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INVESTMENT GRADE AUDIT AGREEMENT

This Energy Audit Agreement is entered into on _____, 20xx__, by and between the _____ (*Insert the name of the Owner/Operator*) of the Commonwealth of Virginia (hereinafter referred to as the "**Owner/Operator**") and _____ (the "**ESCO**"). The Owner/Operator and the ESCO are referred to herein as the "**Parties**".

Whereas, the Owner/Operator has issued a Request for Proposals (RFP) to select a qualified energy performance contractor to implement-a guaranteed energy savings contract at _____ (the "Facility(s)");

Whereas, the ESCO submitted a proposal in response to the RFP;

Whereas, the Owner/Operator has evaluated the proposals submitted by qualified energy service companies and has selected the ESCO;

Whereas, the Owner/Operator is responsible for the operation, management and maintenance of the Facility(s);

Whereas, a comprehensive investment grade energy use and savings analysis (the "**Investment Grade Audit**" and **Report**) must be performed at the Facility(s) in order to determine the feasibility of entering into a guaranteed energy savings contract to provide for the installation and implementation of energy conservation measures (ECMs) at the Facility(s);

Whereas, if the ECMs are demonstrated to be financially feasible according to the BUILDING OWNER/OPERATOR's financial and other criteria, and if the amount of energy savings can be reasonably ascertained and guaranteed in an amount sufficient to cover costs associated with the project at the Facility(s) as desired by the Owner/Operator, the Parties intend to enter into a Energy Performance Contract under which the ESCO shall design, procure, install, implement, maintain and monitor such energy conservation measures at the Facility(s);

Now, Therefore, intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1: SCOPE OF INVESTMENT GRADE ENERGY AUDIT AND REPORT.

The ESCO will perform an Investment Grade Energy Audit and prepare a detailed engineering and economic report (the "Report") which specifically identifies the energy improvements and operational changes which are recommended to be installed or implemented at the Facility(s). The Report shall contain detailed projections of energy and cost savings to be obtained at the Facility(s) as a result of the installation of the recommended energy conservation measures (ECMs) and financially guaranteed by the ESCO. The savings calculations must utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings for the Facility(s), i.e.: utilize: accurate marginal cost for each unit of savings at the time the audit is performed; documented material and operational costs actually avoided; adjustments to the baseline to reflect current conditions at the Facility(s) compared to the historic base period; calculations which account for the

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interactive effects of the recommended ECMs; etc. The Report shall clearly describe how utility tariffs and/or rebates were used to calculate savings for all ECMs. The Report shall describe the ESCO's plan for installing or implementing the measures in the Facility(s), including all anticipated hard and soft costs associated with such installation and implementation. The ESCO shall competitively bid each and every ECM that the ESCO intends to subcontract out, and provide the Owner/Operator with the proposals and pricing information from each bidder. The Owner/Operator may require that certain reputable and qualified contractors with whom the Owner/Operator has an existing relationship be allowed to bid for a given ECM. The primary purpose of the Report is to provide an engineering and economic basis for negotiating the guaranteed energy savings contract between the Owner/Operator and the ESCO; however, the Owner/Operator shall be under no obligation to negotiate such a contract.

Owner/Operator Project Criteria:

Based on the information provided in preliminary analysis of the Facility(s) and discussions between the Owner/Operator and ESCO, the Owner/Operator's project criteria are as follows:

- Maximum price of \$ _____ total, or \$ _____ per project
- Guaranteed energy savings equivalent to no less than _____ per year, or _____% reduction from current consumption
- Project ROI greater than _____%
- Project IRR greater than _____%
- Blended simple payback period of no greater than _____ years

The ESCO shall perform the following tasks in performing the Energy Audit and preparing the Report:

A. Collect General Facility(s) Information

The ESCO shall evaluate the impact on utility cost and consumption of any energy initiatives, currently being installed or currently contemplated to be installed by the Owner/Operator in the Facility(s), which will remain separate from the guaranteed energy savings contract throughout the duration of that contract.

Owner/Operator shall furnish (or cause its energy suppliers to furnish) all available records and data concerning energy and water usage for the Facility(s) for the most current 24 month period, if available, including: Utility records; occupancy information; descriptions of any changes in the structure of the Facility(s) or its heating, cooling, lighting or other systems or energy requirements; descriptions of all major energy and water consuming or energy and water saving equipment used in the Facility(s); any comfort problems, code deficiencies, and a description of current energy management procedures. The Owner/Operator shall also furnish a record of any energy related improvements or modifications that have been installed during the past three years, or are currently being installed or are currently contemplated to be installed by the Owner/Operator in the Facility(s) separate from the guaranteed energy savings contract throughout the duration of that contract. The Owner/Operator shall also provide copies of drawings, equipment logs and maintenance work orders to the ESCO.

B. Analyze Existing Systems and Equipment

The ESCO shall compile an analysis based on a physical inspection of the major electrical and mechanical systems at the Facility(s), including but not limited to:

Cooling systems and related equipment

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- Heating and heat distribution systems
- Automatic temperature control systems and equipment
- Air distribution systems and equipment
- Outdoor ventilation systems and equipment
- Kitchen and associated dining room equipment, if applicable
- Exhaust systems and equipment
- Hot water systems
- Electric motors, transmission and drive systems
- Interior and exterior lighting
- Laundry equipment, if applicable
- Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
- Other major energy using systems, if applicable

The analysis shall address the following considerations:

1. the loads, proper sizing, efficiencies or hours of operation for each system; (Where Facility(s) operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings appropriate measurements are required unless waived by the Owner/Operator);
2. current operating condition for each system;

The ESCO shall conduct interviews with Facility(s) operation and maintenance staff regarding the Facility(s)'s mechanical systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

C. Establish Base Year Consumption and Reconcile with End Use Consumption Estimates

The ESCO shall examine the most recent 24 months of utility bills and establish Base Year consumption for electricity, fossil fuels and water by averaging; or selecting the most representative contiguous 12 months. The ESCO shall consult with Facility(s) staff and account for any unusual or anomalous utility bills which may skew Base Year consumption from a reasonable representation.

The ESCO shall analyze all major end uses representing more than 5% of total Facility(s) consumption including, but not limited to:

- lighting
- heating
- cooling
- HVAC motors (fans and pumps)
- plug load

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kitchen equipment
other equipment
miscellaneous

Where loading and/or usage are highly uncertain, the ESCO shall employ spot measurement and/or short term monitoring at its discretion, or at the request of the Owner/Operator. Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment.

D. Develop List of Potential Energy Conservation Measures (ECMs)

The ESCO shall:

1. Identify and propose potential ECMs for installation or implementation at the Facility(s), including cut sheets on proposed equipment.¹ For non-standard ECMs provide information regarding product site installations. The ESCO shall provide a firm Guaranteed Maximum Price for the Project and employ Transparent Pricing, to include details of hard and soft costs such as materials cost, material mark-up amounts, labor costs, labor margin, project management costs, engineering costs, cost for the performance guarantee, and (retro) commissioning.
2. Identify the energy and operational savings, and the useful life expectancy of each proposed ECM. Energy savings shall be shown both as a monetary amount and as a percentage reduction from baseline consumption.
3. Provide calculations showing the Internal Rate of Return (IRR), Return on Investment (ROI), and simple payback for each individual ECM and for the recommended combination(s) of ECMs proposed (“The Project”).
4. Specify Facility(s) operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs.
5. Provide analysis methodology, supporting calculations and assumptions used to derive baselines (e.g. lighting operating hours) and estimate savings. Provide the existing and proposed air and hot water temperatures, amount of outdoor air ventilation (CFMs) lighting and acoustic levels. Provide copies of the utility tariffs and commodity price histories used in savings calculations. Manual calculations should disclose essential data, assumptions, formulas, etc. so that a reviewer could replicate the calculations based on the data provided.
6. For savings estimates using computer simulations, the ESCO shall provide access to the program and all inputs and assumptions used, if requested by the Owner/Operator.
7. Provide a detailed savings measurement and verification plan for each proposed ECM.

¹ **(Optional)** ECMs of particular interest to Owner/Operator are specified in Attachment A and should be addressed in the Report. The attached list is not intended to be exhaustive nor limit the Company's evaluation and development of a comprehensive list of potential ECMs.

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8. Provide a detailed preliminary commissioning plan for the proposed ECMs. Provide a detailed retro-commissioning plan for building systems not directly impacted by the proposed ECMs.
9. Provide detailed calculations for any rate saving proposals.
10. Provide detailed supporting calculations for any proposed maintenance, material or other operational savings. Describe annual variances in savings from year to year (e.g. lighting, warranties).
11. Estimate any environmental costs or benefits of the proposed ECMs (e.g. disposal costs, avoided emissions, water conservation, etc.). Provide emissions reductions data for NOX, CO2 and SO2. Segment emissions data for direct site emissions reductions (e.g. fossil fuels) and indirect emissions reduction date (e.g. electricity/water).
12. Provide an estimate of all potential revenues from utility incentives, demand response payments, carbon monetization sales, renewable energy credits, 179D tax deduction sharing, and any other applicable attributes
13. For all proposed ECMs, the ESCO shall comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis.
14. Submit a completed Cash Flow Opportunity spreadsheet for each year of the contract term, factoring in the likely revenues from #12 above.

E. Select Final Recommended ECMs

The ESCO shall, in consultation with the Owner/Operator, recommend specific ECMs from its preliminary compilation for installation and implementation at the Facility(s).

F. Firm Costs and Fees

The ESCO shall provide detailed estimates of all costs and fees associated with the installation and implementation of the ECMs including:

- engineering/design costs for individual ECMs
- materials costs for individual ECMs, as well as mark-up
- labor costs for individual ECMs, as well as margin, as well as any associated with securing “attribute” revenues listed in #12 above
- contractor/vendor estimates for individual ECM hard and soft costs
- contingency costs for individual ECM hard cost
- construction management fees for the project
- commissioning costs for individual ECMs
- retro-commissioning cost for existing systems that will not be replaced

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initial training costs (and ongoing training, if applicable)
annual service fees including
measurement and verification
maintenance
performance monitoring
ongoing training services
other costs/fees (specify)

G. Guaranteed Savings

The Owner/Operator has endeavored to provide the ESCO with sufficient general and specific guidance in this ARTICLE 1 to develop the guaranteed savings numbers for the Report. In the event that questions arise as to the calculation of savings or whether certain items will be allowed as savings, the ESCO shall seek written guidance from the Owner/Operator. Owner/Operator rejection of certain calculations of savings or rejection of certain items as allowable savings in the Report shall be at the risk of the ESCO.

The following items will be allowed as savings or in the development of savings:

Owner/Operator material/commodity cost
Owner/Operator in-house labor cost, if applicable
Owner/Operator deferred maintenance cost
Outside maintenance labor costs (if applicable)

H. Report Format

The ESCO shall prepare a two-volume report as follows:

Each volume should be submitted using 8 ½ " x 11" sheets of paper and a font size no smaller than 10 point. The pages in each volume should be numbered sequentially, include a Table of Contents and tabbed with the visible titles of corresponding Schedules (Volume 1) or Sections (Volume 2).

Volume 1 of 2 shall include the presentation of information in the following Schedules required for the BOMA Energy Performance Contract (EPC).

Schedules

Schedule A	Equipment to be Installed by ESCO
Schedule B	Description of Premises; Pre-Existing Equipment Inventory
Schedule C	Energy Saving Guarantee

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Schedule D	Compensation to ESCO
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement & Calculation Formulae; Methodology to Adjust Baseline
Schedule G	Construction and Installation Schedule
Schedule H	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule I	Standards of Comfort
Schedule J	ESCO's Maintenance Responsibilities
Schedule K	Owner/Operator's Maintenance Responsibilities
Schedule L	Facility Maintenance Checklist
Schedule M	ESCO's Training Responsibilities
Schedule N	Installment Purchase and Payment Schedule

Exhibits

Exhibit I	Performance Bond/Construction Bond
Exhibit II (i)	Certificate of Acceptance—Technical Audit
Exhibit II (ii)	Certificate of Acceptance—Installed Equipment
Exhibit III	Equipment Warranties

Volume 2 of 2 shall include all of the information required in Section D and the Sections below, and presented in the following format:

1. **Executive Summary:** Provide an executive summary which describes the Facility(s), energy conservation measures evaluated, analysis methodology, results and a summary table presenting the cost and savings estimates for each recommended measure. Include a summary of the recommended measures and costs.
2. **Measures and Technologies Not Evaluated:** Include a discussion of measures and technologies not evaluated and the explanation of why a detailed analysis was not performed.
3. **Baselines:** Provide a summary of all utility bills, consumption baselines and how they were established, and end use reconciliation with respect to the baselines including a discussion of any unusual characteristics and findings.
4. **ECM Summaries:** Provide detailed descriptions for each ECM including analysis method, supporting calculations (may be submitted in appendices), results, proposed equipment and implementation issues. Provide a financial analysis for each proposed ECM (See Section F).
5. **Guaranteed Costs and Savings:** Conclusions, observations regarding guaranteed costs and savings.

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6. **Appendices:** Provide thorough appendices which document the data relied upon to prepare the analysis and how that data was collected.

I. Submission of the Report

The Report shall be completed and submitted to Owner/Operator within _____ days (*suggested range of 60-90 days*) of the date of execution of this Investment Grade Audit Agreement. The Owner/Operator shall conduct and complete a technical review within 45 days of their receipt of the Report.

J. Acceptance of the Report – If Energy Conservation Measures are Feasible.

The Owner/Operator shall accept the Report if the recommended ECMs are feasible according to the Owner/Operator's criteria as described in Article 1. If the Owner/Operator determines that one or more of the recommended ECMs are not feasible, the Owner/Operator shall give the ESCO written notice of any and all said objections, in detail, within thirty (30) business days of receipt of the Report. The Owner/Operator reserves the right not to implement any ECM that in its sole discretion is deemed not to be feasible for any reason. The ESCO shall, if necessary, correct the Report and submit a second draft within thirty (30) days of said notification. The Owner/Operator shall have ten (10) business days from receipt of the revised Report to notify the ESCO if any objections have not been removed. Upon such notification, the ESCO shall have thirty (30) days to resubmit the Report, and Owner/Operator shall have ten (10) business days to respond. This re-submission process may continue until: (1) the date all material concerns are resolved and the Report is accepted, (2) the dispute is resolved in accordance with the provisions of Article 3 P. If the Owner/Operator fails to give the ESCO any written notice within the time provided for in this Article 1.J, the Report is deemed to have been accepted by the Owner/Operator.

ARTICLE 2: ENERGY PERFORMANCE CONTRACT

The Parties intend to enter into a Energy Performance Contract (EPC) under which the ESCO shall design, install and implement energy conservation measures which the Parties have agreed to and provide certain maintenance and monitoring services. However, nothing in this Agreement should be construed as an obligation on any of the Parties to execute such a EPC. The terms and provisions of such a EPC shall be set forth in a separate agreement.

ARTICLE 3: STANDARD TERMS AND CONDITIONS.

A. TERM OF AGREEMENT

The term of this Agreement shall commence on the Effective Date (as defined below) and shall end on _____ (the Expiration Date) subject to the other provisions of this Agreement.

The Effective Date shall be the date this Agreement has been fully executed by the ESCO and by the Owner/Operator and all approvals required by Owner/Operator contracting procedures have been obtained. This Agreement shall not be a legally binding contract until after the Effective Date and when the fully-executed Agreement has been sent to the ESCO.

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The Contracting Officer shall issue a written Notice to Proceed to the ESCO directing the ESCO to start performance on a date which is on or after the Effective Date. The ESCO shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the Owner/Operator shall not be liable to pay the ESCO for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No Owner/Operator employee has the authority to verbally direct the commencement of any work under this Agreement.

B. INDEPENDENT CONTRACTOR

In performing the services required by this Agreement, the ESCO will act as an independent Contractor and not as an employee or agent of the Owner/Operator.

C. COMPLIANCE WITH LAW

ESCO shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and codes, regulations, in effect at the time of this agreement and in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of Owner/Operator relative to the Premises.

The ESCO shall comply with all statutes and regulations of the state in which the Facility(s) is located concerning environmental quality control. The ESCO is responsible for any violations and shall secure all required permits. Erosion control measures are shown on drawings and specifications and/or specified in the General Requirements. An erosion control permit, if required, will be obtained by the Professional.

D. ENVIRONMENTAL PROVISIONS

In the performance of this Agreement, the ESCO shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

D (a) Professional and Liability Insurance.

E. POST-CONSUMER RECYCLED CONTENT

Owner/Operator may require that any products which are provided to the Owner/Operator as a part of the performance of this Agreement must meet minimum percentage levels for total recycled content as specified in Exhibits A-1 through A-3 of this Agreement (if applicable).

F. COMPENSATION/EXPENSES

It is clearly understood by both parties hereto that, if the Parties successfully negotiate and execute a EPC, no payment shall be due for the Investment Grade Audit or Report under the terms of this Agreement. This Agreement shall automatically terminate upon the execution of a EPC by the ESCO and the Owner/Operator for an energy performance contracting project at the Facility(s).

If the Owner/Operator elects to terminate this agreement pursuant to section O.2.d below, the Owner/Operator agrees to pay ESCO a “walk-away” fee

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in the maximum amount of \$ _____.

The ESCO shall be required to perform the specified services at the price(s) quoted above. All services shall be performed within the time period(s) specified in this Agreement.

G. TAXES

The Owner/Operator is not responsible for the ESCO's payment of any taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

H. WARRANTY

The ESCO warrants that all services performed by the ESCO, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in this Agreement, all services and parts are warranted for a period of one year following completion of performance by the ESCO and acceptance by the Owner/Operator. The ESCO shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the Owner/Operator.

I. BUILDING CODE

This project shall be subject to the Building Codes currently in effect in the State in which the Facility(s) is located and should familiarize itself with any relevant permitting requirements.

J. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

1. The ESCO shall hold the Owner/Operator harmless from any suit or proceeding which may be brought by a third party against the Owner/Operator, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Agreement, including all work, services, materials, reports, studies, and computer programs provided by the ESCO, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Owner/Operator agrees to give Contractor prompt notice of any such claim of which it learns. No settlement which prevents the Owner/Operator from continuing to use the items provided by the ESCO shall be made without the Owner/Operator's prior written consent. In all events, the Owner/Operator shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the ESCO that, in the event it requests that the Owner/Operator to provide support to the ESCO in defending any such claim, the ESCO shall reimburse the Owner/Operator for all expenses (including attorneys' fees, if such are made necessary by the ESCO's request) incurred by the Owner/Operator for such support.
2. The ESCO agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The ESCO certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all works produced under this

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Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties. The ESCO also agrees to certify that work produced for the Owner/Operator under this Agreement shall be free and clear from all claims of any nature.

3. If the defense of the suit is delegated to the ESCO, the ESCO shall pay all damages and costs awarded therein against the Owner/Operator. If information and assistance are furnished by the Owner/Operator at ESCO's written request, it shall be at the ESCO's expense, but the responsibility for such expense shall be only that within the ESCO's written authorization.
4. If, in the ESCO's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the ESCO's obligation to satisfy any final award, the ESCO may, at its option and expense, substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs or, at the ESCO's option and expense, obtain the rights for the Owner/Operator to continue the use of such products, materials, reports, studies, or computer programs.
5. If any of the products, materials, reports, studies, or computer programs provided by the ESCO are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the ESCO shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
6. If the ESCO is unable to do any of the preceding, the ESCO agrees to pay the Owner/Operator:
 - a. any amounts paid by the Owner/Operator less a reasonable amount based on the acceptance and use of the deliverable;
 - b. any license fee less an amount for the period of usage of any software; and
 - c. the prorated portion of any service fees representing the time remaining in any period of service for which payment was made
7. The obligations of the ESCO under this Section continue without time limit and survive the termination of this Agreement.
8. Notwithstanding the above, the ESCO shall have no obligation for:
 - a. modification of any product, service, or deliverable provided by the Owner/Operator;
 - b. any material provided by the Owner/Operator to the ESCO and incorporated into, or used to prepare, a product, service, or deliverable;
 - c. use of the product, service, or deliverable in other than its specified operating environment;

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- d. the combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the ESCO as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that ESCO did not provide;
 - e. infringement of a non-ESCO product alone.
 - f. the Owner/Operator's distribution, marketing or use beyond the scope contemplated by the Agreement; or
 - g. the Owner/Operator's failure to use corrections or enhancements made available to the Owner/Operator by the ESCO at no charge.
9. The obligation to indemnify the Owner/Operator, under the terms of this Section, shall be the ESCO's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

K. OWNERSHIP RIGHTS

The Owner/Operator shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Owner/Operator as part of the performance of this Agreement. The ESCO shall have no responsibility to Owner/Operator or others for any use of information provided by the ESCO unless it is implemented through a subsequently-executed EPC.

L. ASSIGNMENT OF ANTITRUST CLAIMS

The ESCO and the Owner/Operator recognize that in actual economic practice, overcharges by the ESCO's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Owner/Operator. As part of the consideration for the award of this Agreement, and intending to be legally bound, the ESCO assigns to the Owner/Operator all right, title and interest in and to any claims the ESCO now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Agreement.

M. INDEMNIFICATION AND HOLD HARMLESS PROVISION

1. ESCO shall hold the Owner/Operator harmless from and indemnify them against any and all third party claims, demands and actions based upon or arising out of any activities performed by ESCO and its employees and agents under this Agreement, provided the Owner/Operator gives ESCO prompt notice of any such claim of which it learns.
2. The Owner/Operator will cooperate with all reasonable requests of ESCO made in the defense of such suits. ESCO will, at its expense, provide whatever cooperation the court requests in the defense of the suit. Notwithstanding, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld.

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N. AUDIT PROVISIONS

The Owner/Operator shall have the right, at reasonable times and at a site designated by the Owner/Operator, to audit the books, documents and records of the ESCO to the extent that the books, documents and records relate to costs or pricing data for this Agreement. The ESCO agrees to maintain records which will support the prices charged and costs incurred for this Agreement.

The ESCO shall preserve books, documents, and records that relate to costs or pricing data for this Agreement for a period of three (3) years from date of final payment. The ESCO shall give full and free access to all records to the Owner/Operator and/or their authorized representatives.

NN. INSURANCE

The ESCO shall purchase and maintain the following insurance, with all but Builder's Risk Insurance in place for this contract; Builder's Risk must be in place for the Energy Services Agreement, the next phase of this anticipated project:

1. Commercial General Liability Insurance

- a. Coverage shall be at least as broad as Insurance Services Office (ISO) "occurrence" form CG 00 01 (ed. 10/01) covering commercial general liability or its equivalent.
- b. Limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.
- c. A separate designated construction project general aggregate limit shall apply to each designated construction project under this contract, and that limit shall be equal to the amount of the general aggregate limit. Designated Construction Project(s) general aggregate limit endorsement ISO CG 25 03 (ed. 03/97) or its equivalent shall meet this requirement.
- d. Customer, its subsidiaries, officers, directors, and employees are to be covered as additional insureds using ISO additional insured endorsement CG 20 10 (ed. 11/85). The coverage shall contain no special limitations on the scope of protection afforded to Customer.
- e. ESCO's insurance coverage shall be primary and non-contributory.
- f. The insurer shall agree to waive all rights of subrogation against the Customer, its subsidiaries, officers, directors, and employees for losses arising from Work performed by the ESCO for the Customer.
- g. Coverage shall state that ESCO's insurance shall apply separately to each insured against whom claim is made or suit is brought, except as respect to the limits of the insurers' liability.
- h. ESCO shall include all Subcontractors as insureds under its policies or shall furnish separate certificates for each Subcontractor. All coverage for Subcontractors shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent contractors coverage, and the ESCO shall be responsible for assuring that all Subcontractors are properly insured. Customer and ESCO shall be additional insureds on Subcontractors' Commercial General Liability insurance. When requested by Customer, ESCO shall furnish copies of certificates of insurance evidencing coverage for each Subcontractor.

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2. Workers' Compensation Insurance

- a. Coverage shall meet statutory requirements of the State in which Work is to be performed.
- b. The insurer shall agree to waive all rights of subrogation against the Customer, its subsidiaries, officers, directors, and employees for losses arising from Work performed by the ESCO for the Customer.

3. Employers Liability Insurance

Coverage shall provide limits not less than bodily injury by accident \$1,000,000 each accident; bodily injury by disease \$1,000,000 policy limit; and bodily injury by disease \$1,000,000 each person.

4. Business Auto Coverage

- a. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01 (ed. 10/01) covering automobile liability, Code Symbol 1 "Any Auto". Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage.
- b. ESCO shall maintain business auto liability coverage with a limit of not less than \$1,000,000 each accident.
- c. ESCO waives all rights against Customer and its subsidiaries, officers, directors, and employees for recovery of damages arising out of the use, operation or ownership of vehicles. The insurer shall agree to waive all rights of subrogation against the Customer, its subsidiaries, officers, directors, and employees for losses covered by Business Auto Coverage.

5. Umbrella / Excess Liability Insurance

- a. ESCO shall maintain Umbrella / Excess Liability with a limit of not less than \$4,000,000 each occurrence, \$4,000,000 general aggregate.
- b. ESCO may select limits in any combination of primary and excess limits to meet the total limits required.
- c. ESCO waives all rights against Customer and its subsidiaries, officers, directors, and employees for recovery of damages. The insurer shall agree to waive all rights of subrogation against the Customer, its subsidiaries, officers, directors, and employees for losses covered by Umbrella / Excess Liability Insurance.

4. Builder's Risk Insurance

- a. Before any materials are purchased under this contract, ESCO shall, unless Customer has specifically waived such in writing because such risks are covered by Customer's existing property owner's insurance, obtain a Builder's Risk Insurance policy that shall insure Customer and ESCO as their respective rights may appear under the contract. The policy shall provide coverage at least as broad as Insurance Services Office (ISO) Special Form with a limit equal to 100% of the replacement cost of the Project on a non-reporting basis. Coverage shall exclude earthquake, soft costs, and materials furnished outside the scope of this contract. Coverage shall include coverage for flood, storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project.

5. Professional Liability (Errors & Omissions) Insurance

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- a. ESCO shall require that ESCO's architect and/or engineer shall indemnify and hold harmless Customer and each officer, director and employee against all claims against any of them, for personal injury or bodily injury, wrongful death or property damage arising out of negligent performance of professional services or caused by an error, omission, or negligent act of the ESCO's engineer and/or architect or anyone employed by the ESCO's engineer and/or architect.
- b. ESCO shall require that ESCO's architect and/or engineer maintain Professional Liability Insurance with a limit of not less than \$2,000,000 each claim, \$2,000,000 general aggregate.
- c. All subconsultants to the ESCO's engineer and/or architect providing professional services under this contract shall also provide evidence of Professional Liability Insurance at limits not less than that required herein of ESCO's engineer and/or architect.

O. TERMINATION PROVISIONS

1. By ESCO:

ESCO may terminate this Agreement prior to the completion of the Energy Audit and Report or subsequent to the completion of the Energy Audit and Report if:

- a. it determines that it cannot meet Owner/Operator's financial or other criteria through the implementation of a BOMA Energy Performance Contracting project at the Facility(s); or
- b. it determines that even though it can meet the Owner/Operator's desired savings in energy costs, that amount would be insufficient to meet the Owner/Operator's predefined financial criteria and/or cover the costs associated with performing this analysis, installing energy conservation measures and related maintenance and monitoring services.

In the event ESCO terminates the Agreement pursuant to subsection 1 (a), or (b), the Owner/Operator shall not be obligated to pay any amount to ESCO for services performed or expenses incurred by ESCO in performing the Energy Audit and Report required under this Agreement. ESCO shall provide the Facility(s) with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.

Termination under this section shall be effective upon Owner/Operator's receipt of written notification from the ESCO stating the reason for the termination and all documents which support termination pursuant to subsection 1 (a), or (b) herein.

2. By Owner/Operator:

Owner/Operator may terminate this Agreement:

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- a. If the ESCO fails to complete the Energy Audit and deliver the Report to the Owner/Operator by the date established in Article 1, above; or fails to obtain a written extension of that date from the Owner/Operator. Termination under this subsection (a) shall be effective upon ESCO's receipt of written notification from the Owner/Operator that the deadline for submission of the Report has past. In this event, the Owner/Operator shall not be obligated to pay any amount to ESCO for services performed or expenses incurred by the ESCO in performing the Energy Audit and preparing the Report required under this Agreement. ESCO shall provide the Facility(s) with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.
- b. If, prior or subsequent to the completion of the Energy Audit, the ESCO notifies the Owner/Operator in writing that it is unable to guarantee a sufficient level of savings to meet the Owner/Operator's financial criteria pursuant to subsection 1 (a), or (b) above. Termination under this subsection 1 (b) shall be effective upon ESCO's receipt of written notification from the Owner/Operator. In this event, the Owner/Operator shall not be obligated to pay any amount to ESCO for services performed or expenses incurred by ESCO in performing the Energy Audit and preparation of the Report required under this Agreement. ESCO shall provide the Facility(s) with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.
- c. If the ESCO's Investment Grade Audit Report does not identify a Project that meets the Owner/Operator's predefined financial criteria as set forth in Article 1, the Owner/Operator is not obligated to pay any amount to ESCO for services performed or expenses incurred by ESCO in performing the Investment Grade Audit or in preparation of the Report required under this Agreement.
- d. If the completed Investment Grade Audit Report does put forth a Project that meets the Owner/Operator's predefined financial and other criteria as set forth in Article 1 and the Owner/Operator chooses not to proceed to a EPC for any reason, the Owner/Operator is obligated to pay the ESCO a "walk-away" fee in an amount stipulated in Section F above. This amount shall in no circumstance exceed the audit fee stipulated in Section F above.
- e. If, prior to the completion of the Investment Grade Audit, the Owner/Operator notifies the ESCO in writing that it has elected to terminate this Agreement for its convenience or for unavailability of funds and not enter into a EPC, the Owner/Operator shall reimburse the ESCO for actual documented time, material and ancillary expenses incurred, as of the effective date of the termination, but in no event shall the Owner/Operator's liability exceed the "walk-away" fee set forth in Section F. ESCO shall not be entitled to loss of anticipated profit, loss of use of money, or administrative or overhead costs. Termination under this subsection 2 (c) shall be effective upon ESCO's receipt of written notification from the Owner/Operator and payment for actual expenses incurred shall be made in accordance with the provisions of subsection 2 (f) as follows.
- f. The Owner/Operator shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Agreement; (b) thirty (30) days after a proper invoice actually is received at the "Owner/Operator" address if a date on which payment is due is not specified in this Agreement (a "proper" invoice is not received until the Owner/Operator accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in this Agreement. Payment should not be construed by the ESCO as acceptance of the service performed by the ESCO. The Owner/Operator reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The ESCO agrees that the Owner/Operator may set off the amount of any state tax liability or

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other obligation of the ESCO or its subsidiaries to the Owner/Operator against any payments due the ESCO under any contract with the Owner/Operator.

ESCO agrees to provide the Owner/Operator with any preliminary notes, reports, analyses, or the complete Energy Audit if available, which have been produced prior to the effective date of the termination. Such documentation shall be used by the Owner/Operator to verify the extent of work completed by ESCO prior to termination and shall become the property of the Owner/Operator.

P. CONTRACT CONTROVERSIES

1. In the event of a controversy or claim arising from the Agreement, the ESCO must, within six months after the cause of action accrues, file a written claim with the Owner/Operator contracting officer for a determination. The claim shall state all grounds upon which the ESCO asserts a controversy exists. If the ESCO fails to file a claim or files an untimely claim, the ESCO is deemed to have waived its right to assert a claim in any forum.
2. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the ESCO. The contracting officer shall send his/her written determination to the ESCO. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing Owner/Operator.
3. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the ESCO may file a statement of claim with the Owner/Operator and/or the appropriate entity. Pending a final judicial resolution of a controversy or claim, the ESCO shall proceed diligently with the performance of the Agreement in a manner consistent with the determination of the contracting officer and the Owner/Operator shall compensate the ESCO pursuant to the terms of the Agreement.

Q. ASSIGNABILITY AND SUBCONTRACTING

1. Subject to the terms and conditions of this Paragraph, this Agreement shall be binding upon the parties and their respective successors and assigns.
2. The ESCO shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Agreement without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
3. The ESCO may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

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4. Notwithstanding the foregoing, the ESCO may, without the consent of the Contracting Officer, assign its rights to payment to be received under this Agreement, provided that the ESCO provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.
5. For the purposes of this Agreement, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the ESCO provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
6. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the ESCO and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of this Agreement and to assume the duties, obligations, and responsibilities being assigned.
7. A change of name by the ESCO, following which the ESCO’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The ESCO shall give the Contracting Officer written notice of any such change of name.

R. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of this Agreement, ESCO agrees as follows:

1. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under this Agreement or any subcontract, the ESCO, subcontractor or any person acting on behalf of the ESCO or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Owner/Operator who is qualified and available to perform the work to which the employment relates.
2. Neither the ESCO nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under this Agreement on account of gender, race, creed, or color.
3. The ESCO and its subcontractors shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy.
4. The ESCO and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer if requested for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the ESCO or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer.
5. The ESCO shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

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6. The Owner/Operator may cancel or terminate this Agreement, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause.

S. CONTRACTOR INTEGRITY PROVISIONS

1. For purposes of this clause only, the words “confidential information,” “consent,” “ESCO,” “financial interest,” and “gratuity” shall have the following definitions.
 - a) **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Owner/Operator.
 - b) **Consent** means written permission signed by a duly authorized officer or employee of the Owner/Operator, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Owner/Operator shall be deemed to have consented by virtue of execution of this agreement.
 - c) **ESCO** means the individual or entity that has entered into the Agreement with the Owner/Operator, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
 - d) **Financial interest** means:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - e) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
2. The ESCO shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Owner/Operator.
3. The ESCO shall not disclose to others any confidential information gained by virtue of this Agreement.
4. The ESCO shall not, in connection with this or any other agreement with the Owner/Operator, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Owner/Operator.

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5. The ESCO shall not, in connection with this or any other agreement with the Owner/Operator, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Owner/Operator.
6. Except with the consent of the Owner/Operator, neither the ESCO nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Agreement except as provided therein.
7. Except with the consent of the Owner/Operator, the ESCO shall not have a financial interest in any other ESCO, subcontractors, or supplier providing services, labor, or material on this project.
8. The ESCO, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Owner/Operator in writing.
9. The ESCO, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
10. The ESCO, upon the inquiry or request of the Owner/Operator or any of its official agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Owner/Operator to the ESCO's integrity or responsibility, as those terms are defined by the Owner/Operator's regulations, or management directives. Such information may include, but shall not be limited to, the ESCO's business or financial records, documents or files of any type or form which refers to or concern this Agreement. Such information shall be retained by the ESCO for a period of three years beyond the termination of this Agreement unless otherwise provided by law.
11. For violation of any of the above provisions, the Owner/Operator may terminate this and any other agreement with the ESCO, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another ESCO to complete performance hereunder, and suspend the ESCO from doing business with the Owner/Operator. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Owner/Operator may have under law, statute, regulation, or otherwise.

T. ESCO RESPONSIBILITY PROVISIONS

1. The ESCO certifies, for itself and all its subcontractors, that as of the date of its execution of this Agreement, that neither the ESCO, nor any subcontractors, nor any suppliers are under suspension or debarment by any entity, instrumentality, or authority and, if the ESCO cannot so certify, then it agrees to submit, along with this Agreement, a written explanation of why such certification cannot be made.
2. The ESCO's obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement through the termination date thereof. Accordingly, the ESCO shall have an obligation to inform the Owner/Operator if, at any time during the term of this Agreement, it

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becomes delinquent in the payment of any of its subcontractors or if it or any of its subcontractors are suspended or debarred by any state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the ESCO to notify the Owner/Operator of its suspension or debarment shall constitute an event of default of this Agreement with the Owner/Operator.
5. The ESCO agrees to reimburse the Owner/Operator for the reasonable costs of investigation incurred by the Owner/Operator for any investigations of the ESCO's compliance with the terms of this or any other agreement between the ESCO and the Owner/Operator, which results in the suspension or debarment of the ESCO. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The ESCO shall not be responsible for investigative costs for investigations that do not result in the ESCO's suspension or debarment.

T (a) Owner Responsibilities

The owner will provide on a timely basis, ESCO access to the following:

- (i) 24 months of utility billing records for each facility to be audited, electronically if possible;
- (ii) the affected properties, including boiler rooms and roofs, for site visits and inspections of equipment and premises;
- (iii) facility management, maintenance, property management, project management, and other relevant staff, as reasonably needed.

U. AMERICANS WITH DISABILITIES ACT

1. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, the ESCO understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. As a condition of accepting this contract, the ESCO agrees to comply with the "General Prohibitions Against Discrimination," and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Owner/Operator through contracts with outside contractors.
2. The ESCO shall be responsible for and agrees to indemnify and hold harmless the Owner/Operator from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Owner/Operator as a result of the ESCO's failure to comply with the provisions of subparagraph a above.

V. HAZARDOUS SUBSTANCES

The ESCO shall provide information to the Owner/Operator about the identity and hazards of hazardous substances supplied or used by the ESCO in the performance of this Agreement. The ESCO must comply with all relevant regulations pertaining to hazardous materials.

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1. Labeling. The ESCO shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the ESCO is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (4):
 - a) Hazardous substances:
 - 1) The chemical name or common name,
 - 2) A hazard warning, and
 - 3) The name, address, and telephone number of the manufacturer.
 - b) Hazardous mixtures:
 - 1) The common name, but if none exists, then the trade name,
 - 2) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
 - 3) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
 - 4) A hazard warning, and
 - 5) The name, address, and telephone number of the manufacturer.
 - c) Single chemicals:
 - 1) The chemical name or the common name,
 - 2) A hazard warning, if appropriate, and
 - 3) The name, address, and telephone number of the manufacturer.
 - d) Chemical Mixtures:
 - 1) The common name, but if none exists, then the trade name,

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- 2) A hazard warning, if appropriate,
- 3) The name, address, and telephone number of the manufacturer, and
- 4) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

2. Material Safety Data Sheet. The ESCO shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Owner/Operator must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the ESCO shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The ESCO shall also notify the Owner/Operator when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Owner/Operator at the time of shipment.

W. COVENANT AGAINST CONTINGENT FEES

The ESCO warrants that no person or selling Owner/Operator has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies

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maintained by the ESCO for the purpose of securing business. For breach or violation of this warranty, the Owner/Operator shall have the right to terminate this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

X. APPLICABLE LAW

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Owner/Operator of the state where the Property(s) are located (without regard to any conflict of laws provisions) and the decisions of the appropriate state courts. The ESCO consents to the jurisdiction of any court, waiving any claim or defense that such forum is not convenient or proper. The ESCO agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by State law in the state where the Property(s) is located.

Y. INTEGRATION

This Agreement, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Owner/Operator or the ESCO has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Agreement, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, changes, or waiver to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate Owner/Operator methods.

Z. MATERIALS, EQUIPMENT AND SUPPLIES

The ESCO shall provide or cause to be provided all facilities, materials, equipment and supplies necessary to perform the Energy Audit and prepare the Report.

AA. SUBCOMPANY DISCLOSURE

As of the execution date of this Agreement, the following subcontractors are expected to perform work pursuant to this Agreement and to be paid with funds provided hereunder:

Name	Address	Anticipated \$ Amount
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If, during the term of this Agreement, the ESCO retains subcontractors to be paid with funds provided by this Agreement who were not disclosed, the ESCO shall so notify the Owner/Operator and the Parties shall file an amendment to this Agreement stating the names and addresses of and anticipated amount of payment to each subcontractors.

BB. PERSONNEL

All personnel necessary for the effective performance of the Investment Grade Energy Audit shall be employed by ESCO and its designated subcontractors, shall be qualified to perform the services required under this Agreement, and shall in all respects be subject to the rules and regulations of ESCO governing staff members and employees. Neither ESCO, its designated subcontractors, nor its personnel shall be considered to be agents or employees of the Owner/Operator.

CC. NOTICE

1. Any written notice under this Agreement to the Owner/Operator is sufficient if mailed to:

2. Any written notice under this Agreement to ESCO is sufficient if mailed to:

DD. AGREEMENT

The following documents are incorporated in, and made a part of, this Agreement:

EE. PROJECT MANAGEMENT

All necessary and ordinary communications, submittals, approvals, requests and notices related to Project work shall be issued or received by:

For Owner/Operator:

For ESCO:

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IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 201__.

WITNESS:

OWNER/OPERATOR

[Name]

Signature

Signature

ATTEST:

ENERGY SERVICE COMPANY (ESCO)

[Name]

Signature