

**APPENDIX B**  
**PERFORMANCE AGREEMENT**

## ENERGY PERFORMANCE CONTRACT

This Purchase Agreement for Energy Conservation Equipment (the "Agreement" or "Contract") is made and entered into as of this day of **<date>**, by and between **<name of customer, state>** ("Customer") and **<name of energy service company (ESCO)>** ("ESCO"), for the purpose of the sale and installation of certain energy saving equipment ("Equipment"), described in **Schedule A (Equipment to Be Installed by ESCO)** and provision of other services described in **Schedule D (ESCO Monitoring, Maintenance and Service Agreement)** designed to save energy and reduce related costs for certain property and buildings owned by Customer (the "Premises") as described in **Schedule B (Description of the Premises)**.

### WITNESSETH

**WHEREAS** ESCO has developed or become knowledgeable about certain procedures for controlling energy and water consumption through the use of engineering analyses and devices installed and maintained on the premises of its customers; and

**WHEREAS** ESCO has made an assessment of the energy consumption characteristics of the Premises, which Customer has approved; and

**WHEREAS** Customer owns and operates the Premises and is in need of energy and water saving equipment and services designed to reduce consumption and associated costs at said Premises; and

**WHEREAS** Customer desires to retain ESCO to sell to it, install and service certain energy and water efficiency equipment of the type or class described in **Schedule A (Equipment to be Installed by ESCO)** and to provide other services for the purpose of achieving energy cost reductions within Premises, as more fully set forth herein; and

**WHEREAS** ESCO has selected the Equipment on the basis of competitive quality, compliance with ESCO's specifications, and price.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Customer and ESCO hereto covenant and agree as follows:

### 1 PURCHASE AND SALE

- 1.1 Customer agrees to purchase and ESCO agrees to provide the Equipment, together with installation, maintenance and other services as provided herein, on the terms and conditions of this Agreement.
- 1.2 The agreed to Contract Sum for the Work is R **<Cost>**. The Contract Sum will be equal to the sum of all materials, labour, auditing, design, engineering, project management fees, and outside services.
- 1.3 ESCO shall provide the work identified on Schedule A (Equipment to be Installed by ESCO) and the services detailed on Schedule D (ESCO Monitoring, Maintenance and Service Agreement).
- 1.4 ESCO shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Agreement.

- 1.5 ESCO shall be responsible to pay for all labour, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

## **2 ENERGY MANAGEMENT PLAN**

- 2.1 Plan Details. ESCO has prepared a complete Detailed Energy Audit, dated *<date>* which has been approved and accepted by Customer as set forth in Exhibit III (i) (Certificate of Acceptance – Detailed Energy Audit).
- 2.2 Schedules, Exhibits and Appendices. This Agreement incorporates and makes a part hereof certain Schedules and Exhibits listed in Section 40 (Schedules and Exhibits) of this Agreement which determines the precedence of the Schedules and Exhibits relative to each other and to this Agreement in the event of conflict. Notwithstanding, the provisions of this Agreement and the attached Schedules shall govern in the event of any inconsistencies between the Detailed Energy Audit and the provisions of this Agreement.
- 2.3 Other Documents. This Contract incorporates herein and makes a part hereof the General Conditions set forth in Schedule N (General Conditions) and Special Provisions as set forth in Section 38 (Special Provisions), as well as the entire RFP and ESCO Proposal for this Project labelled Appendix A (RFP for ESCO Solicitation) and Appendix B (ESCO Proposal) respectively. Acceptance by the Customer of the Detailed Energy Audit is reflected in Exhibit III (i) (Certificate of Acceptance—Detailed Energy Audit). Notwithstanding, the provisions of this Contract and the attached Schedules shall govern in the event of any inconsistencies between the Detailed Energy Audit and the provisions of this Contract.

## **3 ENERGY USAGE RECORDS AND DATA**

Customer has furnished and shall continue to furnish (or authorise its energy suppliers to furnish) during the Term of this Agreement to ESCO, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Premises.

## **4 TIME FOR COMPLETION; COMMENCEMENT DATE; TERM OF AGREEMENT**

- 4.1 Construction Commencement Date and Time for Completion of Work. Work shall commence within thirty (30) days of execution of this Contract and shall be completed as set forth in Schedule G (Construction and Installation Schedule). The Time for Completion of Work is of the essence of this Contract. By executing this Contract, the parties hereto confirm the Time of Completion of Work is a reasonable period for performing the Work. If ESCO is delayed at any time in progress of the Work by an act or neglect of Customer or by labour disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond ESCO control, then the Time for Completion of the Work shall be extended by Change Order, for such reasonable time as the parties hereto may determine.
- 4.2 Performance Commencement Date. The Performance Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by Customer, and when ESCO shall have delivered a Notice to Customer that it has installed and commenced operating all of the Equipment specified in Schedule A (Equipment to be Installed by ESCO) and in accordance with the provisions of Section 13 (Construction Schedule and Equipment Installation; Approval)

and Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment), and Customer 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 in Section 4 (Time for Completion; Performance Commencement Date; Term of Agreement) and Section 5 (Payments) to the contrary, the Performance Commencement Date shall not occur and the Customer shall not be required to accept the work under this Agreement unless and until: (i) all Equipment installation for the subject Premises is completed by ESCO in accordance with the terms and conditions of this Agreement, including without limitation the satisfaction of all claims for labour and materials.

Customer shall have thirty (30) days after notification by the ESCO to inspect and accept the Equipment. The Customer 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 Agreement.

Acceptance shall occur at the later of the time specified herein for acceptance or at the expiration of the ten (10) days statutory notice of "final settlement" to subcontractors and other persons furnishing labour, materials, and other supplies in the performance of work. In the event claims are received, acceptance shall not occur until after the receipt by Customer of a signed receipt in full or an order of withdrawal of said claims.

- 4.3 Performance Term of Agreement. Unless otherwise terminated pursuant to the terms of this Agreement, the Performance Term of this Agreement shall begin with the Performance Commencement Date and continue for *<number of years – 12 years recommended>* years or for a maximum of *<number of years – 25 years recommended>* years if the cost-weighted average lifetime of the equipment exceeds the financing term.

This Agreement shall be effective and binding upon the parties immediately upon its execution. The period from contract execution until the Performance Commencement Date shall be known as the "Interim Period". All Energy and Cost Savings achieved during the interim period will be fully credited to Customer and shall not be considered as Energy and Cost Savings provided under the ESCO Energy and Cost Savings Guarantee.

## 5 PAYMENTS

- 5.1 ESCO Compensation and Fees. Customer shall pay ESCO the Contract Sum in accordance with Schedule O ( Payment Schedule and Schedule of Values). Payments shall be made on a progress payment basis for work completed and accepted by the Customer. A retention of 10% will be withheld from each payment until the Work is complete and Customer executes the Certificate of Acceptance as set forth in Exhibit III (ii) (Certificate of Acceptance—Installed Equipment).
- 5.2 ESCO Monitoring Fees. Throughout the Term of this Agreement, or until the ESCO Monitoring, Maintenance and Service Agreement is cancelled by Customer, Customer shall pay the ESCO an annual fee according to Schedule D (ESCO Monitoring, Maintenance and Service Agreement) for monitoring the Energy and Cost Savings. Annual guaranteed Energy and Cost savings achieved shall be sufficient to cover any and all fees to be paid to ESCO for the provisions of Schedule D (ESCO Monitoring, Maintenance and Service Agreement).

- 5.3 Energy and Cost Savings Guarantee. Subsequent to the Performance Commencement Date and throughout the Term of this Agreement, ESCO hereby guarantees the level of Annual Energy and Cost Savings as detailed in Schedule C (Energy and Cost Savings Guarantee) <Note: include option to forfeit guarantee and reduce associated cost>. The guarantee shall remain in effect for at least the first <three years> of the performance period. The guarantee shall be optional for Customer each year hereafter, however the annual cost savings shall meet or exceed the annual payments by the Customer to lease the Equipment each year for the duration of the contract term.

This guarantee is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Agreement as specified in **Schedule D (ESCO's Monitoring, Maintenance and Service Agreement)** and in accordance with the Savings Calculation Formula as set forth in **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)**. This Energy and Cost Savings Guarantee is subject to the satisfactory performance by Customer of all its obligations under this Agreement including, without limitation, adjustment in accordance with **Section 19 (Material Changes)** hereunder. In the event this Agreement is terminated due to an uncured Event of Default by Customer, this Energy and Cost Savings Guarantee shall be cancelled.

ESCO has structured the Energy and Cost Savings Guarantee to be sufficient to exceed any and all annual payments required by the Customer in connection with the acquisition of Equipment to be installed by ESCO under this Contract and the Customer's lease financing obligations. 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 Customer to ESCO for the provision of services as set forth and in accordance with the provisions of **Schedule D (ESCO Monitoring, Maintenance and Service Agreement)** and **Schedule O (Annual Instalment Payment Schedule)**.

- 5.4 Annual Review and Reimbursement/Reconciliation. Energy-related cost savings shall be measured and/or calculated as specified in Schedule E (Baseline Energy Consumption) and Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline) and a report provided within forty-five (45) days of each anniversary of the Performance Commencement Date. ESCO has developed the measurement and verification procedures specified in Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline) to comply with the requirements stipulated in the DME CaBEERE Volume 4: Measuring and Verification.

In the event the Energy and Cost Savings achieved during such twelve-month period is less than the Guaranteed Energy and Cost Savings during the years the guarantee is in effect, ESCO shall pay the Customer an amount equal to the deficiency.

If during any twelve-month period the Energy and Cost Savings achieved are greater than the Guaranteed Energy and Cost Savings, such excess Cost Savings shall be shared 50/50 between the Customer and the ESCO.

- 5.5 Monitoring Information Procedure. Energy and Cost Savings shall be calculated each <period of time – month, quarter or year (not to be paid in advance)> in the following manner:

- (i) By the <number of days -- 30<sup>th</sup>> day after receipt, Customer shall provide ESCO with copies of all energy bills for the Premises that 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 F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)**.

5.6 **Late Payment.** Payment due either party hereunder shall be due and payable within thirty (30) days of the invoice date. Interest shall accrue on any past due balance owed to either party hereunder at the rate of one percent (1%) per month (or the highest rate not prohibited by law, whichever is lower). This remedy shall be in addition to, and not exclusive of, any other remedy available under this Agreement or applicable law.

5.7 **Effective Date of Payment Obligation.** Notwithstanding the above provisions in Section 4, Customer 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 Section 10 (Acceptance Testing), Section 13 (Construction and Installation by ESCO) and Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment), and accepted by Customer 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.

## **6 MODIFICATION OF EQUIPMENT**

During the Term of this Agreement, Customer shall 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.

## **7 UPGRADING OR ALTERING THE EQUIPMENT**

ESCO shall at all times have the right, subject to Customer'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 Premises, provided that:

- (i) the ESCO complies with the standards of comfort and services set forth in **Schedule I: Standards of Comfort** 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 Energy and Cost Savings at the Premises 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 Customer for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall be new and have equal or better potential to reduce energy consumption at the Premises than the Equipment being replaced. The ESCO shall update any and all software to be used in connection with the Equipment in accordance with the provisions of **Section 15.1 (Ownership of Certain Proprietary Rights) of Schedule J (ESCO's Maintenance Responsibilities)**. All replacements of and alterations or additions to the Equipment shall become part the Equipment described in **Schedule A (Equipment to be Installed by ESCO)** and shall be covered by the provisions and terms of **Section 10 (Acceptance Testing)** and **Section 13 (Construction and Installation by ESCO)**.

## 8 ACCEPTANCE TESTING

- 8.1 Modification of Schedules. To ensure that this Agreement and its Schedules properly account for as-installed conditions, which conditions may vary from the pre-installation analyses, the ESCO shall re-validate or modify the Schedules.
- 8.2 Systems Start-up and Equipment Commissioning. 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 H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment) and prior to acceptance of the project by Customer as specified in Exhibit III (ii) (Acceptance Testing).

Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Agreement, and to determine if all building systems, subsystems or components are functioning properly within the new integrated environment. The ESCO shall provide notice to the Customer of the scheduled test(s) and the Customer 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. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in Equipment operations that may be observed during system testing procedures. Prior to Customer acceptance ESCO shall also provide Customer with satisfactory documentary evidence that the Equipment installed is the Equipment specified in Schedule A (Equipment to Be Installed by ESCO).

## 9 EQUIPMENT WARRANTIES

ESCO warrants that all equipment sold and installed, as part of this Agreement is new, will be 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 Certificate of Acceptance (Exhibit III, ii) for the particular energy conservation measure. 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 D (ESCO Monitoring, Maintenance and Service Agreement)**.

ESCO further agrees to assign to Customer all manufacturer's warranties relating to the Equipment and to deliver such written warranties and which shall be attached and set forth as **Exhibit V (Equipment Warranties)**; to pursue rights and remedies against manufacturer and ESCO of the equipment under the warranties in the event of equipment malfunction or improper or defective function, and defects in parts, workmanship and performance, to notify the Customer 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.

The cost of any risk of damage or damage to the equipment and its performance, including damage to property and equipment of the Customer or the Premises, due to ESCO's failure to exercise its warranty rights shall be borne solely by ESCO.

All warranties shall be transferable and extend to the Customer. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction.

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.

## **10 PERMITS AND APPROVALS; COORDINATION**

10.1 Permits and Approvals. All required permits and licences for the installation of the Equipment, including without limitation, this South Africa's plumbing and electrical permits, shall be secured and paid for by the ESCO. Customer shall use its best efforts to assist ESCO in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Customer, however, be responsible for payment of any permit or licence fees. The equipment and the operation of the equipment by ESCO shall upon acceptance conform to all Government, Provincial and local code requirements. ESCO shall furnish copies of each permit or licence which is required to perform the work to the Customer before the ESCO commences the portion of the work requiring such permit or licence.

As directed by Customer, design documentation will be submitted to Customer for review. As deemed necessary by Customer, design documentation will be forwarded by Customer to the appropriate code review contractor. Customer agrees that the total review process will not be longer than 10 days. All costs of code review will be borne by Customer.

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

## **11 CONSTRUCTION AND INSTALLATION BY ESCO**

11.1 Construction Schedule. Construction and equipment installation shall proceed in accordance with the construction schedule approved by Customer and attached hereto as **Schedule G (Construction and Installation Schedule)**.

11.2 ESCO's Duty of Proper Installation. All services called for by this Agreement which constitute the "practice of architecture" or the "practice of engineering", shall be performed by properly qualified and licensed professionals employed by ESCO and shall be performed in accordance with applicable law. ESCO shall perform all tasks/phases under this Agreement, including construction, and shall 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 I (Standards of Comfort) and Schedule G (Construction and Installation Schedule)**. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Agreement. Customer reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of Customer, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action caused by ESCO's breach of its obligations under this Agreement shall be borne by ESCO. All construction and installation by ESCO shall be in compliance with applicable building, fire and other codes in existence as of the date of this contract.

11.3 Subcontracts. As used in this Agreement, the term "subcontractor" means a person or entity supplying both labour and materials, or labour only, for installation or

maintenance related to the Equipment. Each and every subcontractor shall be properly qualified to perform the work that is the subject of such subcontract. Within thirty (30) days following execution of this Agreement, ESCO shall provide the Customer a complete list of all subcontractors. The ESCO shall not use any subcontractor the Customer objects to in writing as being unacceptable within five (5) days after receiving ESCO's list. The ESCO agrees to bind each subcontractor to the terms of **Sections 9, 10, 11, 12, 13, 16 and 20 of this Agreement**. Nothing in this Agreement or otherwise shall create any contractual relationship whatsoever between any subcontractor and the Customer. The ESCO shall not grant or allow any lien or security interest for labour or material or otherwise on the Equipment, the Premises or other property owned by the Customer.

- 11.4 ESCO's Superintendence and Supervision. ESCO shall provide, during the progress of the installation and testing, a competent superintendent and any necessary assistants. The superintendent shall represent the ESCO and all directions or notices given to him or her shall be binding on the ESCO.

The superintendent shall give efficient supervision to the work, using his or her best skill and attention. The superintendent shall see that the work is carried out in accordance with this Agreement and in a thorough first-class manner in every respect. The superintendent shall establish all lines, levels, and marks, if any, necessary to facilitate the operations of all concerned in such installation.

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

- 11.6 Open Book Pricing. Open book pricing will be required, such that the ESCO shall fully disclose all costs. ESCO shall maintain cost accounting records on authorised work performed documenting actual costs for labour and material, or other basis agreed to by the Customer. ESCO shall afford Customer access to these records and preserve them for a period of three (3) years after final payment. Costs shall be evaluated through price analysis to compare costs with reasonable criteria such as established catalogue and market prices or historical prices. The pricing methodology and individual cost mark-ups disclosed during preliminary contract negotiations shall be expected to be applied in costs presented in any subsequent technical audit or performance contract, providing the scope and size of the project remain the same as assumed when mark-ups were disclosed.

- 11.7 Use of Stated Mark-ups: In establishing the Contract Sum the ESCO has used the mark-ups for overhead and profit as disclosed in the ESCO Proposal (Appendix B) and applied to the labour and material costs as shown in **Schedule O (Payment Schedule and Schedule of Values)**. It also has also provided a contingency budget equal to < % of labour and materials or R value>. The Contract Sum shall be adjusted based on the actual costs of labour and materials to the ESCO multiplied by the mark-ups agreed to by the ESCO, but in no event shall the Contract Sum be increased. In the event it is possible to reduce the Contract Sum because the contingency budget is not spent or the actual labour and material costs are less than budgeted, the Customer can, at its sole option, increase the Scope of Work to include additional equipment such that the original Contract Sum is reached. If the Customer declines to increase the scope of Work, at its sole option, the Contract Sum shall be reduced to an amount consistent with the pricing using the stated mark-ups.

11.8 Performance by ESCO: 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 I (Standards of Comfort)** and the construction schedule specified in **Schedule G (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 Customer 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 Customer, the structural integrity of the Premises 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.

## **12 TRAINING AND FOLLOW-UP ACTIVITIES BY ESCO**

The ESCO shall conduct the training programme described in **Schedule M (ESCO's Training Responsibilities)**. Appropriate training shall 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 Customer.

## **13 OWNERSHIP**

13.1 Ownership of Certain Proprietary Property Rights. Customer shall not, by virtue of this Agreement, acquire any ownership 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. Customer shall, however, have a nonexclusive licence to utilise all such intellectual or proprietary rights in connection with its use of the Equipment under this Agreement. The ESCO hereby grants to the Customer a perpetual, irrevocable, royalty-free licence to any and all software or other intellectual property or proprietary rights necessary for the Customer to continue to operate, maintain, and repair the Equipment in a manner that will yield maximal energy consumption reductions. This license shall continue subsequent to any termination or expiration of this Agreement other than termination due to breach by Customer.

13.2 Ownership of Documents. All drawings, reports and materials prepared by the ESCO specifically in performance of this contract shall become the property of Customer. Unless waived by the Customer in writing, within thirty (30) days following the Performance Commencement Date, ESCO shall provide the Customer as-built record drawings of the Equipment installation and all specifications therefore. "Drawings" shall include three sets of corrected prints, and electronic files in compliance with Customer's CAD standards *<insert desired format for electronic drawings>*. Additional documents will be provided as a change order.

13.3 Ownership of Existing Equipment. Ownership of the equipment and materials existing at the Premises at the time of execution of this Agreement shall remain the property of Customer even if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Agreement. If applicable, ESCO shall advise the Customer in writing of all equipment and materials to be replaced at the Premises and the Customer shall within fifteen (15) days designate in writing to the ESCO which equipment and materials should not be disposed of off-site by the ESCO. It is

understood and agreed to by both Parties that the Customer shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. Except as may be otherwise provided in this Agreement, the ESCO shall be responsible for the disposal of all equipment and materials designated by the Customer as disposable off-site in accordance with all applicable laws and regulations regarding such disposal. Under no circumstance shall ESCO be obligated to dispose of or take responsibility for any materials identified in Section 9 of this Agreement.

- 13.4 Ownership of Measurement and Verification Equipment. Customer agrees to provide rent-free space for the location of equipment required to provide the ongoing measurement of energy and water savings (the "Metering Equipment"). If required, Customer shall provide and maintain a non-dedicated telephone line to facilitate remote monitoring of the Equipment. Customer shall not by virtue of this Agreement, 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 verification of savings by ESCO. ESCO shall insure such Metering Equipment at its own expense and Customer shall have no liability for such Metering Equipment except in the event of damage arising from the fault of the Customer.

## 14 LOCATION AND ACCESS

- 14.1 ESCO Access. ESCO acknowledges that there exists sufficient space on the Premises for the installation and operation of the Equipment. Customer shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this Agreement. Customer shall provide access to the Premises for ESCO to perform any function related to this Agreement during regular business hours, or such other reasonable hours as may be requested by ESCO and acceptable to the Customer. ESCO shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. ESCO's access to the Premises to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by Customer. ESCO shall immediately notify the Customer 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 Premises, if any.

## 15 EQUIPMENT SERVICE

- 15.1 Actions by ESCO. During the Warranty Period, ESCO shall provide all service, repairs, and adjustments to the Equipment installed under terms of this Agreement pursuant to **Schedule J (ESCO's Maintenance Responsibilities)**. Customer shall incur no cost for Equipment service, repairs, and adjustments, except as set forth in **Schedule D (ESCO Monitoring, Maintenance and Service Agreement)**. Thereafter, Customer shall be responsible for and shall bear all costs associated with service, repairs, and adjustments to the Equipment.
- 15.2 Malfunctions and Emergencies. Customer shall use its best efforts to notify the ESCO or its designated subcontractor within twenty-four (24) hours after the Customer's actual knowledge and occurrence of:
- (i) any malfunction in the operation of the Equipment or any pre-existing energy related equipment that might materially impact upon the savings or savings guarantee,

- (ii) any interruption or alteration to the energy supply to the Premises, or
- (iii) any alteration or modification in any energy-related equipment or its operation.

Where Customer 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 a such conditions as having a material impact upon the savings. Customer shall notify ESCO within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. If such malfunction, interruption, or alteration occurs during the Warranty Period, ESCO shall respond to any such notice within twenty-four (24) hours and shall promptly thereafter proceed with corrective measures. Any telephonic notice of such conditions by Customer shall be followed within three business days by written notice to ESCO from Customer. If Customer 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 Customer for its loss, due to the delay, associated with the guaranteed savings under this Agreement for the particular time period, provided that ESCO is able to show the direct causal connection between the delay and the loss.

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

- 15.3 Actions by Customer. During the term of this Agreement, Customer 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 K (Customer's Maintenance Responsibilities)**. Notwithstanding the foregoing, Customer 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, Customer shall take reasonable steps to protect the Equipment from damage or injury. Customer agrees to maintain the Premises in good repair and to protect and preserve all portions thereof, which may in any way affect the operation or maintenance of the Equipment, all in accordance with the same standard of care the Customer applies to the Premises generally, that of a reasonably prudent government owner.

## 16 STANDARDS OF COMFORT

During the term of this Agreement, ESCO will maintain and operate the Equipment in a manner that will provide the standards of heating, cooling, hot water, lighting and other systems as described in **Schedule I (Standards of Comfort)**.

## 17 MATERIAL CHANGES

- 17.1 Material Change Defined: A Material Change shall include any change in or to the Premises, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Customer, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in **Schedule E (Baseline Energy Consumption) and Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)** by at least five (5) % after adjustments for climatic variations. Actions by the Customer that may result in a Material Change include but are not limited to the following:

- (i) manner of use of the Premises by the Customer; or

- (ii) hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or
- (iii) permanent changes in the comfort and service parameters set forth in **Schedule I (Standards of Comfort)**; or
- (iv) occupancy of the Premises; or
- (v) structure of the Premises; or
- (vi) types and quantities of equipment used at the Premises or
- (vii) modification, renovation or construction at the Premises; or
- (viii) the Customer's failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule K (Customer's Maintenance Responsibilities)**; or
- (ix) casualty or condemnation of the Premises or Equipment, or
- (x) changes in utility provider or utility rate classification, or
- (xi) any other conditions other than climate affecting energy or water use at the Premises.

17.2 Reported Material Changes; Notice by Customer. The Customer shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises at least 21 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 Customer within twenty-four (24) hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Customer to have occurred.

17.3 Unreported Material Change. In the absence of any Material Changes in the Premises or in their operations, the baseline energy consumption as set forth in **Schedule E (Baseline Energy Consumption)** should not change from year to year after adjustments for changes in climatic conditions. Therefore, if energy and water use for any month is more than five (5) % or more during any month from the projected energy usage for that month, after adjustments for changes in climatic conditions then such deviation shall be deemed to have resulted from a Material Change, except where an increase is due to Equipment malfunction, malfunction of Premises systems, subsystems or components attributable to the Equipment, faulty repair or other negligence or breach of contract by ESCO. In the event an unreported Material Change is identified according to this Section 19.3, the ESCO shall attempt to identify the Material Change and report its findings to the Customer in a timely manner. The ESCO and Customer shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)** and **Schedule E (Baseline Energy Consumption)**. If no Material Change is identified by the ESCO then no adjustments to the baseline will occur.

## 18 INSURANCE REQUIREMENTS

18.1 Liability Insurance. The ESCO shall procure and maintain Comprehensive General Public Liability and Property Damage Insurance and Comprehensive Automobile Liability and Property Damage Insurance as hereinafter specified, at ESCO's own

expense, during the life of this Agreement, written on an "occurrence" basis and naming the Customer as an additional insured. This insurance shall include a provision preventing cancellation without ninety (90) days' prior Notice by certified mail.

This insurance must protect the ESCO from all claims for bodily injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under this Agreement, whether such operations are by ESCO or by any subcontractor or anyone directly or indirectly employed by the ESCO or by a subcontractor. All such insurance shall be written on a Comprehensive Form of Policy. In the event any of the hazards or exposures, normally listed in standard policies as "Exclusions," are involved or required under this Agreement, then such hazards or exposures shall be covered and protection afforded under the policy and such exclusions "(x)", "(c)" and "(u)", as excerpted from standard policies, shall be removed from the policy as listed below:

"(x) Injury to or destruction of any property arising out of blasting or explosion, other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery of power transmitting equipment;"

"(c) The collapse of or structural injury to any building or structure due to;

- (1) grading of land, excavating, burrowing, filling, backfilling, tunnelling, pile driving, cofferdam work or caisson work; or
- (2) moving, shoring, underpinning, raising or demolition of any building or structure, or removal or rebuilding of any structural support thereof;"

"(u) (1) injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating or drilling; or

- (2) injury to or destruction of property at any time resulting there from."

18.2 Installation Risk Insurance. ESCO shall effect and maintain, at ESCO's expense, All Risk Installation Floater insurance in the Rand amount equal to the total insurable value of the construction contemplated by this Agreement. The insurance shall remain in effect until Customer acceptance of the installation as provided for in this Agreement.

18.3 Workers' Compensation Insurance. Standard Workers' Compensation and Employer Liability Insurance as required by Customer statute, including occupational disease, covering all employees at the worksite. ESCO shall require that all subcontractors also maintain such Insurance for their own employees. ESCO accepts full liability and responsibility for all subcontractor employees not so covered. In cases where any class of employees engaged in hazardous work under this Agreement at the worksite is not protected under Workers' Compensation statute, ESCO shall provide, and shall cause each subcontractor to provide adequate and suitable insurance for the protection of such employees not otherwise protected.

18.4 Professional Liability Insurance. ESCO shall maintain in full force and effect, at ESCO's expense, an Errors and Omissions or Professional Liability Insurance Policy in the amount of R1,000,000 minimum coverage. The policy shall remain in effect for the duration of the applicable statute of limitations for claims against construction professionals. The ESCO shall be responsible for all claims, damages, losses or expenses, including attorneys fees, arising out of or resulting from the performance of

professional services contemplated by this Agreement, provided that any such claim is attributable to bodily injury or death, or injury to or destruction of tangible personal property, or to failures of the work, including the loss of use resulting there from, and is caused, in whole or in part, by any negligent act, error or omission of the ESCO, any consultant or associate thereof, anyone directly or indirectly employed by the ESCO. The ESCO shall submit a Certificate of Insurance verifying said coverage upon execution of this Agreement and also any notices of renewals of such policy as they occur.

18.5 Certificate and Endorsements. Prior to commencement of work under this Agreement, ESCO is required to provide Customer with complete current certificates of insurance evidencing the required coverages specified above and endorsements to the policies listing Customer as additional insured (other than for workers' compensation and professional liability). ESCO shall also immediately provide written notice to Customer of any notice of cancellation received from any insurer.

18.6 At all times during the term of this Agreement, Customer shall maintain in full force and effect at its expense, standard perils Casualty insurance on the Equipment and Liability insurance in accordance with applicable South African law.

## **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, materials or labour shortages, or similar events, this Agreement shall at the other party's option remain in effect but the obligations of both parties shall be suspended until the said events shall have ended.

## **20 EVENTS OF DEFAULT**

20.1 Events of Default by Customer. Each of the following events or conditions shall constitute an "Event of Default" by Customer:

- (i) any failure by Customer to pay ESCO any sum due hereunder for a service and maintenance period of more than thirty (30) days after written notification by ESCO that Customer is delinquent in making payment;
- (ii) any other material failure by Customer to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after notice to Customer demanding that such failures to perform be cured or if such cure cannot be effected in such thirty (30) days, Customer shall be deemed to have cured default upon the commencement of a cure within such thirty (30) days and diligent subsequent completion thereof;
- (iii) any representation or warranty furnished by Customer in this Agreement that was false or misleading in any material respect when made.
- (iv) the filing of a bankruptcy petition whether by Customer or its creditors against Customer which proceeding shall not have been dismissed within 90 days of its filing, or an Involuntary assignment for the benefit of all creditors of the liquidation of Customer.

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

- (i) the standards of comfort and service set forth in **Schedule I (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 seven (7) days after written notice by Customer to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract.
- (ii) any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made;
- (iii) 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 A (Equipment to be Installed by ESCO) and Schedule G (Construction and Installation Schedule)**;
- (iv) provided that the operation of the facility is not adversely affected and provided that the standards of comfort in **Schedule I (Standards of Comfort)** are maintained, any failure by ESCO to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty (30) days after written notice to ESCO demanding that such failure to perform be cured, shall be deemed cured for purposes of this Agreement;
- (v) any lien or encumbrance upon the equipment by any subcontractor, labourer or material man of ESCO which is not released in thirty days;
- (vi) the filing of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within 90 days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO.
- (vii) failure by the ESCO to pay any amount due, or perform any obligation under the terms of this Agreement.

## 21 REMEDIES UPON DEFAULT

21.1 Remedies upon Default by Customer. If an Event of Default by Customer occurs, ESCO may, without a waiver of other remedies that exist in law or equity:

- (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 Customer, and/or for damages which shall include all costs and expenses reasonably incurred, including reasonable attorney fees;
- (ii) terminate this Agreement.

21.2 Remedies Upon Default by ESCO. In the Event of Default by ESCO, Customer may, without waiver of other remedies which exist in law or equity, exercise any and 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 damages, which shall include all costs and expenses reasonably incurred, including reasonable attorney fees. The customer may also terminate this Agreement.

## **22 ASSIGNMENT**

The ESCO acknowledges that the Customer 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 Customer.

### **22.1 Assignment by ESCO.**

- (i) The ESCO acknowledges that the Customer is induced to enter into this Agreement by, among other things, the professional qualifications of the ESCO. The ESCO agrees that except as provided below, neither this Agreement nor any right of obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Customer.
- (ii) Notwithstanding the foregoing, in the event of a sale, transfer, or reorganization of ESCO as an entity, ESCO shall have the right to assign all of its rights and delegate all of its duties under or pursuant to this Agreement without any prior consent or approval of Customer.
- (iii) The ESCO may, with prior written approval of the Customer, which consent shall not be unreasonably withheld, utilise subcontractors, provided that any subcontractor(s) shall fully comply with the terms of this Agreement. The provisions of Section 13.3 pertaining to subcontracts shall apply to any and all subcontract(s). Proposed subcontract(s) for other than installation shall be tendered to the Customer for approval of at least ten (10) days prior to execution of any such subcontract. No such assignment shall relieve the ESCO of any obligation under this Agreement.

**22.2 Assignment by Customer.** Customer may transfer or assign this Agreement and its rights and obligations herein to a successor or purchaser of the Premises or an interest therein with the consent of ESCO, which shall not be unreasonably withheld.

## **23 REPRESENTATIONS AND WARRANTIES**

Each party warrants and represents to the other that:

- (i) it has all requisite power, authority, licences, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (ii) its execution, delivery, and performance of this Agreement have been duly authorised by, or are in accordance with, its organic instruments, and this Agreement has been duly executed and delivered for it by the signatories so authorised and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a default under any Agreement, 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.

## **24 ADDITIONAL REPRESENTATIONS OF THE PARTIES.**

Customer hereby warrants, represents and promises that:

- (i) Customer is authorised under the Constitution and laws of South Africa to enter into this Agreement, each transaction contemplated hereby, and to perform all of its obligations under this Agreement.
- (ii) Customer has provided or shall provide timely to ESCO, all records relating to energy and water usage and energy-related maintenance of Premises requested by ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement will be true and accurate in all material respects; and
- (iii) Customer has not entered into any prior leases, contracts or agreements with other persons or entities regarding the leasing or acquisition of water or energy efficiency equipment or the provision of energy management services for the Premises or with regard to servicing any of the energy related equipment located in the Premises that would encroach upon the scope of this contract. Customer shall provide ESCO with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of pre-existing equipment at Premises that may be executed from time to time hereafter within seven days after execution thereof.
- (iv) The authorisation, approval and execution of the Agreement and all other proceedings of Customer relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public records, public bidding and all other laws, rules and regulations of Customer.

**24.1 By ESCO. ESCO hereby warrants, represents and promises that:**

- (i) before commencing performance of this Agreement:
  - (a) ESCO shall have become licensed or otherwise permitted to do business in South Africa.
  - (b) ESCO shall have provided proof and documentation of all required insurance and bonds pursuant to this Agreement.
- (ii) ESCO shall make available, upon reasonable request, documents relating to its performance under this Agreement, including contracts and subcontracts it shall enter into;
- (iii) ESCO shall use subcontractors who are qualified, licensed and bonded in South Africa to perform the work so subcontracted pursuant to the terms hereof;
- (iv) ESCO has all requisite authority to license the use of proprietary property, both tangible and intangible, contemplated by this Agreement;
- (v) The Equipment will meet or exceed the Acceptance Testing Standards set forth in this Agreement.
- (vi) The Equipment is or will be compatible with all other Premises 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;

- (vii) That ESCO is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Installation and perform its obligations under this Agreement.

## **25 COMPLIANCE WITH REGULATIONS**

ESCO shall perform its obligations hereunder in compliance with any and all applicable laws, rules, and regulations, in accordance with sound engineering and safety practices and in compliance with any and all reasonable rules of Customer relative to the Premises. ESCO shall be responsible for obtaining all governmental permits, consents, and authorisations as may be required to perform its obligations hereunder. Where applicable, any additions or changes to the installation shall comply in all respects with:

- (a) the latest issue of SABS 0412; "Code of Practice for the Wiring of Premises".
- (b) the Machinery and Occupational Safety Act No. 6 of 1983 as amended;
- (c) the municipal by-laws and any special requirements of the Local Supply Authority;
- (d) the local fire regulations, and
- (e) the National Building Regulations and Building Standards Act 1977 (Act 103 of 1977) as amended.
- (F) the SABS Code of Practice for the Application of the National Building Regulations SABS 0400 – 1990.

## **26 NO WAIVER**

The failure of ESCO or Customer to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of ESCO or Customer.

## **27 SEVERABILITY**

In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not effect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or unconscionable or unlawful.

## **28 COMPLETE AGREEMENT**

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

## **29 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 Agreement.

### 30 APPLICABLE LAW

This Agreement and the construction and enforceability thereof shall be interpreted under the laws of South Africa.

### 31 NOTICE AND CONSENT

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, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice. Any consent required hereunder shall not be unreasonably withheld.

TO ESCO:                    *<ESCO Name, Attention, Mailing address.>*  
                                  *< Include COPY TO: information for ESCO, if applicable.>*

TO CUSTOMER:            *<Customer Name, Attention, Mailing address.>*  
                                  *< Include COPY TO: information for CUSTOMER, if applicable. >*

### 32 CUSTOMER'S COMPLIANCE WITH CHECKLIST

- 32.1 The parties further acknowledge and agree that said Energy and Cost Savings are not likely to be achieved unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by Customer on a regular and continuous basis.
- 32.2 Customer agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on **Schedule K (Customer's Maintenance Responsibilities)**, to be attached hereto and made a part hereof after Customer's approval.
- 32.3 Customer agrees that ESCO shall have the right once a month, with prior notice, to inspect Premises to determine if Customer is complying, and shall have complied with its obligations as set forth above in Section 32.2. For the purpose of determining Customer's said compliance, the checklist to be set forth at **Schedule L (Facility Maintenance Checklist)** as completed and recorded by ESCO during its monthly inspections, shall be used to measure and record Customer's said compliance. Customer shall make the Premises available to ESCO for and during each monthly inspection, and shall have the right to witness each inspection and ESCO's recording of findings on the checklist. Customer may complete its own checklist at the same time.

SIGNED AT ..... on this ..... day of .....

AS WITNESSES

1. ....

2. ....

.....

Customer

SIGNED AT ..... on this ..... day of .....

AS WITNESSES

1. ....

2. ....

.....

ESCO

### **33 SCHEDULES AND EXHIBITS**

The following Schedules and Exhibits are attached hereto (or will be, as provided in this Agreement) and are made a part of this Agreement by reference.

#### **33.1 Schedules**

<b>Schedule A</b>	<b>Equipment to be Installed by ESCO</b>
<b>Schedule B</b>	<b>Description of Premises; Pre-Existing Equipment Inventory</b>
<b>Schedule C</b>	<b>Energy and Cost Savings Guarantee</b>
<b>Schedule D</b>	<b>ESCO Monitoring, Maintenance and Service Agreement</b>
<b>Schedule E</b>	<b>Baseline Energy Consumption</b>
<b>Schedule F</b>	<b>Savings Measurement &amp; Calculation Formulae; Methodology to Adjust Baseline</b>
<b>Schedule G</b>	<b>Construction and Installation Schedule</b>
<b>Schedule H</b>	<b>Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment</b>
<b>Schedule I</b>	<b>Standards of Comfort</b>
<b>Schedule J</b>	<b>ESCO's Maintenance Responsibilities</b>
<b>Schedule K</b>	<b>Customer's Maintenance Responsibilities</b>
<b>Schedule L</b>	<b>Facility Maintenance Checklist</b>
<b>Schedule M</b>	<b>ESCO's Training Responsibilities</b>
<b>Schedule N</b>	<b>General Conditions</b>
<b>Schedule O</b>	<b>Payment Schedule and Schedule of Values</b>

### **33.2 Exhibits**

Exhibit I	Performance Bond
Exhibit II	Labour and Material Payment Bond
Exhibit III (i)	Certificate of Acceptance—Detailed Energy Audit
Exhibit III (ii)	Certificate of Acceptance—Installed Equipment
Exhibit IV	Operations and Maintenance Manuals
Exhibit V	Equipment Warranties
Exhibit VI	Form of Letter of Credit

### **33.3 Appendices**

Appendix A	RFP for ESCO Solicitation
Appendix B	ESCO Proposal
Appendix C	Detailed Energy Audit