
Energy Performance Contract Attachment G To RFP



The Energy Services Coalition offers a collection of model procurement and contracting documents that represent Best Practices for state energy offices (SEOs) to launch and administer programs to increase energy efficiency through energy performance contracting. The documents draw from successful programs in various states and are continually updated to incorporate the latest strategies. They can be easily customized to meet the needs of any SEO or similar government department.

DESCRIPTION –Energy Performance Contract

This Energy Performance Contract is for design, construction, guarantee, and follow-up monitoring of energy-saving projects. An energy audit was previously completed that identified the costs and savings of each project. The audit provides the basis to develop and negotiate this Energy Performance Contract.

This is a model document only and does not attempt to identify or address all circumstances or conditions you may encounter or desire. Consult with your legal counsel and procurement staff to adapt it to meet your needs.

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Appendix B	ESCO Proposal
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MODEL ENERGY PERFORMANCE CONTRACT

This Energy Performance Contract (the "Contract") is made and entered into as of this day of _____, at _____, in the County of _____, State of _____, by and between _____ ("ESCO"), having its principal offices at _____, and _____ ("Institution") having principal offices at _____, for the purpose of installing certain energy and water cost saving equipment, described in **Schedule H (Equipment to Be Installed by ESCO)**, and providing other services designed to save energy for the Institution's property and buildings, known as _____, located at _____ (the "Project Site(s)").

RECITALS

WHEREAS, Institution owns and operates the Project Site(s), and is in need of energy and water cost saving equipment and services designed to save energy and associated energy costs at said Project Sites; and

WHEREAS, Institution has been authorized to enter into a third party financing agreement for all professional services, equipment and construction for the purchase and installation of energy and water cost savings measures, collectively referred to as the "Work" (as herein after defined); and

WHEREAS, ESCO has developed or become knowledgeable about certain procedures for controlling energy and water consumption through services provided and equipment installed and maintained at project sites similar in scope and scale of Institution; and

WHEREAS, ESCO was selected after a determination that its proposal was the most advantageous to Institution pursuant to a Request for Proposal and contract for the Technical Energy Audit and Project Development Proposal (as hereinafter defined); and

WHEREAS, ESCO has made an assessment of the utility consumption characteristics of the Project Site(s) and existing Equipment described in **Schedule G (Description of Project Site(s))**, which was delivered to Institution as a Technical Energy Audit Report which Institution has approved and is attached as Appendix C; and

WHEREAS, Institution desires to retain ESCO to purchase, install and service certain energy and water cost savings equipment and to provide other services and strategies described in the attached Schedules, for the purpose of achieving energy and water cost reductions within Project Site(s), as more fully described herein; and

WHEREAS, Institution is authorized under the Constitution and the laws of the State of _____ to enter into this Contract for the purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Institution and ESCO hereto covenant and agree that the following Schedules, Exhibits and Appendices are attached hereto (or will be, as provided in this Contract) and are made a part of this Contract by reference.

ARTICLE 1. DEFINITIONS, SCHEDULES, EXHIBITS AND APPENDICES

Section 1.1. Definitions.

Certificate of Acceptance: The certificate substantially in the form provided in **Appendix A**.

Contract: This Energy Performance Contract and all Schedules and Exhibits attached hereto.

Contract Sum: The sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency, subcontracted services related to the project.

Energy and Water Cost Savings: The savings as provided in **Schedule A (Energy and Cost Savings Guarantee)**.

Energy and Cost Savings Guarantee: The guarantee that is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in **Schedule F (Compensation to ESCO for Annual Service)** and in accordance with the Savings Calculation Formula as set forth in **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)**.

Equipment: The goods enumerated on **Schedule H (Equipment to be Installed by ESCO)** that is now or hereafter from time to time become attached hereto and incorporated herein by reference, together and with any and all additions, modifications, attachments, replacements and parts thereof.

Event of Default: Those events described in **Section 19 (Events of Default)** hereof.

Interim Period: The period from contract execution until the Commencement Date.

Commencement Date: The date described in **Section 2.2 (Commencement Date)**.

Project Site(s): The facilities of the Institution in need of energy and water saving equipment and services designed to reduce consumption and associated costs at said Project Site(s)

Technical Energy Audit: A study by the qualified energy services provider selected for a particular energy performance contract project which includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements and the utility and operations and maintenance cost savings projected to result from the recommended improvements.

Work: Collectively, the Equipment, professional services and project construction related to the project.

Section 1.2. Technical Energy Audit Report and Project Development Proposal.

Section 1.2: This section records the approval and acceptance by the Institution of the Technical Energy Audit Report which must be completed prior to the execution of this contract. A Certificate of Acceptance of the audit should be signed by both parties and attached to the contract (Exhibit III (i)). If the list of measures is not completely finalized prior to the signing of this contract, then language to that effect should be included.

ESCO has prepared the complete Technical Energy Audit Report of the Project Site(s) set forth in Appendix C (**Technical Energy Audit**) and dated _____ which has been approved and accepted by Institution as set forth in Exhibit III (i) (**Certificate of Acceptance—Technical Energy Audit Report**). The audit includes all energy conservation measures agreed upon by the parties.

Section 1.3. Schedules, Exhibits and Appendices

Section 1.3: The contract schedules detail the substantive technical parameters of the projects negotiated by the parties and accepted and approved by the Institution. These schedules are also referenced throughout the various sections of the Contract. Their titles may be included here for ease of reference or located at the end of the contract. If any schedules need to be completed after execution of the contract, language to the effect they are forthcoming should be included. (Please note that descriptions for each contract schedule are provided at the end of this sample contract document under the heading of Attachment I.)

ESCO has prepared and Institution has approved and accepted the following Schedules, copies of which are attached hereto (or will be as provided for in the Contract), set forth in their entirety as Attachment I and made a part of this Contract by reference.

Schedules

Savings Guarantee

- Schedule A Energy and Water Cost Savings Guarantee
- Schedule B Baseline Energy Consumption
- Schedule C Savings Measurement and Verification Plan; Methodology to Adjust Baseline

Payments and Schedule

- Schedule D Final Project Cost & Project Cash Flow Analysis
- Schedule E Financing Agreement and Payment Schedule
- Schedule F Compensation to ESCO for Annual Services

Audit and Construction Phase

- Schedule G Description of Project Site(s)
- Schedule H Equipment to be Installed by ESCO
- Schedule I Construction and Installation Schedule
- Schedule J Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
- Schedule K Standards of Comfort
- Schedule L ESCO's Training Responsibilities

Post-Construction

- Schedule M ESCO's Maintenance Responsibilities
- Schedule N Institution's Maintenance Responsibilities
- Schedule O Facility Maintenance Checklist

Administration

- Schedule P Annual Reporting Requirements
- Schedule Q Alternative Dispute Resolution Procedures

Optional Schedules

- Pre-Existing Service Contracts
- Energy Savings Projections
- Facility Changes Checklist
- Current and Known Capital Projects at Facility

Exhibits

- Exhibit I Performance Bond
- Exhibit II Labor and Material Payment Bond *if required*
- Exhibit III (i) Certificate of Acceptance—Technical Energy Audit Report

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- Exhibit III (ii) Certificate of Acceptance—Installed Equipment
 - Exhibit IV Equipment Warranties

Appendices

- Appendix A RFP for ESCO Solicitation
- Appendix B ESCO Proposal
- Appendix C Technical Energy Audit Report

Section 1.4. Other Documents

Section 1.4: This section makes the original Request for Proposals (RFP) and the selected ESCO's proposal part of the contract. It also acknowledges the completion of the ESCO's Technical Energy Audit Report and its approval and acceptance by the Institution. It is recommended that the original Technical Energy Audit Report in its entirety be attached and/or referenced as an Exhibit to this contract. It is important to note the last sentence of this provision makes it clear that if there is any future discrepancy between the Technical Energy Audit Report and any technical schedule(s), the terms of this contract shall apply.

This Contract incorporates herein and makes a part hereof the entire RFP and ESCO Proposal for this Project labeled Appendix A and B respectively. Acceptance by the Institution of the Technical Energy Audit Report is reflected in Exhibit III (i). Notwithstanding, the provisions of this Contract and the attached Schedules shall govern in the event of any inconsistencies between the Technical Energy Audit Report and the provisions of this Contract.

PAYMENTS AND SCHEDULES

ARTICLE 2. PURCHASE AND SALE; COMMENCEMENT DATE AND TERMS; INTERIM PERIOD

Section 2.1. Purchase and Sale

Section 2.1. When using a third-party lease-purchase structure the ESCO will receive 100% of the Contract Sum from the Institution once the Certificate of Acceptance is signed. The payments to the ESCO during the construction period (Interim Period) can be drawn down by the ESCO from the proceeds of the lease through an escrow account set up by the leasing ESCO. Payments will be made based upon the percentage of work completed and approved by the Institution. The Institution should require a ___% retainage be withheld from the ESCO until the Certificate of Acceptance is executed at which time final payment can be made.

Institution agrees to lease Equipment through a third party financier, name of lender, as provided for in a separate lease document, **Schedule E (Financing Agreement and Payment Schedule)**. ESCO agrees to provide the Equipment, together with installation, maintenance and other services as provided herein, as in **Schedule H, (Equipment to be Installed by ESCO)** based upon the terms and conditions set forth in **Schedule E (Financing Agreement and Payment Schedule)**.

The agreed to Contract Sum for the Work is a Guaranteed Maximum Price of \$ _____ as set forth in **Schedule D (Final Project Cost & Project Cash Flow Analysis)**. Payment terms are described in **Schedule E (Financing Agreement and Payment Schedule)**.

ESCO will provide the Work and all related services identified in **Schedule H (Equipment to be Installed by ESCO)** and the services detailed in **Schedule M (ESCO's Maintenance Responsibilities)** and **Schedule F (Compensation to ESCO for Annual Services)**. ESCO shall supervise and direct the Work and shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Contract. ESCO shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

Institution shall pay ESCO the Contract Sum in accordance with **Schedule E (Financing Agreement and Payment Schedule)**. Payments will be made on a progress basis in accordance with **Schedule E (Financing Agreement and Payment Schedule)**, for Work completed and authorized by Institution during the Interim Period. The Progress Payments outlined in **Schedule E (Financing Agreement and Payment Schedule)** will not be applicable to this Contract. Retainage of ___% will be withheld from each payment until the construction installation is completed as set forth in **Section 2.2 (Commencement Date)**.

Section 2.2. Commencement Date

Section 2.2: This section defines the Commencement Date which is the actual beginning date for the savings guarantee period. It is standard for this date to be the first month AFTER the ESCO has completed construction and delivered a notice that all equipment is installed and operating. In addition, the Institution will have accepted the installation by signing a Certificate of Acceptance which should be attached to the contract. It also clearly states that no payment for any of the ESCO's on-going services (e.g. measurement and verification, project monitoring, maintenance, training etc.) will be made prior to the Commencement Date. It is recommended that the repayment obligation of project financing be arranged to coincide with the Commencement Date. The timing of the Commencement Date may also need to be arranged to accommodate the Institution's fiscal year for the purpose of appropriations and budgeting. This date alignment should not prevent the ESCO from timely remuneration for training and other services performed prior to Commencement Date.

The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by Institution and ESCO shall have delivered a Notice to Institution that it has installed and commenced operating all of the Equipment specified in **Schedule H (Equipment to be Installed by ESCO)** and in accordance with the provisions of **ARTICLE 8 (Construction Schedule and Equipment Installation; Approval)**, **Schedule I (Construction and Installation Schedule)** and **Schedule J (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**; and Institution has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance as set forth in **Exhibit III (ii) (Certificate of Acceptance—Installed Equipment)**.

Notwithstanding anything to the contrary in this **Article 2 and Article 3 (Purchase and Sale; Commencement Date and Terms; Interim Period)**, the Commencement Date shall not occur and the Institution shall not be required to accept the work under this Contract unless and until all Equipment installation for the Project Site(s) is completed by ESCO in accordance with the terms and conditions of this Contract. Institution shall have ___ days after notification by the ESCO to inspect and accept the Equipment. Institution reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. ESCO shall not be paid in full, including retainage, until after the punch list is completed and ESCO has satisfied any and all claims for labor and materials and the Certificate of

Acceptance has been signed. The Certificate of Acceptance will not be unreasonably withheld by the Institution.

Compensation payments due to ESCO for on-going services and maintenance under this Contract as set forth in **Schedule F (Compensation to ESCO for Annual Services)** shall begin no earlier than _____ from the Commencement Date as defined herein.

Section 2.3. Term of Contract; Interim Period

Section 2.3: Prior to the Commencement Date (Section 2.2) the final contract and technical schedules are negotiated and executed by signature. At that point in time the ESCO typically begins the final design of the project and finalizes the construction schedule with the Institution. The "Interim Period" refers to the construction period, during which some amount of energy savings will start to accrue. The treatment of those energy savings can be negotiated to either be credited to the ESCO's guarantee or credited to the Institution. If such savings are credited to the ESCO's guarantee, it is recommended that such credit be extended for a specified period of time (e.g. 1-2 years). If the ESCO is credited with the interim period savings, the Institution and ESCO will need to agree to develop an approach to the measurement of those savings.

Subject to the following sentence, the term of this Contract shall be _____ years measured beginning with the Commencement Date. Nonetheless, the Contract shall be effective and binding upon the parties immediately upon its execution, and the period from contract execution until the Commencement Date shall be known as the "Interim Period". All energy savings achieved during the interim period will be fully credited to Institution.

ARTICLE 3. SAVINGS GUARANTEE; ANNUAL RECONCILIATION; PAYMENTS TO ESCO

Section 3.1. Energy and Cost Savings Guarantee

Section 3.1: This section establishes the term of the Energy and Cost Savings Guarantee to be on an annual basis and structured to cover any and all annual payments (debt service/lease payment and on-going ESCO fees) to be made by the Institution. It ensures that the ESCOs' savings guarantee will at least cover annual project lease-purchase costs (principal and interest) and all annual ESCO service fees for maintenance.

ESCO has formulated and, subject to the adjustments provided for in **ARTICLE 15 (Material Changes)**, has guaranteed the annual level of energy and water cost savings to be achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract in accordance with the methods of savings measurement and verification as set forth in **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)**. The Energy and Cost Savings Guarantee is set forth in annual increments for the term of the Contract as specified in **Schedule A (Energy and Cost Savings Guarantee)** and has been structured by the ESCO to be sufficient to cover any and all annual payments required to be made by the Institution as set forth in **Schedule F (Compensation to ESCO for Annual Services)** and **Schedule E (Financing Agreement and Payment Schedule)**.

Section 3.2. Annual Review and Reimbursement/Reconciliation

Section 3.2: At the end of each year of the contract and within a specified number of days, there will be a review and reconciliation of the actual achieved savings (subject to any adjustments made for weather, occupancy, operations etc.) with the ESCO's guaranteed savings. If there is a savings shortfall, the ESCO is contractually liable to reimburse the Institution for the difference between what was actually achieved and the amount guaranteed. If in any future year, the achieved savings exceed the guarantee, the excess savings will be used to reimburse the ESCO for any shortfall payments made in previous years. It is recommended that all excess savings be retained by the Institution except when the ESCO has had a previous year's shortfall and not be credited to satisfy savings guarantees in future years of the contract. Institution may negotiate to receive cash, equipment or services equivalent to any deficiency in savings.

Energy-related cost savings shall be measured and/or calculated as specified in **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)** and a report provided within ninety (90) days of the end of the year for the previous year for each anniversary of the Commencement Date.

In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in **Schedule A (Energy and Cost Savings Guarantee)**, ESCO shall pay the Institution an amount equal to the deficiency.

The ESCO shall remit such payments to the Institution within ___ days of written notice by the Institution of such monies due. When the total energy savings in any one year during the guarantee period exceed the Energy and Cost Savings Guarantee as set forth in **Schedule A (Energy and Cost Savings Guarantee)** and are in addition to those monies due the ESCO for compensation for services as set forth in **Schedule F (Compensation to ESCO for Annual Services)**, such excess savings shall first be applied to reimburse ESCO for any payment ESCO made to Institution to meet ESCO's guarantee for previous years in which the energy savings fell short of ESCO's Energy and Cost Savings Guarantee under the terms as set forth in **Schedule A (Energy and Cost Savings Guarantee)**. In no event shall credit for excess savings be used to satisfy saving guarantees in future years of the Contract

Section 3.3. ESCO Compensation and Fees

Section 3.3: This section ensures that the ESCO's savings guarantee will, at a minimum, cover annual project financing costs (principal and interest). In addition, it states that all annual ESCO service fees for maintenance will also be paid from savings.

ESCO has structured the Energy and Cost Savings Guarantee referred to in 3.1 above, to be sufficient to include any and all annual payments required to be made by the Institution in connection with financing/purchasing the Equipment to be installed by ESCO under this Contract as set forth in **Schedule E (Financing Agreement and Payment Schedule)**. Actual energy and operations savings achieved by ESCO through the operation of Equipment and performance of services by ESCO shall be sufficient to cover any and all annual fees to be paid by Institution to ESCO for the provision of services as set forth and in accordance with the provisions of **Schedules D (Compensation to ESCO)** and **J (ESCO's Maintenance Responsibilities)**.

Section 3.4. Billing Information Procedure

Sections 3.4 & 3.5: These sections which deal with payment can be negotiated and structured to suit the needs of the Institution. It is, however, important to provide the ESCO with monthly utility bills and to

do so in a timely manner. The project's billing schedule for on-going ESCO services can be set up on a monthly or quarterly basis.

Payments due to ESCO under this Section 3 shall be calculated each _____ in the following manner:

- (i) By the _____ day after receipt, Institution shall provide ESCO with copies of all energy bills for the Project Site(s) which it shall have received for the preceding month;
- (ii) Upon receipt of the required information, ESCO shall calculate the savings in accordance with the agreed-upon calculation formulae in **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)**.
- (iii) Based upon paragraphs (i) and (ii) above, ESCO shall prepare and send to Institution a _____ invoice which shall set forth for each _____ the amounts of the energy and operations dollar savings calculated in accordance with **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)** and for the services as provided for in **Schedule F (Compensation to ESCO for Annual Services)**. The invoice will set forth the total _____ payment due from Institution.

Section 3.5. Payment

Institution shall pay ESCO within ____ days of receipt of ESCO's invoice.

Section 3.6. Effective Date of Payment Obligation

Section 3.6: This section states that no ESCO fees for ongoing maintenance, monitoring or other services shall be paid until all equipment is installed and operating in accordance with the agreed upon Construction Schedule and Institution has approved the completed installation and signed the requisite Certificate of Acceptance—Installed Equipment.

Notwithstanding the above provisions in Section 3, Institution shall not be required to begin any payments to ESCO under this Contract unless and until all equipment installation is completed by ESCO in accordance with the provisions of **Article 8 (Construction and Equipment Installation; Approval)** and **Schedule J (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**, and accepted by Institution as evidenced by the signed Certificate of Acceptance as set forth in **Exhibit III (ii) (Certificate of Acceptance—Installed Equipment)**, and unless and until said equipment is fully and properly functioning.

Section 3.7. Open Book Pricing

Section 3.7: This section establishes that the ESCO will fully disclose all costs, providing access to records for all labor and material costs, making them available for three years beyond final payment.

Open book pricing will be required, such that the Contractor will fully disclose all costs of materials and labor purchased and subcontracted by the ESCO and a list of hourly rates and position descriptions for labor or services provided by the ESCO. Estimates for number of hours required for the project and deviations of these budgeted hours shall require prior written approval by the owner or shall not be paid. Contractor will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Contractor will afford Agency access to

these records and preserve them for a period of three (3) years after final payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be expected to be applied, providing the scope and size of the project remain the same as assumed when markups were disclosed.

ARTICLE 4. FISCAL FUNDING

Section 4.1. Non-appropriation of Funds

Section 4.1: This section protects the Institution in the event no funds or insufficient funds are appropriated to cover the financial payments due to the ESCO under the terms of this Contract, in effect terminating the contract with no penalty to the Institution. This is a standard provision in public sector performance contracting and is generally accepted by the ESCO industry since it is unlikely that funding for utilities (source of funds) would be withheld.

In the event no Institution or other funds or insufficient Institution or other funds are appropriated and budgeted, and funds are otherwise unavailable by any means whatsoever in any fiscal period for which payments are due ESCO under this Contract, then the Institution will, not less than ___ days prior to end to such applicable fiscal period, in writing, notify the ESCO of such occurrence and this Contract shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the Institution of any kind whatsoever, except as to the portions of payments herein agreed upon for which Institution and/or other funds shall have been appropriated and budgeted or are otherwise available.

Section 4.2. Non-substitution

Section 4.2: In the rare event that funds were not appropriated or the Institution is in default, and to protect the ESCO, this provision prevents the Institution from securing funding for the same purposes for a period of one year following the termination of the contract.

In the event of a termination of this contract due to the non-appropriation of funds or in the event this Contract is terminated by ESCO due to a default by the Institution, the Institution agrees, to the extent permitted by state law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by ESCO under the terms of this Contract for a period of three-hundred sixty five (365) calendar days following such default by Institution, or termination of this Contract due to non-appropriations.

AUDIT AND CONSTRUCTION PHASE

ARTICLE 5. ENERGY USAGE RECORDS AND DATA

Article 5: This section ensures that the ESCO has access to the historical energy consumption, facility operations and occupancy data in order to develop baseline utility consumption. At a minimum, there should be 24 months of data made available, however, 36 months is recommended. Existing facility conditions, operations and equipment needs to be carefully recorded to establish an accurate baseline. This will serve as a record of your buildings as they were configured prior to project installation and will

be critical to the establishment and adjustment of baseline, and measurement of savings. As well, any prior technical studies and/or energy audits should also be made available for the ESCO's review and verification.

Institution has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Contract to ESCO or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Project Site(s).

ARTICLE 6. LOCATION AND ACCESS

Article 6: This provision states the Institution's responsibility for providing adequate space and protection for the installed equipment and authorizes the ESCO's access to the facility to perform routine and emergency operations.

ESCO acknowledges that there exists sufficient space on the Project Site(s) for the installation and operation of the Equipment. Institution shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this Contract. Institution shall provide access to the Project Site(s) for ESCO to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by ESCO and acceptable to the Institution. ESCO shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. The ESCO's access to Project Site(s) to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the Institution. ESCO shall immediately notify the Institution when emergency action is taken and follow up with written notice with three (3) business days specifying the action taken, the reasons therefore, and the impact upon the Project Site(s), if any.

ARTICLE 7. PERMITS AND APPROVALS; COORDINATION

Section 7.1. Permits and Approvals

Section 7.1: This standard construction provision requires the ESCO comply with all code requirements, pay all associated permit fees and provide the Institution with copies of each permit and license required to do the work. The Institution agrees to assist the ESCO to the best of its ability to obtain all required permits and approvals.

Institution shall use its best efforts to assist ESCO in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Institution, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment by ESCO shall at all times conform to all federal, state and local code requirements. ESCO shall furnish copies of each permit or license which is required to perform the work to the Institution before the ESCO commences the portion of the work requiring such permit or license.

Section 7.2. Coordination During Installation

Section 7.2: This standard provision directs the Institution and ESCO to coordinate the equipment installation activities to not interfere with the Institution's business activities. If an installation will require interference, the ESCO must first obtain the Institution's written approval to proceed. If a facility

generates revenue for the Institution (e.g. civic center, theater, arena etc.) and scheduled revenue-producing activities are interrupted due to the fault of the ESCO, either during project installation or operation, then a provision for the collection of damages may be negotiated.

The Institution and ESCO shall coordinate the activities of ESCO's equipment installers with those of the Institution, its employees, and agents. ESCO shall not commit or permit any act which will interfere with the performance of business activities conducted by the Institution or its employees without prior written approval of the Institution.

ARTICLE 8. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

Section 8.1. Construction Schedule; Equipment Installation

Section 8.1: It is important that the construction/installation phase of the project be managed in compliance with individual Institution requirements and the appropriate governing statutes. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract.

Construction and equipment installation shall proceed in accordance with the construction schedule approved by Institution and attached as **Schedule I (Construction and Equipment Installation Schedule)**.

Section 8.2. Systems Startup and Equipment Commissioning

Section 8.2: This section requires the ESCO to conduct performance testing of the equipment as specified in its Commissioning Plan located in **Schedule J (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**, and verify the specified operating parameters to make certain the system is working properly. In most instances this activity occurs prior to the Institution's final acceptance of the project as fully installed, however, if any testing is negotiated to occur after project acceptance, language to that effect should be included here. It also requires the ESCO notify the Institution of when the testing will take place and gives the Institution (or its designee) the right to be present during all tests. Make sure the commissioning plan includes manufacturer's startup and performance sheets.

The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in **Schedule J (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)** and prior to acceptance of the project by the Institution as specified in **Exhibit III (i) (Certificate of Acceptance)**. Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The ESCO shall provide notice to the Institution of the scheduled test(s) and the Institution and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in **Schedule J**

(Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment). The Contractor shall be responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to Institution acceptance ESCO shall also provide Institution with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in **Schedule H (Equipment to be Installed by ESCO)**.

ARTICLE 9. EQUIPMENT WARRANTIES

Article 9: This warranty provision requires all installed equipment be new and protected by appropriate written manufacturers warranties for a minimum of one year, covering parts and performance. It also requires warranties provide for the installation of only new parts (not used or reconditioned) during the warranty period. While equipment warranties will be transferred to the Institution after completed project installation, this provision makes the ESCO responsible for pursuing any necessary remedies during the warranty period. If the ESCO fails to exercise the warranty and damages occur, the ESCO is responsible for all costs of repair and any lost savings.

ESCO warrants that all equipment sold and installed as part of this Contract is new, will be materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of one (1) year from the date of the Substantial Completion for the particular energy conservation measure if operated and maintained in accordance with the procedures established per building. Substantial Completion shall be defined as the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the Institution can utilize and take beneficial use of the Work for its intended use or purpose. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and the “Substantial Completion” form fully executed.

After the warranty period, ESCO shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in **Schedule M (ESCO’s Maintenance Responsibilities)**.

ESCO further agrees to assign to Institution all available manufacturer’s warranties relating to the Equipment and to deliver such written warranties and which shall be attached and set forth as **Exhibit IV (Equipment Warranties)**; pursue rights and remedies against the manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance. ESCO shall, during the warranty period, notify the Institution whenever defects in Equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by ESCO. During this period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property and equipment of the Institution or the Project Site(s), due to ESCO’s failure to exercise its warranty rights shall be borne solely by ESCO.

All warranties, to the extent transferable, shall be transferable and extend to the Institution. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction. All extended warranties shall be addressed as the property of the owner and appropriately documented and titled.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the ESCO from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

ARTICLE 10. STANDARDS OF COMFORT

Article 10: This section references the **Schedule K (Standards of Comfort)** which the ESCO is contractually liable to maintain throughout the term of the contract. These standards are negotiated between the ESCO and Institution to reflect realistic ranges of heating, cooling and hot water temperatures, lighting levels, chilled water requirements, and other specified comfort and operating parameters to be maintained.

ESCO will maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels as described in **Schedule K (Standards of Comfort)**. During the term of this Contract, ESCO and Institution will maintain, according to **Schedule M (ESCO's Maintenance Responsibilities)** and **Schedule N (Institution's Maintenance Responsibilities)**, and operate the Equipment in a manner that will provide the standards of comfort and levels of operation as described in **Schedule K (Standards of Comfort)**.

ARTICLE 11: ENVIRONMENTAL REQUIREMENTS

Section 11.1. Excluded Material and Activities

Section 11.1. This section addresses hazardous materials and establishes that the ESCO may encounter such materials but is not responsible for identification, handling or any work. The Institution will be responsible for such handling at its expense. In the event the ESCO discovers such materials, the ESCO will stop work and the Institution will handle it. Neither the ESCO's stoppage of work nor the Institution's discovery are grounds for default. If work can commence, any lost time will be added to the time schedule. The ESCO is responsible for any hazardous materials related to equipment it brings to the site.

Institution recognizes that in connection with the installation and/or service or maintenance of Equipment at Institution's Project Site(s), ESCO may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, (ii) fungus (any type of form of fungi, including mold or mildew, and myotoxins, spores, scents or by-products produced or released by fungi), (iii) incomplete or damaged work or systems or code violations that may be discovered during or prior to the work of this agreement, or (iv) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities". Institution agrees that if performance of work involves any Excluded Materials and Activities, Institution will perform or arrange for the performance of such work and shall bear the sole risk and responsibility therefore. In the event ESCO discovers Hazardous or Excluded Materials, ESCO shall immediately cease work, remove all ESCO personnel or subcontractors from the site, and notify the Institution. The Institution shall be responsible to handle such Materials at its expense. ESCO shall undertake no further work on the Project Site(s) except as authorized by the Institution in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Institution shall not constitute a default by the Institution. In the event of such stoppage of work by ESCO, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage and any additional costs incurred by ESCO as a result will be added by Change Order.

ESCO shall be responsible for any hazardous or other materials, including, without limitation, those listed in this section that it may bring to the Project Site(s).

Section 11.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps

Section 11.2. The ESCO is required to have an agreement with an approved PCB ballast disposal company that will properly handle transport, recycling, and incineration, providing information for site handling and a Certificate of Destruction. Similarly the ESCO is required to have an agreement with an approved lamp disposal company. In both cases, the Institution will sign manifests of ownership.

ESCO will enter into an agreement with an approved PCB ballast disposal company that will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from Institution's PCB ballasts will be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction will be provided by the approved facility to Institution. ESCO's responsibility shall be for the proper and legal management of any of Institution's PCB ballasts removed as a result of the installation of the Equipment and shall be limited only until said PCB ballasts are loaded onto an approved PCB ballast disposal ESCO's vehicle for transportation.

ESCO will enter into an agreement with an approved lamp disposal company who will provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the manifest.

Institution agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Project Site(s).

ARTICLE 12. TRAINING BY ESCO

Article 12: In many performance contracts the training of facility personnel is often conducted prior to acceptance by the Institution of the completed installation. There are occasions, however, where it may be necessary to conduct training after project acceptance, which can be noted and included in the appropriate schedule. If there are charges for unscheduled training, such charges should be noted in this section.

The ESCO shall conduct the training program described in **Schedule L (ESCO's Training Responsibilities)** hereto. The training specified in **Schedule L (ESCO's Training Responsibilities)** must be completed prior to acceptance of the Equipment installation. The ESCO shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at no charge to the Institution and shall have no effect on prior acceptance of Equipment installation.

POST-CONSTRUCTION PHASE

ARTICLE 13. EQUIPMENT SERVICE

Section 13.1. Actions by ESCO

Section 13.1: This section refers to the maintenance and service responsibilities of each party as they are specified in Schedules J and D. It also states that if the Institution is at fault for causing additional

maintenance or repair to the equipment, then the Institution will be charged by the ESCO for the cost of the required maintenance or repair.

ESCO shall provide all service, repairs, and adjustments to the Equipment installed under terms of this Contract pursuant to **Schedule M (ESCO's Maintenance Responsibilities)**. Institution shall incur no cost for Equipment service, repairs, and adjustments, except as set forth in **Schedule F (Compensation to ESCO for Annual Services)**, provided, however, that when the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Institution or any employee or other agent of Institution, and ESCO can so demonstrate such causal connection, ESCO may charge Institution for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

Section 13.2. Malfunctions and Emergencies

Section 13.2: This section requires the Institution to notify the ESCO within a specified number of hours of actually knowing about any situation that impacts the performance of the equipment. As described here, the impacts cover both pre-existing energy related equipment and the newly installed equipment. The impacts defined here include equipment malfunction or modification, interruption of power supply or any emergency situation which may affect the Energy and Cost Savings Guarantee. If such an impact is known by the Institution to have occurred and the Institution delays in notifying the ESCO and doesn't correct the situation, it will be treated as a Material Change and the baseline will be adjusted accordingly. If the Institution makes an effort to assess the situation and incorrectly determines it doesn't have an impact, then the ESCO will not fault the Institution, although an adjustment to the baseline may still be warranted.

Institution shall use its best efforts to notify the ESCO or its designated subcontractors within 24 hours after the Institution's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Project Site(s), or (iii) any alteration or modification in any energy-related equipment or its operation.

Where Institution exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Institution shall notify ESCO within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. ESCO shall respond or cause its designee(s) shall respond within ___ hours and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by Institution shall be followed within three business days by written notice to ESCO from Institution. If Institution unreasonably delays in so notifying ESCO of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, ESCO may charge Institution for its loss, due to the delay, associated with the guaranteed savings under this Contract for the particular time period, provided that ESCO is able to show the direct causal connection between the delay and the loss.

The ESCO will provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

Section 13.3. Actions by Institution

Section 13.3: This section states the Institution may not make any changes to the operation and maintenance of the equipment without the prior written approval of the ESCO unless otherwise indicated in **Schedule N (Institution's Maintenance Responsibilities)** or if there is an emergency and the ESCO

can't be reasonably notified. In the case of such emergency, the Institution should follow instructions provided by the ESCO for emergency action.

Institution shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of ESCO except as set forth in **Schedule N (Institution's Maintenance Responsibilities)**. Notwithstanding the foregoing, Institution may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify ESCO before taking any such actions. In the event of such an emergency, Institution shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by ESCO. Institution agrees to maintain the Project Site(s) in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

ARTICLE 14. MODIFICATION, UPGRADE OR ALTERATION OF THE EQUIPMENT

Section 14.1. Modification of Equipment

During the Term of this Contract, Institution will not, without the prior written consent of ESCO, affix or install any accessory Equipment or device on any of the Equipment if such addition will change or impair the originally intended functions, value or use of the Equipment without ESCO's prior written approval, which shall not be unreasonably withheld.

Section 14.2. Upgrade or Alteration of Equipment

Section 14: This section describes the terms and conditions under which the ESCO may make changes to the equipment, operating procedures or take other energy savings actions. If such changes are implemented during any time during the contract they must be described in a supplemental schedule and be approved by the Institution. As well, any equipment replaced is required to be new and have the potential to produce at least as much or more savings. If computer software is updated, the licensing provisions of Section 17.1 still apply.

ESCO shall at all times have the right, subject to Institution's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Project Site(s), provided that: (i) the ESCO complies with the standards of comfort and services set forth in **Schedule I** herein; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the guaranteed energy and cost savings at the Project Site(s) and; (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Institution for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Project Site(s) than the Equipment being replaced. The ESCO shall have the right to update any and all software to be used in connection with the Equipment in accordance with the provisions of **Section 17.1 (Ownership of Certain Proprietary Rights)** and **Schedule M (ESCO's Maintenance Responsibilities)**. All replacements of and alterations or additions to the Equipment shall become part the Equipment described in **Schedule H (Equipment to be Installed by ESCO)** and shall be covered by the provisions and terms of **Article 8 (Construction Schedule and Equipment Installation; Approval)**.

ARTICLE 15. MATERIAL CHANGES

Article 15: This section defines the term "Material Change" which covers any condition other than weather that affects building energy use by more than the negotiated percentage (see above discussion). It is typical for the percent of deviation to be negotiated as a value ranging between 2% and 5% based on aggregate consumption costs. The lower value (2%) may be appropriate for large facilities (over \$20,000/month utility bills) and the higher value (5%) may be appropriate for small facilities (less than \$5,000/month utility bills).

Section 15.1. Material Change Defined

A Material Change shall include any change in or to the Project Site(s), whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Institution, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in **Schedule B (Baseline Energy Consumption)** and **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)** by at least ___% after adjustments for climatic variations. Actions by the Institution which may result in a Material Change include but are not limited to the following:

- (i) manner of use of the Project Site(s) by the Institution; or
- (ii) hours of operation for the Project Site(s) or for any equipment or energy using systems operating at the Project Site(s); or
- (iii) Permanent changes in the comfort and service parameters set forth in **Schedule K (Standards of Comfort)**; or
- (iv) occupancy of the Project Site(s); or
- (v) structure of the Project Site(s); or
- (vi) types and quantities of equipment used at the Project Site(s) or
- (vii) modification, renovation or construction at the Project Site(s); or
- (viii) the Institution's failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule N (Institution's Maintenance Responsibilities)**; or
- (ix) any other conditions other than climate affecting energy use at the Project Site(s) including but not limited to the replacement, addition or removal of energy and water consuming devices whether plug in or fixed assets,
- (x) casualty or condemnation of the Project Site(s) or Equipment, or
- (xi) changes in utility provider or utility rate classification, or
- (xii) any other conditions other than climate affecting energy or water use at the Project Site(s).
- (xiii) Modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules.

Section 15.2. Reported Material Changes; Notice by Institution

Section 15.2: This section requires the Institution to notify the ESCO in writing if there are any actual or planned changes to the facility which would effect energy consumption by more than the specified percentage. In the event of an emergency or situation that would prevent advance notification, the Institution has a specified number of hours to inform the ESCO that a Material Change has occurred.

The Institution shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Material Changes in the Project Site(s) or in the operations of the Project Site(s) at least ___ days before any actual or proposed Material Change is implemented or as soon as is practicable after an

emergency or other unplanned event. Notice to the ESCO of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Institution within ____ hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Institution to have occurred.

Section 15.3. Other Adjustments

Section 15.3: This section states that if all building conditions and operations stay the same, then energy consumption will not vary more than the negotiated percentage during any month when compared to the baseline use for that month and after adjustments for weather are made. See above discussion. In the event such a variation occurs, the ESCO will try to determine the cause of the deviation and report its findings to the Institution. The ESCO and Institution will then determine what adjustments will be made to the baseline as described in **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)**.

As agreed in **Section 15.1** Institution will alert ESCO of materials changes as known. Both parties have a vested interest in meeting the guaranteed savings of the Contract. As such, the ESCO will work with Institution to investigate, identify and correct any changes that prevent the guaranteed savings from being realized. As a result of such investigation, ESCO and Institution shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)** and **Schedule B (Baseline Energy Consumption)**. Any disputes between the Institution and the ESCO concerning any such adjustment shall be resolved in accordance with the provisions of **Schedule Q (Alternative Dispute Resolution Procedures)** hereto.

ARTICLE 16. PERFORMANCE BY ESCO

Section 16.1. Corrective Action; Accuracy of the Services

Section 16.1: This section directs the ESCO to protect the Project Site(s) and its contents to repair and restore to the original condition any damage caused by the ESCO in connection with this contract. Any costs incurred to correct such damage are to be paid by the ESCO. The ESCO is solely responsible for the technical professional accuracy of all work performed under this Contract including work done by subcontractors or others.

ESCO shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in **Schedule K (Standards of Comfort)** and the construction schedule specified in **Schedule I (Construction and Installation Schedule)**. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Contract. The Institution reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of the Institution, the structural integrity of the Project Site(s) or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by ESCO's performance of the work shall be borne by ESCO.

ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether by the ESCO or its subcontractors or others on its behalf, throughout the term of this Contract.

Section 16.2. Annual Reporting Requirements; Annual ENERGY STAR Rating

At the end of each year during the guarantee period as specified in **Schedule A (Energy and Water Cost Savings Guarantee)** and no later than ninety (90) days thereafter, the ESCO shall complete and submit the data required in **Schedule P (Annual Reporting Requirements)** . The ESCO shall provide an ENERGY STAR rating for each eligible facility for each year of the guarantee period if applicable.

ADMINISTRATION

ARTICLE 17. OWNERSHIP OF CERTAIN PROPRIETARY RIGHTS; EXISTING EQUIPMENT

Section 17.1. Ownership of Certain Proprietary Property Rights

Section 17.1: This provision addresses the ESCO's proprietary rights over customized (or exclusive) software used in an energy management system which may control, manage and perform other functions in conjunction with the project (there may other technical designs, processes, formulas etc., which this provision would cover). Of particular importance is the stipulation that grants the Institution a continuing license (at no charge) to use and operate the project without violating any ESCO's proprietary rights.

Institution shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The ESCO shall grant to the Institution a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Institution to continue to operate, maintain, and repair the Equipment in a manner that will yield guaranteed utility consumption reductions for the specified contract term. ESCO shall not be liable for providing new versions of software or other enhancements if or unless such new versions or enhancements are necessary to achieve the guaranteed utility consumption reductions.

Section 17.2. Ownership of Existing Equipment

Section 17.2: This provision states that the Institution has ownership of all existing equipment and that the ESCO shall notify the Institution in writing of what equipment and materials are to be replaced. If the Institution chooses to keep the equipment to be replaced, the ESCO will be notified and the Institution responsible for identifying the location of where the property is to be stored or relocated. The ESCO is responsible for all equipment and materials to be disposed. The exception to this is the treatment of any hazardous or environmentally sensitive materials.

Ownership of the equipment and materials presently existing at the Project Site(s) at the time of execution of this Contract shall remain the property of the Institution even if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Contract. If applicable, ESCO shall advise the Institution in writing of all equipment and materials to be replaced at the Project Site(s) and the Institution shall within ___ days designate in writing to the ESCO which equipment and materials that should not be disposed of off-site by the ESCO. It is understood and agreed to by both Parties that the Institution shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. The ESCO shall be responsible for the disposal of all equipment and materials designated by the Institution as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

ARTICLE 18. PROPERTY/CASUALTY/INSURANCE; INDEMNIFICATION

Article 18: This section needs to reflect the individual Institution's standard requirements with regard to insurance and indemnification.

Section 18.1 Insurances. At all times during the term of this Contract, ESCO shall maintain in full force and effect, at its expense: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of (ESCO) working to fulfill this Contract, and (2) Casualty and Liability Insurance on the Equipment and Liability Insurance for its employees and the possession, operation, and service of the Equipment. The limits of such insurance shall be not less than \$_____ for injury to or death of one person in a single occurrence and \$_____ for injury to or death of more than one person in a single occurrence and \$_____ for a single occurrence of property damage. Such policies shall name the Institution as an additional insured.

Prior to commencement of work under this Contract, ESCO will be required to provide Institution with current certificates of insurance specified above. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed until at least thirty (30) days' prior written notice has been given to Institution.

Section 18.2. Damages to Equipment or Property: ESCO shall be responsible for (i) any damage to the Equipment or other property on the Project Site(s) and (ii) any personal injury where such damage or injury occurs as a result of ESCO's performance under this Contract.

Section 18.3. Indemnification. ESCO shall save and hold harmless Institution and its officers, agents and employees or any of them from any and all claims, demands, actions or liability of any nature based upon or arising out of any services performed by ESCO, its agents or employees under this Contract.

Section 18.4. Liabilities. Neither party shall be liable for any special, incidental, indirect, punitive or consequential damages, arising out of or in connection with this Contract. Further, the liability of either party under this Contract shall not exceed the Contract Sum in the aggregate.

ARTICLE 19. CONDITIONS BEYOND CONTROL OF THE PARTIES

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, or similar events, this Contract shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days notice to the performing party, in which event neither party shall have any further liability to the other.

ARTICLE 20. EVENTS OF DEFAULT

Section 20.1. Events of Default by Institution

Each of the following events or conditions shall constitute an "Event of Default" by Institution:

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- (i) any failure by Institution to pay ESCO any sum due for a service and maintenance period of more than ___ days after written notification by ESCO that Institution is delinquent in making payment and provided that ESCO is not in default in its performance under the terms of this Contract; or
 - (ii) any other material failure by Institution to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for ___ days after notice to Institution demanding that such failures to perform be cured or if such cure cannot be effected in ___ days, Institution shall be deemed to have cured default upon the commencement of a cure within ___ days and diligent subsequent completion thereof;
 - (iii) any representation or warranty furnished by Institution in this Contract which was false or misleading in any material respect when made.

Section 20.2. Events of Default by ESCO

Each of the following events or conditions shall constitute an "Event of Default" by ESCO:

- (iv) the standards of comfort and service set forth in **Schedule K (Standards of Comfort)** are not provided due to failure of ESCO to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within ___ days after written notice by Institution to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract.
- (v) any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made;
- (vi) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in **Schedule H (Equipment to be Installed by ESCO)** and **Schedule I (Construction and Installation Schedule)**;
- (vii) provided that the operation of the facility is not adversely affected and provided that the standards of comfort in **Schedule K (Standards of Comfort)** are maintained, any failure by ESCO to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within ___ days after written notice by the Institution to ESCO demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;
- (viii) any lien or encumbrance upon the equipment by any subcontractor, laborer or materialman of ESCO;
- (ix) the filing of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within ___ days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO.
- (x) failure by the ESCO to pay any amount due the Institution or perform any obligation under the terms of this Contract or the Energy and Cost Savings Guarantee as set forth in Schedule A (**Energy and Cost Savings Guarantee**).

ARTICLE 21. REMEDIES UPON DEFAULT

Section 21.1. Remedies upon Default by Institution

If an Event of Default by Institution occurs, ESCO may, without a waiver of other remedies which exist in law or equity, elect one of the following remedies:

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- (i) exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Institution, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy;

Section 21.2. Remedies Upon Default by ESCO

In the Event of Default by ESCO, Institution shall have the choice of either one of the following remedies in law or equity:

- (i) exercise and any all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred, including attorney's fees;

ARTICLE 22. ASSIGNMENT

The ESCO acknowledges that the Institution is induced to enter into this Contract by, among other things, the professional qualifications of the ESCO. The ESCO agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Institution.

Section 22.1. Assignment by ESCO

Section 22.1: This assignment provision first acknowledges that the Institution selected the ESCO for its unique expertise and qualifications to perform the services specified in the contract. The ESCO may not assign this contract to another ESCO without the written approval of the Institution and any ESCO assigned this contract must fully comply with all terms and conditions. In addition, the ESCO and any assignee remain contractually liable to the Institution for fulfilling all of the ESCO's obligations as specified in the contract.

The ESCO may, with prior written approval of the Institution, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize ESCOs, provided that any assignee(s), delegee(s), or ESCO(s) shall fully comply with the terms of this Contract. Notwithstanding the provisions of this paragraph, the ESCO shall remain jointly and severally liable with its assignees(s), or transferee(s) to the Institution for all of its obligations under this Contract.

Section 22.2. Assignment by Institution

Section 22.2: In turn, this provision allows the Institution to transfer or assign this contract to a new building owner or occupant. The Institution and its assignee, however, still remain responsible to the ESCO for the Institution's obligations as specified in the contract.

Institution may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Buildings or an interest therein. The Institution shall remain jointly and severally liable with its assignees or transferees to the ESCO for all of its obligations under this Contract.

ARTICLE 23. REPRESENTATIONS AND WARRANTIES

Article 23: This boilerplate provision states that each party has the requisite authority and ability to enter into this contract.

Each party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- (ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

ARTICLE 24. ADDITIONAL REPRESENTATIONS OF THE PARTIES

Article 24: These additional representations address several areas specific to the performance contract. The Institution certifies it has or will provide the ESCO will all energy and energy-related records and all future records to be provided will be truthful and accurate. The Institution also declares it has not entered into any leases or service contracts relating to energy equipment or servicing of pre-existing equipment and will notify the ESCO within a specified period of time if it does so.

In addition, the ESCO certifies that before beginning work under this contract it will: have become licensed to business in the state; provide proof of required insurance and bonds; give Institution access to all document relating to the project (including all contracts and subcontracts) upon request; use licensed and qualified subcontractors; and is financially able to complete the project and perform under the terms of this contract. In addition, the ESCO certifies that the equipment will meet or exceed the functional design tests performed prior to Institution acceptance and the installed equipment will be compatible with existing equipment and building systems.

Institution hereby warrants, represents and promises that:

- (i) it has provided or shall provide timely to ESCO, all records relating to energy usage and energy-related maintenance of Project Site(s) requested by ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and
- (ii) it has not entered into any leases, contracts or Contracts with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Project Site(s) or with regard to servicing any of the energy related equipment located in the Project Site(s). Institution shall provide ESCO with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Project Site(s) which may be executed from time to time hereafter within ____ days after execution thereof.

ESCO hereby warrants, represents and promises that:

- (i) before commencing performance of this Contract:
 - (a) it shall have become licensed or otherwise permitted to do business in the State of _____
 - (b) it shall have provided proof and documentation of required insurance and bonds pursuant to this Contract;
- (ii) it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;
- (iii) it shall use qualified subcontractors who are qualified, licensed and bonded in this state to perform the work so subcontracted pursuant to the terms hereof;
- (iv) The Equipment will meet or exceed the provisions set forth in **Section 8.2 (Systems Start Up and Equipment Commissioning)** and in **Schedule J (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**.
- (v) The Equipment is or will be compatible with all other Project Site(s) mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;
- (v) that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

ARTICLE 25. MICELLANEOUS DOCUMENTATION PROVISIONS

Section 25.1. Waiver of Liens, Construction Performance and Payment Bonds, Labor and Material Payment Bonds

Such executed bonds are incorporated herein by reference as **Exhibit I (Performance Bond)** and **Exhibit II (Labor and Material Payment Bond, if applicable)**.

Section 25.2. Further Documents

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 25.3 Institution's Responsibilities

This provision protects both the ESCO and the Institution by establishing a method for the ESCO to supervise the Institution's compliance with the scheduled routine and preventative maintenance activities to be performed by the Institution (either by in-house personnel or existing maintenance contract). This checklist should be developed for both the newly installed and pre-existing energy-related equipment.

(a) Methods of Operation by Institution

The parties acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by Institution on a regular and continuous basis.

(b) Institution Maintenance Responsibilities

Institution agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on **Schedule N (Institution Maintenance Responsibilities)**, to be attached hereto and made a part hereof after Institution's approval, such approval not to be unreasonably withheld, conditioned or delayed.

(c) Inspection of Project Site(s)

Institution agrees that ESCO shall have the right once a month, with prior notice, to inspect Project Site(s) to determine if Institution is complying, and shall have complied with its obligations as set forth in **Section 25.3(b)**. For the purpose of determining Institution's said compliance, the checklist to be set forth at **Schedule O (Facility Maintenance Checklist)** as completed and recorded by ESCO during its monthly inspections, shall be used to measure and record Institution's said compliance. Institution shall make the Project Site(s) available to ESCO for and during each monthly inspection, and shall have the right to witness each inspection and ESCO's recordation on the checklist. Institution may complete its own checklist at the same time. ESCO agrees to not interfere with the Institution operations during any monthly inspection.

Section 25.4. Waiver Of Liens

ESCO will obtain and furnish to Institution a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of each piece of Equipment.

ARTICLE 26: CONFLICTS OF INTEREST

Section 26.1 Conflicts of Interest

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither party hereto nor any director, employee or agent of any party hereto shall give to or receive from any director, employee or agent of any other party hereto any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither party hereto nor any director, employee or agent of either party hereto, shall without prior notification thereof to the other party enter into any business relationship with any director, employee or agent of the other party or of any affiliate of the other party, unless such person is acting for and on behalf of the other party or any such affiliate. A party shall promptly notify the other party of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to the party against whom it was charged. Any representative of any party, authorized by that party, may audit the records of the other party related to this Contract, upon reasonable notice and during regular business hours including the expense records of the party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this section.

ARTICLE 27. COMPLETE CONTRACT

This Contract, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract between both parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the parties.

ARTICLE 28. APPLICABLE LAW

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of _____.

ARTICLE 29. INTERPRETATION OF CONTRACT

The Institution shall have the authority to determine questions of fact that arise in relation to the interpretation of this Contract and the ESCO'S performance hereunder. However, such determinations are subject to the Alternative Dispute Resolution procedures as described in **Schedule Q (Alternative Dispute Resolution Procedures)**. Unless the Parties agree otherwise, or the Work cannot be continued without a resolution of the question of fact, such determinations and Alternative Dispute Resolution procedures shall not be cause for delay of the Work. The ESCO shall proceed diligently with the performance of this Contract and in accordance with the Institution's decision whether or not the ESCO or anyone else has an active claim pending. Continuation of the Work shall not be construed as a waiver of any rights accruing to the ESCO.

ARTICLE 30. NOTICE

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ESCO: *ESCO Name, Attention:, Complete address.*
 Include COPY TO: information for ESCO, if applicable.

TO INSTITUTION: *Institution Name, Attention: Complete address.*
 Include COPY TO: information for INSTITUTION, if applicable.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract by their duly authorized representatives on the date first above written.

(Corporate Seal)

ATTEST:

(INSTITUTION)

_____ By _____

(ESCO)

_____ By: _____

CONTRACT ATTACHMENT I: Schedules, Exhibits, and Appendices

SCHEDULE A. ENERGY SAVING GUARANTEE

This schedule should fully describe all provisions and conditions of the energy saving guarantee provided by the ESCO. The guarantee should be defined in units of energy to be saved for the duration of the contract term. Reference to the annual reconciliation of achieved vs. guaranteed savings should be included (there is also language in the body of the contract regarding annual reconciliation See Section 3.2).

SCHEDULE B. BASELINE ENERGY CONSUMPTION

The baseline energy consumption is the "yardstick" by which all savings achieved by the installed project will be measured. The methodology and all supporting documentation used to calculate the baseline should be located in this schedule including unit consumption and current utility rates for each fuel type. This schedule may also include baseline documentation regarding other cost savings such as material savings (e.g. bulbs, ballasts, filters, chemicals etc.), and cost savings associated with the elimination of outside maintenance contracts.

SCHEDULE C. SAVINGS MEASUREMENT AND VERIFICATION PLAN; METHODOLOGY TO ADJUST BASELINE

This schedule contains a description of the energy savings measurement, monitoring and calculation procedures used to verify and compute the savings performance of the installed equipment will be contained in this schedule. This calculation will include a method to compare the level of energy that would have been consumed without the project (referred to as the "Baseline") with what amount of energy was actually consumed during a specific time period (monthly, quarterly, etc.). All methods of measuring savings including engineered calculations, metering, equipment run times, pre- and post-installation measurements, etc. should be explicitly described for all equipment installed.

Periodically (at least on an annual basis), the baseline will be adjusted to account for the prevailing conditions (e.g., weather, billing days, occupancy, etc.) during the measurement period. All methodologies used to account for any adjustments to the baseline needs to be clearly defined in this schedule.

SCHEDULE D. FINAL PROJECT COST & PROJECT CASH FLOW ANALYSIS

This schedule contains a spreadsheet depiction of the expected financial performance of the project throughout the entire contract term. The documentation should clearly identify all financial components of the project, including interest rates, current fuel prices, any escalation rates, guaranteed savings figures, ESCO compensation figures, cash-flow projections, and projected Net Present Value of any cumulative positive cash flow benefits to the Institution. Savings projections should be delineated by utility/fuel type and should identify ongoing annual service fees provided over the contract term. Project cost breakdowns should identify both hard costs (labor costs, subcontractor costs, cost of materials and equipment, and miscellaneous costs like permits, bonds taxes, insurance, mark-ups, overhead and profit, etc.).

SCHEDULE E. FINANCING AGREEMENT AND PAYMENT SCHEDULE

This schedule contains a copy of the project financing agreement or terms and conditions of whatever financing vehicle is used (lease, COPs, bank financing etc.). An amortization and payment schedule should also be included as well as the progress payment disbursement schedule that will be used to pay the ESCO during the Interim Period (construction and installation) for the agreed-upon percentages of work completed.

SCHEDULE F. COMPENSATION TO ESCO FOR ANNUAL SERVICES

This should contain the amount and frequency of any payments that may be made to the ESCO for maintenance, monitoring or other services negotiated as part of the contract. It should contain information about how the compensation is calculated (e.g. a percentage of savings above and beyond the guarantee, flat fee etc.), and if an annual inflation index is to be used to escalate fees over the duration of the contract term. An hourly fee structure will also likely be included to cover ESCO costs for any services provided beyond the scope agreed to at the time of contract execution.

SCHEDULE G. DESCRIPTION OF PROJECT SITE(S); PRE-EXISTING EQUIPMENT INVENTORY

This schedule contains basic information about the condition of the Project Site(s) at the time of contract execution. Such information would include facility square footage, building construction, use, occupancy, hours of operation etc., and any special conditions that may exist.

The inventory is important to include for the purpose of identifying what equipment was in place and how it was configured at the time of contract execution. This schedule is important to the accurate establishment of baseline, savings measurement and may need to be referred to in the later years of the contract.

SCHEDULE H. EQUIPMENT TO BE INSTALLED BY ESCO

Schedule H: This schedule should specify all of the newly installed equipment including manufacturer, quantity, location and warranties (you can also have a separate schedule for warranties). This schedule should also describe any modifications that may have been made to existing equipment, if applicable.

SCHEDULE I. CONSTRUCTION AND INSTALLATION SCHEDULE

The timetables and milestones for project construction and installation should be contained in this schedule. If so desired, documentation of required insurance, subcontractor lists and any MBE/WBE required subcontracts may be included in this schedule or broken out into a separate schedule. NOTE: It is important that the construction/installation phase of the project be treated in compliance with individual institutional requirements and the appropriate governing statutes. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract. This will need to be decided as appropriate on a case-by-case basis.

SCHEDULE J. SYSTEMS START-UP AND COMMISSIONING OF EQUIPMENT; OPERATING PARAMETERS OF INSTALLED EQUIPMENT

This section should specify the performance testing procedures that will be used start-up and commission the installed equipment and total system. The schedule should also provide for the Institution to be notified of and present during all commissioning procedures. This schedule should contain a provision for the documentation of the client's attendance at the various tests and their approval that the tests followed the specified procedures and met or exceed the expected results.

The operating parameters should contain any specified parameters for the operation of the installed equipment such as temperature setbacks, equipment run times, load controlling specifications and other conditions for the operation of the equipment.

SCHEDULE K. STANDARDS OF COMFORT

The standards of comfort to be maintained for heating, cooling, lighting levels, hot water temperatures, humidity levels and/or any special conditions for occupied and unoccupied areas of the facility should be explicitly described in this schedule.

SCHEDULE L. ESCO'S TRAINING RESPONSIBILITIES

The description of the ESCO's training program or sessions for facility personnel should be contained in this schedule. As well, the duration and frequency of the specified training should also be included. Any provisions for on-going training, commitments to train newly hired facility personnel, and training with respect to possible future equipment or software upgrades should also be described. Any fees associated with the client's request for training beyond what the ESCO is contractually bound to provide should also be specified.

SCHEDULE M. ESCO'S MAINTENANCE RESPONSIBILITIES

A complete description of the ESCO's specific operations and maintenance responsibilities should be included in this schedule along with the time intervals for their performance of the stated O&M activities.

SCHEDULE N. INSTITUTION'S MAINTENANCE RESPONSIBILITIES

This schedule describes the operations and maintenance responsibilities that may be assigned to facility staff as agreed to by both parties. In some instances it will contain no more than a description of routine O&M currently being performed on existing energy consuming equipment in the facility. In other cases, facility staff may be used to provide some maintenance on the new equipment installed under the performance contract, with the ESCO providing any specialized services as needed.

SCHEDULE O. FACILITY MAINTENANCE CHECKLIST

This checklist is a method by which the ESCO may record and track the Institution's compliance with any of the maintenance procedures being performed by facility personnel. The checklist typically specifies simple list of tasks and the corresponding schedule for the performance of the prescribed procedures. Facility staff will complete the checklist and forward it to the ESCO, usually on a monthly basis. (This checklist is a very useful tool for both the ESCO and Institution to verify that the required maintenance activities are being performed at the scheduled intervals).

SCHEDULE P. ANNUAL REPORTING REQUIREMENTS

This schedule summarizes the project and contains the energy, water and operational cost savings (in dollars and MMBTUs) for the annual reporting period. In addition, annual emission reductions and ENERGY STAR rating (if applicable) are also located in this schedule. This summary information is useful for tracking and reporting on annual project performance. (See template.)

Schedule P- Annual Reporting Requirements

Institution Name/Institution Contact (Include Email and Phone Number)	
Facility Name/Facility Contact (Include Email and Phone Number)	
ESCO Name/ESCO Contact (Include Email and Phone Number)	
Total Square Footage of Project Site/Contract Start Date/Contract End Date	
Current Repayment Year (ex. Yr. 3/ 2005)	
Reporting Timeframe (ex. Jan 1-Dec. 31)	
Installed Project Cost (no financing costs)	
Total Contract Value of Guaranteed Savings	
Annual Value of Guaranteed Savings	
Measured Energy Savings	
Operational Savings	
 Avoided Capital Cost (if applicable)	
Annual Dollar Value of Achieved Savings	
Total Annual Achieved Energy Savings (MMBTU)	
 Electric	
 Natural Gas	
 Oil	

Coal	
Steam	
Other	
Annual Water Savings (kgal)	
Annual Avoided NOx Emissions (Tons)	
Annual Avoided SOx Emissions (Tons)	
Annual Avoided CO2 Emissions (Tons)	
ENERGY STAR Rating (if applicable)	

SCHEDULE Q. ALTERNATIVE DISPUTE RESOLUTION

This schedule describes methods for resolving disputes or claims relating to construction or the contract, wherein the parties agree to exercise good faith efforts (e.g., mediation, dispute resolution board) and to only use litigation as a last resort. This schedule is included as an alternative to costly binding arbitration and litigation.

OPTIONAL SCHEDULES

PRE-EXISTING SERVICE CONTRACTS

Information regarding the scope and cost of pre-existing equipment service contracts should be located in this schedule. This gives both the client and ESCO information about how and when the existing equipment is being serviced. As well, if the ESCO is credited with any maintenance savings or is taking over any existing service contracts, the scopes and costs of such Contracts will be useful in tracking the performance of the ESCO in providing the required services and documenting any attributable cost savings.

ENERGY SAVINGS PROJECTIONS

This schedule should contain the projected energy savings in units for each year of the contract. Oftentimes these projections are broken down on a measure by measure basis although some measures may be aggregated into general categories such as lighting or HVAC. If there are several buildings involved in the project, this schedule should contain projections for each facility, even though they may all be covered under a single guarantee.

FACILITY CHANGES CHECKLIST

A "Facility Changes Checklist" or other method may be provided by the ESCO for the Institution to notify the ESCO of any changes in the facility that could have an impact on energy consumption (e.g.

occupancy, new equipment acquisition, hours of use etc.). This checklist is generally submitted on a monthly basis or quarterly basis.

CURRENT AND KNOWN CAPITAL PROJECTS AT FACILITY

If there are any current or planned capital projects to be implemented in the facility, that information should be contained in this schedule. This information could prove to be very useful in the out-years of the contract to avoid potential disputes over long-term energy savings performance, overall facility energy consumption and costs.

EXHIBITS

EXHIBIT I	PERFORMANCE BOND/CONSTRUCTION BOND
EXHIBIT II	LABOR AND MATERIAL PAYMENT BOND <i>if required</i>
EXHIBIT II (i)	CERTIFICATE OF ACCEPTANCE—TECHNICAL AUDIT
EXHIBIT II (ii)	CERTIFICATE OF ACCEPTANCE—INSTALLED EQUIPMENT
EXHIBIT III	EQUIPMENT WARRANTIES

APPENDICES

APPENDIX A	RFP FOR ESCO SOLICITATION
APPENDIX B	ESCO PROPOSAL
APPENDIX C	TECHNICAL ENERGY AUDIT REPORT

NOTE: THESE SCHEDULES CAN BE INCLUDED AS OPTIONAL AND INCLUDED OR COMBINED WITH OTHERS OR MAY BE CONTAINED IN THE AUDIT REPORT AS DESIRED.