee schedule of the Charges Order. The need for additional time and services would be determined by the panel in accordance with applicable legal and administrative arrangements.

## 2.3 THE ROLE OF THE CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY

The Agency is responsible for:

- coordinating and managing the recovery of costs of panel reviews;
- ensuring that appropriate accounting, cost tracking and reporting mechanisms and capacities are in place;
- monitoring the implementation of the cost recovery procedures to ensure that they conform with the Charges Order and the Treasury Board Cost Recovery and Charging Policy; and
- responding to concerns expressed by industry, environmental groups, Aboriginal groups and federal departments regarding cost recovery of environmental assessments.

## 2.4 THE SERVICE LEVEL AGREEMENT

The Agency uses a Service Level Agreement as the mechanism to develop cost recovery arrangements with project proponents. The agreement supports an open, predictable and accountable cost recovery process by describing the services to be rendered and providing an estimate of all direct incurred costs that are to be recovered. The agreement is signed by senior representatives of the Agency and the proponent. A sample Service Level Agreement is provided in Appendix 2.

The budget estimate outlined in the agreement is based on a range of factors and assumptions, including the location of the project, the panel's Terms of Reference and other elements of the project or review as appropriate. Changes in these assumptions, or other unforeseen circumstances, may affect both the timeline and costs of the panel review. The agreement is designed to allow modifications to the budget to accommodate such changes as determined by the panel.

## 2.5 PANEL REVIEW PHASES

There are three distinct phases to the environmental assessment panel review process (see Figure 1).

### Phase I: Pre-Referral

Phase I, or pre-referral, involves activities undertaken by the Agency prior to the referral of the project to a review panel. During this phase, the Agency will prepare for cost recovery while it is preparing for the upcoming panel review. Preparations include ensuring the coordination of federal authorities that need to be involved in the assessment, establishing internal financial procedures such as financial codes and time-tracking systems, and preparing a preliminary budget estimate as part of a draft Service Level Agreement.

Cost recovery does not apply to services provided by the Agency during this phase.

### Phase II: Environmental Assessment Review Panel

During this phase of the environmental assessment, the panel may conduct public hearings before issuing the guidelines outlining the issues to be

addressed by the proponent in its Environmental Impact Statement (EIS). After the proponent submits the EIS, the panel will hold further public hearings and then write its report.

When a project has been officially referred to a review panel, the Agency has authority to initiate cost recovery. The Agency will develop and sign a Service Level Agreement with the proponent. Throughout the review, the Agency will track the direct costs incurred by the review panel that are covered under the Service Level Agreement and issue quarterly invoices to the proponent.

### Phase III: Post-Review

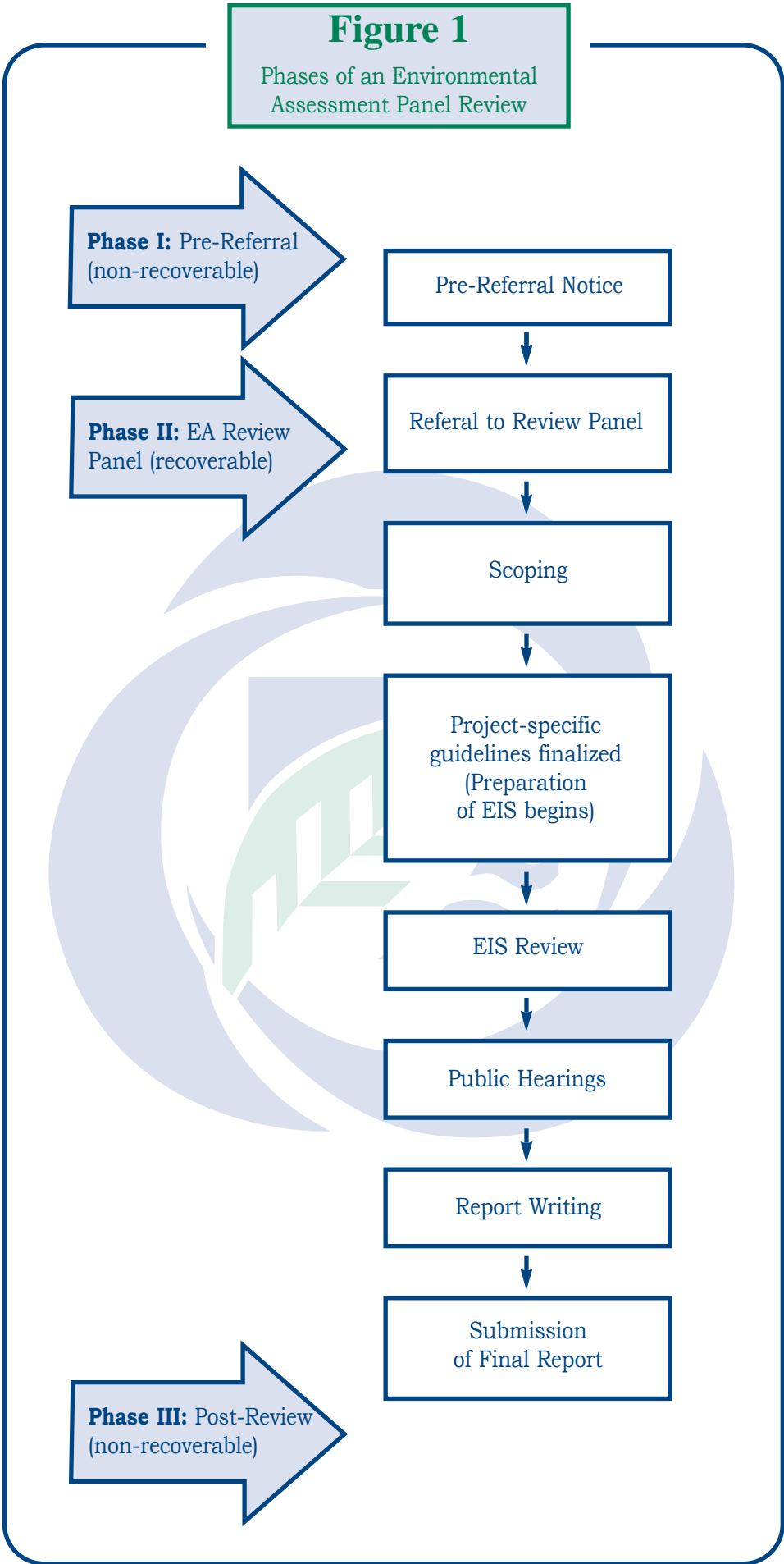
On submission of the review panel's report to the Minister of the Environment, the work of the panel is complete and cost recovery for services no longer applies. However, should the federal government ask the panel to clarify its recommendations after the final report has been submitted, panel costs associated with this task are subject to recovery by the Agency.

At this time, the Agency will collect all final expenditure information, close professional time accounts and submit its final invoice to the proponent.

## 2.6 SETTLEMENT OF DISPUTES

Any disagreement about cost recovery should be resolved in a fair and timely manner, and must not delay the environmental assessment. As a first step, the project proponent and the Agency should seek to resolve a dispute informally. Should the

dispute remain unresolved after informal discussions, the project proponent has recourse to a dispute settlement process. The process is outlined in the Service Level Agreement signed by the Agency and the project proponent (Appendix 2).



### 3. A COMMITMENT TO IMPROVEMENT

**U**nder the Treasury Board's Cost Recovery and Charging Policy, regular reviews of federal government cost recovery policies and procedures must be conducted to:

- assess whether existing fees are consistent with current cost structures (and that effective consultations are undertaken when fees need to be modified);
- review the balance of private and public benefits, and adapt the cost recovery mechanism as necessary; and
- determine if service levels have been altered and if this will have any impact on user fees.

The Agency is committed to working with industry on an on-going basis to monitor implementation of the cost recovery procedures for environmental assessment review panels, and identify opportunities for improvement.



## 4. FOR MORE INFORMATION

**M**ore information on the federal government's Cost Recovery and Charging Policy can be found on the Treasury Board Secretariat Web site at [www.tbs-sct.gc.ca](http://www.tbs-sct.gc.ca).

A copy of the *Environmental Assessment Review Panel Service Charges Order* is available in Appendix 1 and at the following Web address: [www.canada.gc.ca/gazette/part2/current/g2-13219.pdf](http://www.canada.gc.ca/gazette/part2/current/g2-13219.pdf).

For more information on the Agency's cost recovery procedures, contact:

Director, Project Assessment  
Canadian Environmental Assessment Agency  
200 Sacre-Coeur Blvd, 13<sup>th</sup> Floor  
Hull, Quebec K1A 0H3  
(819) 953-5044



## APPENDIX 1

### ENVIRONMENTAL ASSESSMENT REVIEW PANEL SERVICE CHARGES ORDER

The Environmental Assessment Review Panel Service Charges Order (“the Charges Order”) was made by the Minister of the Environment under Order in Council P.C. 1998-1495. It was registered as SOR/98-443 on 26 August 1998 and came into force on that day. This Appendix contains an unofficial version of the Charges Order. The official version was published in Part II of the *Canada Gazette* (Volume 132, No. 19) on 16 September 1998.

## Environmental Assessment Review Panel Service Charges Order

### Interpretation

1. The definitions in this section apply in this Order.

“**Act**” means the *Canadian Environmental Assessment Act*. (*Loi*)

“**Agency**” means the Canadian Environmental Assessment Agency established by section 61 of the Act. (*Agence*)

“**charges**” means all charges for services, including per diem fees for the review panel members, travel costs and other operating costs attributable to a review panel. (*prix*)

“**project**” means a project for which an environmental assessment is required under the Act. (*projet*)

“**proponent**”, in respect of a project, means the person or body that proposes a project referred to a review panel under the Act. (*promoteur*)

“**review panel**” means a body established pursuant to section 33 of the Act to conduct an environmental assessment of a project and consider factors required to be considered under subsections 16(1) and (2) of the Act, and includes a review panel established pursuant to subsection 40(2) of the Act but does not include a review panel established pursuant to an agreement with a jurisdiction referred to in paragraph 40(1)(a) of the Act. (*commission*)

“**services**” means environmental assessment services relating to review panels conducted pursuant to the Act. (*services*)

**Application**

2. This Order seeks to recover the direct costs incurred through a panel review conducted pursuant to the Act, but it does not apply to:

- (a) a proponent who is a federal authority within the meaning of subsection 2(1) of the Act;
- (b) projects in which the involvement of a federal authority within the meaning of subsection 2(1) of the Act is limited to the provision of funding;
- (c) a proponent who is the Commissioner in Council or an agency or body of the Yukon Territory or the Northwest Territories, the council of a band within

the meaning of the *Indian Act*, or a provincial government, except in the case of a provincial Crown corporation;

- (d) review panels whose members were appointed before the coming into force of this Order.

**Charges**

3. The charges to be paid by a proponent for a service set out in column 1 of an item of the schedule are the charges set out in column 2 of that item.

**Coming Into Force**

4. This Order comes into force on August 26, 1998.

**SCHEDULE**

**Section 3  
Charges**

| Column 1<br>Item / Services   | Column 2<br>Charges   |
|---|---|
| <p>1. Review panel members:</p> <ul style="list-style-type: none"> <li>a) panel chairperson</li> <li>b) panel member</li> </ul>                   | <ul style="list-style-type: none"> <li>a) \$650 per day</li> <li>b) \$500 per day</li> </ul>  |
| <p>2. Direct and attributable federal government employees salaries and Employee Benefit Plans (EBP), including overhead and overtime charges</p> | <p>Salary per diem based on a productivity rate of 220 days per year, plus EBP (20% of total chargeable salaries)</p>   |
| <p>3. Travel:</p> <ul style="list-style-type: none"> <li>a) regular travel services</li> <li>b) chartered services</li> </ul>                     | <ul style="list-style-type: none"> <li>a) The rates set out in the Treasury Board Travel Directive</li> <li>b) The rates set out in the <i>Catalogue for Air Charter Services</i>, published by the Department of Public Works and Government Services</li> </ul> |
| <p>4. Publication and printing (including professional desktop publishing, editing and English/French or French/English) translation</p>          | <p>The rates established in standing offers with the Department of Public Works and Government Services</p>   |
| <p>5. Distribution services:</p> <ul style="list-style-type: none"> <li>a) regular mail</li> <li>b) courier delivery</li> </ul>                   | <ul style="list-style-type: none"> <li>a) The rates of the Canada Post Corporation</li> <li>b) The rates of Purolator Courier Ltd.</li> </ul>   |

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### Section 3 Charges

|  |  |
|--|--|
| <p>6. Telecommunications (including telephone and line installation, long distance, conference and video conference services)</p>  | <p>a) In the case of federal government employees and non-federal government personnel using federal government telecommunications equipment, the rates of the Government Telecommunications and Informatics Services (GTIS) Agency</p> <p>b) In the case of non-federal government personnel using private telecommunications equipment, the tariffs as regulated by the Canadian Radio-television and Telecommunications Commission for telecommunications service providers</p> |
| <p>7. Public hearing/panel meeting facilities:</p> <p>a) hospitality</p> <p>b) simultaneous translation</p> <p>c) sound systems</p> <p>d) transcription services</p>   | <p>a) The rates of the <i>Treasury Board Manual – Employee Services, Hospitality</i>, chapter 7-1</p> <p>b) The rates established in standing offers with the Department of Public Works and Government Services</p> <p>c) The rates established in standing offers with the Department of Public Works and Government Services</p> <p>d) The rates established in standing offers with the Department of Public Works and Government Services</p>                                 |
| <p>8. Information office:</p> <p>a) stationery supplies</p> <p>b) lease of the information office</p> <p>c) rental of furniture and office equipment</p> <p>d) rental of informatics equipment</p> <p>e) panel information officer</p> | <p>a) The rates of the yearly catalogue of Lyreco Inc.</p> <p>b) The rates established in standing offers with the Department of Public Works and Government Services</p> <p>c) The rates established in standing offers with the Department of Public Works and Government Services</p> <p>d) The rates established in standing offers with the Department of Public Works and Government Services</p> <p>e) \$200 per day</p>  |



## APPENDIX 2

### SAMPLE SERVICE LEVEL AGREEMENT

**This is a sample agreement. Were this an actual Service Level Agreement, Annex A (Terms of Reference) and Annex B (Budget Estimate) would be included.**

Service Level Agreement (Draft) Respecting  
the <project name> Environmental  
Assessment Review Panel

**T**his Service Level Agreement made this XX day of  
XXXXXX, XXXX.

**BETWEEN:** The Government of Canada, represented  
by the **Canadian Environmental  
Assessment Agency** (“Agency”);

**AND:** **XXXXX Ltd.** (“Proponent”).  
 (“Parties”)

**WHEREAS** this Agreement provides for the financial  
arrangements between the Agency and the proponent for  
the operation and conduct of the <project name> envi-  
ronmental assessment review panel (“review panel”);

**WHEREAS** the review panel is established pursuant to  
section 33 of the *Canadian Environmental Assessment  
Act* or subsection 40(2) of the *Canadian Environmental  
Assessment Act*;

**WHEREAS** the Agency and the Proponent recognize that  
environmental assessment is an important environmen-  
tal management tool contributing to the goal of sustain-  
able development;

**AND WHEREAS** these arrangements are made within  
the context of the *Environmental Assessment Review  
Panel Service Charges Order*, the terms of reference of  
the review panel and the Ministerial Guideline on  
Procedures for an Assessment by a review panel, the  
Parties hereby agree as follows:

## 1.0 DEFINITIONS

In this Agreement:

“**Act**” means the *Canadian Environmental Assessment Act*;

“**Charges**” means all fees for services provided, including,  
but not limited to, per diem fees for members of the  
review panel and the review panel secretariat, travel  
expenditures, printing and publishing costs plus any  
other operating costs that are direct and attributable  
to a review panel;

“**Charges Order**” means the *Environmental Assessment  
Review Panel Service Charges Order* (SOR/98-443);

“**environmental assessment**” (hereafter “EA”) means  
an assessment of the environmental effects of a project  
conducted in accordance with the Act, or in accordance  
with a joint review panel agreement established with  
another jurisdiction pursuant to section 40(2) of the Act;

“**review panel**” means a body established pursuant to  
section 33 of the Act to conduct an environmental assess-  
ment of a project and consider factors required to be  
considered under subsections 16(1) and (2) of the Act,  
and includes a review panel established pursuant to  
subsection 40(2) of the Act but does not include a review  
panel established pursuant to an agreement with a  
jurisdiction referred to in paragraph 40(1)(a) of the Act;

“**review panel secretariat**” means the body established by the Agency that is assigned duties as described in Section 3.5 of this Agreement to assist the review panel in carrying out its duties as described in Section 3.3 of this Agreement;

“**services**” means environmental assessment services relating to the conduct of a review panel pursuant to the Act or joint agreement with a jurisdiction pursuant to section 40(2) of the Act;

“**terms of reference**” means the documents issued by the Minister of the Environment to the review panel pursuant to subsection 33(1)(b) or subsection 41(c) of the Act that prescribe the process and information requirements that will satisfy the legislated requirements for an environmental assessment, as set out in Annex A of this Agreement.

## 2.0 BACKGROUND

### 2.1 Cost Recovery Authority

**2.1.1** Governor-in-Council authority was granted to the Minister of the Environment to prescribe by Order the charges to be paid to the Agency by the Proponent of a project for the services that are provided by the Agency in the course of an EA review panel under the Act. The *Environmental Assessment Review Panel Service Charges Order* (“the Charges Order”) came into force on August 26, 1998 (SOR/98-443).

**2.1.2** The Charges Order consists of Charges that represent the actual costs in providing services during the conduct of a review panel. Annex B of this Agreement includes a budget estimate that contains these charges, plus additional charges for special services that can only be ascertained after a review panel has been established and the terms of reference are issued, as per Annex A of this Agreement.

## 3.0 REVIEW PANEL OPERATIONS

### 3.1 Establishment of the Review Panel

The review panel will be established pursuant to the Act and will conduct its operations in accordance with the Ministerial Guideline on Procedures for an Assessment by a review panel, or the procedures established in a joint review panel agreement.

### 3.2 Composition of Review Panel

The review panel will consist of individuals appointed by the Minister of the Environment under subsections 33(1)(a) or 41(a) of the Act, plus any individuals that are appointed by another jurisdiction pursuant to a joint review panel agreement.

### 3.3 Duties and Powers of the Review Panel

The duties of the review panel are set out in section 34 and section 41 for joint Review Panels of the Act and in the Terms of Reference issued by the Minister of the Environment as described in Annex A of this Agreement. The review panel will have the powers set out in section 35 of the Act.

### 3.4 Composition of the Review Panel Secretariat

The review panel secretariat is composed of various specialists and is provided by the Agency to support the review panel. Depending on the nature and current

phase of the review panel, certain members may have more involvement than others in the conduct of the review panel. Typical members and tasks of the secretariat include:

- a) **Panel Manager:** manages the secretariat, acts as the Agency liaison with the proponent, other government departments and other stakeholders, and is responsible for the delivery and coordination of the items listed in Section 3.5;
- b) **Panel Analyst:** under the direction of the panel manager, provides the review panel with technical and analytical support throughout the assessment of the project;
- c) **Information Officer:** under the direction of the panel manager, operates the regional information office of the review panel, provides liaison between the review panel and the public, maintains the public registry, answers general queries from the media and the public respecting the assessment of the project and assists the secretariat as required in the conduct of public hearings;
- d) **Administrative Officer:** under the direction of the panel manager, provides general administrative assistance and support to the secretariat such as travel and accommodation arrangements;
- e) **Communication Officer:** provides communication advice to the panel and secretariat, manages media and public relations, manages the production of the final report, and prepares public notices and communications products as required; and
- f) **Finance Officer:** assists the panel manager in developing the budget schedule for the review panel and provides financial and administrative services to the secretariat.

### 3.5 Duties of the Review Panel Secretariat

Members of the secretariat will perform the following functions and duties in direct support of the review panel:

- a) advise the review panel on the means to meet the requirements of the Act, the terms of reference issued to the review panel and the Ministerial Guideline on Procedures for an Assessment by a Public Review Panel, as appropriate;
- b) assist the review panel in producing and distributing hearing procedures and other documents associated with examining the project, as directed by the review panel;
- c) provide, or arrange, for the provision of scientific and technical advice to the review panel;
- d) draft documents, information requests and other correspondence upon the request of, and pursuant to the instructions of, the review panel;
- e) provide administrative services to the review panel;
- f) provide procedural advice to other federal departments involved in the review panel (responsible and federal authorities);
- g) provide an information office consisting of documents relating to the assessment of the project for public reference and distribution, including maintenance of the public registry;
- h) assist the review panel in preparing draft and final reports as directed by the review panel; and
- i) manage the budget and expenditures of the review panel.

## 4.0 FINANCIAL CONSIDERATIONS

### 4.1 General

**4.1.1** In accordance with this Agreement, the Agency will charge the proponent, and the proponent agrees to pay, the actual, direct costs incurred in conducting the review panel. A budget estimate is contained in Annex B of this Agreement, which provides a listing of the charges by phase of the review.

**4.1.2** All costs relating to the Participant Funding Program are excluded from this Agreement.

**4.1.3** All charges to the proponent are net of costs shared with another jurisdiction pursuant to cost sharing arrangements under a joint review panel agreement.

### 4.2 Budget Estimate

**4.2.1** The total approved budget for the conduct of the <project name> environmental assessment review panel is \$XXX,XXX as detailed in Annex B of this Agreement. This amount represents the charges to be paid by the Proponent for anticipated costs to be incurred by the Agency in providing the EA review panel services.

**4.2.2** The Agency may reallocate funds between phases and expenditure categories on condition that the total approved budget is not exceeded, and that the Agency provides a revised budget estimate to the proponent.

**4.2.3** It is understood by all parties that Annex B of this Agreement provides an estimate of the charges to be paid, and that charges will be based on actual costs that are incurred by the Agency, at rates established in the Charges Order, or in the case of charges not covered by the Charges Order, at rates equivalent to market values.

**4.2.4** It is understood by all parties that the estimates provided in Annex B of this Agreement are subject to change due to unforeseen factors which may influence the final outcome of the charges to the proponent. The degree to which the budget estimate can be affected due to unforeseen factors can vary in significance.

**4.2.5** The Agency agrees to assess the significance of new information affecting the budget estimate and revise the estimates as appropriate. In the interests of administrative efficiency, this will occur at the end of the “Scoping” phase and the “Review of the EIS” phase, as defined by the Procedures for an Assessment by a Review Panel.

**4.2.6** The Agency agrees to consult with the Proponent with respect to any proposed revisions to the budget estimate as a result of the review undertaken pursuant to Section 4.2.5. Any amendments to the budget estimate with respect to costs that fall outside the fee schedule of the Charges Order require approval of all signatory parties.

### 4.3 Invoicing

**4.3.1** The Agency will pay in advance all related costs of the review panel and subsequently charge the proponent by way of invoice.

**4.3.2** An invoice will be prepared and issued to the proponent on a quarterly basis, or monthly during the last quarter of the fiscal year. A final invoice will be prepared and issued when the review panel has completed its duties (as per Section 3.3 of this Agreement).

**4.3.3** Should the proponent decide not to proceed with the project under assessment, and hence terminate the requirement for a review panel, or should the Minister terminate the assessment by review panel, the Agency will consolidate all accrued costs up to the date of termination and prepare and issue an invoice to the proponent for payment.

**4.3.4** An adjustment invoice or reimbursement cheque will be prepared by the Agency, should discrepancies be revealed as a result of an independent audit as per Section 5 of this Agreement.

### 4.4 Payment Due

All invoices issued by the Agency to the proponent are payable 30 calendar days after the day on which demand for payment is issued, in accordance with the *Interest and Administrative Charges Regulation*. Payments not received within 30 days will be considered overdue and treated as a Debt Owing to Her Majesty (see Section 6.2).

### 4.5 Unforeseen Costs

The Parties recognize that some unforeseen costs may arise during the course of the assessment. For any direct and attributable review panel cost that is not included in the budget estimate, as per Annex B of this Agreement, the Agency agrees to negotiate with the proponent the amount to be charged for unforeseen costs, should these costs fall outside the fee schedule of the Charges Order. If the proponent is dissatisfied with any additional costs incurred due to unforeseen circumstances, the proponent has recourse to the dispute resolution mechanism in Section 6.1 of this Agreement.

### 4.6 Post Review Costs

It is recognized that some costs may not be incurred by the Agency until after the review panel has completed its work. All Parties agree that these costs will be paid by the Agency and then charged to the proponent as described in Section 4.3.2, within the budget estimate established in Annex B of this Agreement.

## 5.0 AUDIT

**5.1** Subject to this Agreement, the Agency will keep open to audit and inspection by an independent auditor, that is deemed acceptable to all parties, all invoices, receipts, vouchers, time sheets and documents of any nature or kind whatsoever that have been relied on by the Agency to calculate the cost of conducting the review.

**5.2** Any party exercising its option to audit will be responsible for the cost of the audit.

**5.3** Where an audit conducted pursuant to this Agreement reveals discrepancies regarding the amount charged by the Agency, those discrepancies will be promptly resolved and adjusted between the parties.

**5.4** Any audit under this section shall be conducted in accordance with a schedule agreed upon by all parties.

## 6.0 RECOURSE

### 6.1 Dispute Resolution Process

A dispute resolution process outlined below is available to the parties. This process is limited to resolving disputes related to the amounts billed to the proponent pursuant to this Agreement.

**6.1.1** If a dispute arises under this Agreement, the Agency and the proponent shall endeavour to settle the dispute amicably through negotiation within two weeks from the time that either party advises the other in writing of the existence of the dispute.

**6.1.2** If it becomes apparent within a two week period referred to in Section 6.1.1, that the dispute cannot be settled by negotiation, the parties agree to submit the matter to mediation as administered by a mediator to be mutually agreed upon by the parties. The cost of mediation shall be borne equally by the parties. If the Parties cannot agree on the choice of a mediator within 10 days, the matter will be referred to a neutral appointment authority who will appoint a mediator.

**6.1.3** If the parties cannot resolve the dispute through mediation within 40 days, the parties agree to submit the dispute to arbitration pursuant to the *Commercial*

*Arbitration Act* (Canada). The party requesting such arbitration shall do so by written notice to the other party. The cost of the arbitration shall be borne equally by the parties. The arbitration shall take place in [*the city where the Proponent carries on business*] before a single arbitrator to be chosen jointly by the parties. If the parties cannot agree on the choice of an arbitrator within two weeks of written notice to submit the dispute to arbitration, the matter will be referred to a neutral appointment authority who will appoint an arbitrator. The arbitrator shall issue a written award within 30 days of hearing the parties. The award may be entered in any court having jurisdiction and enforced as a judgment of that court.

### 6.2 Debt Owing to Her Majesty

All invoices for which payment is considered outstanding under Section 4.4 will be deemed a “debt owing to Her Majesty” and the Agency will avail the powers and functions in accordance with the *Interest and Administrative Charges Regulations* under the *Financial Administration Act*.

## 7.0 AMENDMENT AND TERMINATION OF AGREEMENT

**7.1** This Agreement can be amended to reflect new information that significantly affects the timing and budget forecast of the review panel, in accordance with Section 4.2.6.

**7.2** This Agreement can only be terminated under the following circumstances:

a) the Minister terminates the environmental assessment review panel under section 27 of the Act; or

b) the proponent terminates the project, and informs the Minister, the Agency and responsible authorities of its decision.

**7.3** Where there is a conflict between any provision of this Agreement and the *Environmental Assessment Review Panel Service Charges Order*, the latter shall prevail.

## 8.0 SIGNATURES

\_\_\_\_\_  
 Representative  
 Canadian Environmental Assessment Agency

\_\_\_\_\_  
 Name  
 Title  
 Company

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date

This is a sample agreement. Were this an actual Service Level Agreement, Annex A (Terms of Reference) and Annex B (Budget Estimate) would be included.