

Guaranteed Energy Savings Contract



DISCLAIMER

This contract (including any optional clauses thereto) is provided by the Regulatory Supervisory Bureau for the Water and Electricity Sector in the Emirate of Dubai (the "**RSB**") for the purposes of general guidance only for the purposes of encouraging and facilitating the growth of the ESCO services market in the Emirate of Dubai. It has not been drafted to reflect a specific transaction or to take into account a specific circumstance or issue. Accordingly it should not be relied upon and independent expert legal advice should always be obtained by those who intend to use it, and particularly before entering into or terminating a contract relating to energy savings.

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CONTENTS

1	DEFINITIONS	5
2	INTERPRETATION	12
3	TERM OF CONTRACT	13
4	CONTRACT DOCUMENTS	13
5	ENERGY SAVINGS REPORT	14
6	COORDINATION	14
7	ACCESS	14
8	PERMITS AND APPROVALS	15
9	PROGRAMME	15
10	ESCO'S GENERAL PERFORMANCE OBLIGATIONS	15
11	EQUIPMENT	16
12	CUSTOMER'S GENERAL PERFORMANCE OBLIGATIONS	19
13	REPORTING	20
14	VARIATIONS	20
15	OPERATIONS DATE	21
16	HAZARDOUS MATERIALS	21
17	NOTICE OF MATERIAL CHANGES	21
18	STANDARDS OF COMFORT	21
19	ENERGY SAVINGS GUARANTEE	22
20	MAINTENANCE OF RECORDS	22
21	PAYMENTS	22
22	DELAYED PAYMENTS	23
23	LIMITATION OF LIABILITIES	23
24	INDEMNITIES	24
25	INTELLECTUAL PROPERTY	24
26	INSURANCE	25
27	CONFIDENTIALITY	25
28	CHANGE IN LAW	26
29	FORCE MAJEURE	26

30	SUSPENSION	27
31	TERMINATION	27
32	GOVERNING LAW AND LANGUAGE	30
33	DISPUTE RESOLUTION	30
34	EXPERT DETERMINATION	30
35	NOTICES	32
36	REPRESENTATIVES	32
37	WAIVER	33
38	REPRESENTATIONS AND WARRANTIES	33
39	ASSIGNMENT AND SUB-CONTRACTING	34
40	SEVERABILITY	34
41	RELATIONSHIP OF THE PARTIES	34
42	AMENDMENT	34
43	LIABILITY FOR EXPENSES	34
44	EXCLUSION OF LEGISLATION	35
45	FURTHER ASSURANCES	35
46	SURVIVAL	35
47	ENTIRE AGREEMENT	35
48	COUNTERPARTS	35
	SCHEDULE 1 - PREMISES	37
	SCHEDULE 2 - INFORMATION PROVIDED BY CUSTOMER	38
	SCHEDULE 3 - ENERGY SAVINGS REPORT	39
	SCHEDULE 4 - PERMITS, LICENCES AND APPROVALS TO BE MAINTAINED BY CUSTOMER	40
	SCHEDULE 5 - PRELIMINARY PROGRAMME	41
	SCHEDULE 6 - CONTRACT PRICE AND PAYMENT SCHEDULE	42
	SCHEDULE 7 - SCOPE OF WORKS AND SERVICES	43
	SCHEDULE 8 - EQUIPMENT AND EXISTING EQUIPMENT	44
	SCHEDULE 9 - BASELINE ENERGY CONSUMPTION, BASELINE UNIT RATES AND BASELINE ENERGY COST	45
	SCHEDULE 10 - ENERGY SAVINGS GUARANTEE	46

SCHEDULE 11 - ENERGY SAVINGS MEASUREMENT AND VERIFICATION	47
SCHEDULE 12 - STANDARDS OF COMFORT	48
SCHEDULE 13 - CUSTOMER'S OPERATION AND (IF APPLICABLE) MAINTENANCE OBLIGATIONS	49
SCHEDULE 14 - ESCO'S MAINTENANCE OBLIGATIONS	50
SCHEDULE 15 - FACILITY MANAGEMENT CHECKLIST	51
SCHEDULE 16 - MATERIAL CHANGES	52
SCHEDULE 17 - INSURANCES	53
SCHEDULE 18 - EXPERTS	55
SCHEDULE 19 - PARTIES' REPRESENTATIVES	56
SCHEDULE 20 - SYSTEMS	57

THIS CONTRACT is made on **[insert date]**

BETWEEN:

- (1) **[** Trade Licence No./Company No. **[insert]** of **[insert registered address]** (the "Customer"); and
 - (2) **[** Trade Licence No./Company No. **[insert]** of **[insert registered address]** (the "ESCO"),
- each a "Party" and together the "Parties".

RECITALS

- (A) The Customer wishes to take steps to improve energy efficiency within its Premises and reduce energy and water usage.
- (B) The ESCO is a company with expertise in energy efficiency and generating energy and water savings through equipment installed and services provided.
- (C) The Customer has provided the ESCO with certain information in respect of the Premises and energy and water consumption at the Premises, which has been included in Schedule 2 (*Information Provided by Customer*).
- (D) In reliance on the information provided by the Customer being true and correct and after undertaking inspections and investigations at the Premises, the ESCO has prepared an Energy Savings Report (as included in Schedule 3 (*Energy Savings Report*)), which has been agreed by the Parties and identifies the cost savings and benefits that can be derived by the Customer from the provision by the ESCO of the energy saving measures and services defined in the Energy Savings Report.
- (E) The Customer and the ESCO wish to enter into this Contract to record the basis on which the ESCO will provide these measures and savings, as more particularly defined in this Contract.

IT IS AGREED as follows:

1. DEFINITIONS

- 1.1 In this Contract, the following words and expressions shall have the meaning set out below, unless inconsistent with the context:

"Adjusted Energy Usage" means the volumes of energy and water consumed **[CHOICE: (i) [at the Premises] or (ii) [in respect of the Systems]]**¹ verified and/or measured in accordance with Schedule 11 (*Energy Savings Measurement and Verification*), adjusted to take into account the effect on consumption of any Material Change(s).

"Affiliate" means, in relation to any company or corporation, a Subsidiary of that company or corporation or a Holding Company of that company or corporation or any other Subsidiary of that Holding Company.

¹ Select either "the Premises" or "the Systems" as applicable.

"Baseline Energy Cost"	<p>means the amount in Dirhams identified as the "Baseline Energy Cost" in Schedule 9 (<i>Baseline Energy Consumption, Baseline Unit Rates and Baseline Energy Cost</i>), based on:</p> <ul style="list-style-type: none"> (a) the annual energy and water consumption levels [CHOICE: (i) [at the Premises] or (ii) [in respect of the Systems]]² prior to the implementation of the energy savings mechanisms by the ESCO; and (b) the applicable unit rates, <p>(each as set forth in that Schedule).</p>
"Business Day"	<p>means a day (other than a Friday or a Saturday or a public holiday) on which banks are open for general banking business in the Emirate of Dubai, UAE.</p>
"Business Hours"	<p>means the hours between 8.00 am and 6.00 pm on a Business Day.</p>
"Confidential Information"	<p>means confidential and/or proprietary information including but not limited to systems, services or planned services, suppliers, data, financial information, computer software, processes, methods, knowledge, ideas, marketing, promotions, current or planned activities, research, development and other information which should reasonably be considered to be confidential or commercially sensitive with respect to the information holder's business or operations.</p>
"Construction Period"	<p>means the period commencing immediately following the Effective Date up to the day prior to the Operations Date.</p>
"Contract Price"	<p>means the price to be paid by the Customer to the ESCO for the performance of the Works (and all obligations set out in this Contract) as set forth in Schedule 6 (<i>Contract Price and Payment Schedule</i>).</p>
"Control"	<p>means in respect of the control of a person by another, that that other (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):</p> <ul style="list-style-type: none"> (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which controls that person; (b) controls or has the power to control the affairs and policies of that person or of any other person which controls that person; (c) is the parent undertaking of that person or of any other person which controls that person; or (d) possesses or is, or will at a future date be, entitled to acquire:

² Select either "the Premises" or "the Systems" as applicable.

- (i) fifty one per cent (51%) or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which controls that person; or
- (ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were in fact distributed, entitle him to receive fifty one per cent (51%) or more of the amount so distributed; or
- (iii) such rights as would, in the event of the winding-up of that person or any other person which controls that person or in any other circumstances, entitle him to receive fifty one per cent (51%) or more of the assets of such person which would then be available for distribution,

and, for those purposes, there shall be attributed to any person the rights or powers of any nominee of his and the rights and powers of any one or more persons which he, or he and associates of his, controls and of any one or more associates of his, and "**Control**" and "**Controlled**" shall be construed accordingly.

"Cost Proposal"	has the meaning given to it in clause 14.2.
"Created Intellectual Property Rights"	means any Intellectual Property Rights created by the ESCO during the performance of the Works or services under this Contract.
"Customer Representative"	means the representative nominated by the Customer to act on its behalf in the administration of this Contract as more particularly described in Schedule 19 (<i>Parties' Representatives</i>).
"Day"	means the twenty four (24) hour period beginning and ending on 00:00 hours.
"Default Interest Period"	means an interest period contemplated by clause 22.2.
"Effective Date"	means the date this Contract is signed, or if counterparts of this Contract are signed, the date the last counterpart is signed.
"EIBOR"	means in respect of a Default Interest Period: <ul style="list-style-type: none"> (a) the rate, determined by the Party making the interest payment claim to be the average bid rate quoted on the Reuters screen for the UAE Dirham Interbank Offered Rate for Dirhams at 11.00 am (Emirate of Dubai time) on the first Business Day of the relevant period (rounded up to four (4) decimal places) for bank accepted bills of exchange that have a tenor of thirty (30) Days or otherwise equivalent to that period; or (b) if that rate is not published or is otherwise not available, a replacement rate reasonably determined by the Party making the interest payment claim having regard to its cost of funds.

"Energy Cost"	in respect of a Guarantee Year, means the Adjusted Energy Usage for that Guarantee Year multiplied by the applicable unit rates set forth in Schedule 9 (<i>Baseline Energy Consumption, Baseline Unit Rates and Baseline Energy Cost</i>).
"Energy Savings Guarantee"	in respect of a Guarantee Year, means the guaranteed Energy Savings for that Guarantee Year as specified in paragraph 1 of Schedule 10 (<i>Energy Savings Guarantee</i>).
"Energy Savings"	in respect of a Guarantee Year, means the Baseline Energy Cost less the Energy Cost for that Guarantee Year. If the amount is less than zero (0), Energy Savings shall be zero (0).
"Energy Savings Report"	means the Energy Savings Report prepared by the ESCO, as set out in Schedule 3 (<i>Energy Savings Report</i>).
"Equipment"	means the goods, materials and equipment to be installed by the ESCO at the Premises as more particularly described in Schedule 8 (<i>Equipment and Existing Equipment</i>), including any additions and modifications made to such goods, materials or equipment during the Term.
"ESCO Representative"	means the representative nominated by the ESCO to act on its behalf in the administration of this Contract as more particularly described in Schedule 19 (<i>Parties' Representatives</i>).
["Existing Equipment"³	means the energy and water related equipment owned by the Customer and already installed at the Premises prior to the Effective Date that is to be maintained by the ESCO as described in Part A of Schedule 8 (Equipment and Existing Equipment).]
"Facility Management Checklist"	means the checklist in the form set out in Schedule 15 (<i>Facility Management Checklist</i>) to be completed by the ESCO in accordance with clause 13.1.
"Force Majeure Event"	<p>means an exceptional event or circumstance which:</p> <ul style="list-style-type: none"> (a) is beyond a Party's control; (b) could not reasonably have been provided against by such Party as at the Effective Date; (c) having arisen, could not be reasonably avoided or overcome by such Party; and (d) is not substantially attributable to the other Party, <p>and includes (without limitation) events such as:</p> <ul style="list-style-type: none"> (i) wars, hostilities (whether declared or not), invasion or acts of foreign enemies; (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;

³ If the ESCO will not be maintaining any Existing Equipment, then in Part B of Schedule 8 state "Not Used".

- (iii) riot, commotion, disorder, strikes, lock-outs, labour or industrial disputes, all by people not employed by a Party or a Sub-Contractor;
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the acts of the affected Party; and
- (v) natural catastrophes such as earthquakes, hurricanes, typhoons, fire, floods, volcanic activity or epidemics.

"Good Industry Practice"	means standards, practices, methods and procedures conforming to Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of business carrying out the same duties under the same or similar circumstances.
"Government Instrumentality"	means the federal government of the UAE, the local government of the Emirate of Dubai or any ministry, department or political subdivision thereof, and any person under the direct or indirect control of any such government, exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any other governmental entity, instrumentality, agency, authority, corporation, committee or commission, or any independent regulatory authority, in each case within the Emirate of Dubai or the UAE, and any successor to or any assignee of any of the foregoing.
"Guaranteed Savings"	means the Energy Savings guaranteed under clause 19.2 and Schedule 10 (<i>Energy Savings Guarantee</i>).
"Guarantee Year"	means the period of twelve (12) consecutive months beginning on the Operations Date and each period of twelve (12) consecutive months thereafter until the end of the Term.
"Hazardous Materials"	means: <ul style="list-style-type: none"> (a) any fungus (any type of form of fungi, including mould, or mildew, and myotoxins, spores, scents or by-products produced or released by fungi); (b) incomplete or damaged work or systems or code violations that may be discovered during or prior to the Effective Date; or (c) pollutants, hazardous wastes, hazardous materials, contaminants or such substance known as hazardous or deleterious to health and safety in accordance with applicable Laws.
"Holding Company"	means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

- "Indirect Loss"** means any consequential or special losses or any loss of profits, loss of business, loss of business opportunity or loss of revenue or any other pure economic losses (other than lost Energy Savings) whatsoever and whether arising in contract or otherwise.
- "Information"** means information, reports, documents, designs, drawings, records, data concerning energy and water use and consumption and other information (excluding any financial, commercially sensitive or Confidential Information).
- "Insolvency Event"** means:
- (a) a Party becomes unable or admits inability to pay its debts as they fall due or suspends making payments on any of its debts generally;
 - (b) the value of the assets of the Party is less than its liabilities (taking into account contingent and prospective liabilities);
 - (c) a moratorium is declared in respect of any indebtedness of the Party;
 - (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, the entry into a protective composition, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Party other than a solvent liquidation or reorganisation;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of the Party;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Party or any of its assets; or
 - (iv) enforcement of any security over any assets of the Party,
 or any analogous procedure or step is taken in any jurisdiction, and in any such case has not been set aside, dismissed or stayed within sixty (60) Days; or
 - (e) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Party having an aggregate value of not less than one million Dirhams (AED 1,000,000) and is not discharged within fourteen (14) Days.

"Intellectual Property"	means all patents, trade marks and service marks, registered designs, design rights and copyright (including rental and lending rights), moral rights, rights in computer software, rights in databases and other protectable lists of information, rights in Confidential Information, trade secrets, inventions and know-how, trade and business names, domain names, getups, logos and trade dress (including all extensions, revivals and renewals, where relevant) in each case whether registered or unregistered and applications for any of them and the goodwill attaching to any of them and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world.
"Intellectual Property Rights"	means the right to exploit any Intellectual Property or any right which is similar or analogous to Intellectual Property, any moral right, any licence, right or interest of any kind arising out of or granted or created in respect of any of the foregoing, any right to bring an action for passing off or any similar or analogous proceeding.
"Laws"	means any decree, resolution, law, statute, act, ordinance, rule, directive (to the extent having the force of law), order, treaty, code or regulation or any interpretation of the foregoing, as enacted, issued or promulgated by any Governmental Instrumentality that is publicly available and published in the UAE Federal Gazette or the Dubai Official Gazette or of which the Party to which such Law applies has actual knowledge, including amendments, modifications, extensions, replacements or re-enactments thereof.
"Maintenance Fee"	means the maintenance fee referred to in clause 10.8.
"Material Change"	means a change, event or circumstance described in Schedule 16 (<i>Material Changes</i>).
"Operations Date"	has the meaning given to it in clause 15.
"Operations Period"	means the period from the Operations Date to the end of the Term.
"Payment Claim"	means a claim or invoice prepared by the ESCO for payment by the Customer of the Contract Price or a portion thereof, or the Maintenance Fee, in accordance with Schedule 6 (<i>Contract Price and Payment Schedule</i>).
"Premises"	means the Customer's premises in which the Works are to be performed as more particularly described in Schedule 1 (<i>Premises</i>).
"Programme"	has the meaning given to it in clause 9.2.
"RSB"	means the Regulatory and Supervisory Bureau for the Water and Electricity Sector in the Emirate of Dubai.
"Schedule"	means a Schedule to this Contract.
"Standards of Comfort"	means the standards set out in Schedule 12 (<i>Standards of Comfort</i>).

"Sub-Contractors"	means any sub-contractor or sub-sub-contractor appointed by the ESCO to perform any part of the Works, including the supply and/or delivery of any Equipment.
"Subsidiary"	<p>means in relation to any company or corporation, a company or corporation:</p> <p>(a) which is Controlled, directly or indirectly, by the first-mentioned company or corporation;</p> <p>(b) where more than half the issued share capital is beneficially owned, directly or indirectly, by the first-mentioned company or corporation; or</p> <p>(c) which is a Subsidiary of another Subsidiary of the first-mentioned company or corporation,</p> <p>and for this purpose, a company or corporation shall be treated as being Controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.</p>
["Systems"	means the system or systems, or sub-system or sub-systems, described in Schedule 20 (Systems).] ⁴
"Target Operations Date"	means [<i>insert date</i>], as such date may be extended in accordance with the terms of this Contract.
"Tenant"	means a person with whom the Customer has entered into a lease, licence, tenancy or right to occupy all or any part of the Premises.
"Term"	means the term of this Contract specified in clause 3.1.
"Termination Value"	has the meaning given to it in clause 31.6.
"UAE"	means United Arab Emirates.
"UAE Dirhams", "AED" or "Dirhams"	means the lawful currency of the UAE.
"Variation Request"	has the meaning given to it in clause 14.2.
"Works"	means the management, procurement, construction, installation and maintenance works and services to be performed by the ESCO under this Contract as more particularly described in Schedule 7 (<i>Scope of Works and Services</i>).

2. INTERPRETATION

2.1 In this Contract:

- 2.1.1 the headings to the clauses, Schedules and paragraphs of the Schedules are for reference only and shall not affect the interpretation or construction of this Contract;
- 2.1.2 use of the singular includes the plural and vice versa;
- 2.1.3 any reference to time or date shall be in accordance with the Gregorian calendar;

⁴ Include this definition only where the energy savings measures relate to a specific system or systems, and not to the entire Premises.

- 2.1.4 the words "include" and "including" shall be construed without limitation;
- 2.1.5 words of any gender include each other gender;
- 2.1.6 the Schedules form a binding part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract shall include the recitals and the Schedules;
- 2.1.7 references to any laws includes a reference to that law as amended, re-enacted, consolidated or replaced from time to time (whether before or after the date of this Contract) and includes any subordinate legislation made under the relevant law and in force at the relevant time;
- 2.1.8 references to clauses and Schedules are references to clauses and schedules of this Contract, unless expressly stated otherwise;
- 2.1.9 references to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated (other than in breach of the provisions of this Contract) at any time;
- 2.1.10 a "person" includes a reference to an individual, partnership, body corporate, government, local or municipal authority or government body or any joint venture wherever incorporated or situated (in each case whether or not having separate legal personality) and includes a reference to that person's legal personal representatives and successors;
- 2.1.11 references to a Party to this Contract or to any other document or agreement includes a successor-in-title, permitted substitute or a permitted assign of that Party; and
- 2.1.12 the terms "hereof", "herein", "hereunder" and similar words and phrases refer to this entire Contract and not to any particular clause, Schedule, section or any other subdivision of this Contract.

3. **TERM OF CONTRACT**

- 3.1 This Contract shall commence on the Effective Date and, unless terminated earlier in accordance with its terms or extended in accordance with clause 3.2 (below), shall continue to be binding on the Parties until ***[insert months/years]*** after the Operations Date.
- 3.2 The Term of this Contract may be extended by the written agreement of both Parties signed by their respective authorised representatives.

4. **CONTRACT DOCUMENTS**

- 4.1 The following documents shall form part of and comprise this Contract:
 - 4.1.1 Clauses 1 - 48; and
 - 4.1.2 Schedules 1 – ***[insert as applicable]***.
- 4.2 The documents comprising this Contract as described in clause 4.1 (above) shall be taken to be mutually explanatory of one another. In the event of any conflict, ambiguity or inconsistency between any of the documents, the document which is the highest in the order of documents set out in clause 4.1 shall prevail.

5. **ENERGY SAVINGS REPORT**

- 5.1 The ESCO has prepared and completed an Energy Savings Report in respect of the **[CHOICE: (i) [Premises] or (ii) [Systems]]⁵**, as included in Schedule 3 (*Energy Savings Report*) and that Energy Savings Report has been approved and accepted by the Customer.
- 5.2 Any payments to be made by the Customer to the ESCO in respect of the preparation of the Energy Savings Report shall be as separately itemised in Schedule 6 (*Contract Price and Payment Schedule*). If Schedule 6 (*Contract Price and Payment Schedule*) is silent on the payments to be made in respect of the Energy Savings Report, the cost of such works shall be deemed to have been included within the Contract Price.
- 5.3 The work undertaken by the ESCO in respect of the preparation of the Energy Savings Report has been undertaken prior to the Effective Date. The Parties agree that the ESCO shall be bound by the terms and conditions of this Contract with respect to the preparation of the Energy Savings Report and the Parties shall be entitled to enforce rights against each other in respect of the Energy Savings Report as though the preparation of the Energy Savings Report formed part of the scope of Works to be performed by the ESCO under this Contract.
- 5.4 The Customer represents and warrants that, to the best of its knowledge and belief, the Information provided to the ESCO for the purpose of the Energy Savings Report is complete and accurate and is not misleading in any material respect. If at any time the Customer becomes aware of any material omission or inaccuracy in any such Information, the Customer shall promptly notify the ESCO in writing and provide the ESCO with such missing or accurate information that may be in its possession. In such circumstances the ESCO shall also be entitled to adjust the Baseline Energy Cost to reflect the revised Information provided by the Customer.

6. **COORDINATION**

- 6.1 Each Party shall cooperate with and assist the other Party, its advisors, consultants, contractors, employees, agents and representatives at all times during the Term of this Contract.
- 6.2 The ESCO shall allow appropriate opportunities for and cooperate with the Customer, its personnel, agents, representatives or other contractors, as well as any Government Instrumentality, to perform works on the Premises at any time at the Customer's discretion.
- 6.3 The ESCO shall perform its obligations under this Contract so as not to interfere with the use or occupation of the Premises by the Customer or any of the Customer's Tenants.

7. **ACCESS**

- 7.1 The ESCO has inspected the Premises and acknowledges and accepts that there is sufficient space and access to and within the Premises for the installation and operation of the Equipment.
- 7.2 The Customer shall give the ESCO, its employees, Sub-Contractors, agents and representatives a right of access to and non-exclusive possession of the Premises for the performance of the Works during Business Hours or during such hours as may be agreed by the Parties in writing.
- 7.3 The Parties acknowledge that the ESCO may need to access the Premises to undertake emergency repairs or corrections. In such circumstances, the ESCO shall immediately notify the Customer, which notification shall be confirmed in writing no later than three (3) Business Days after the emergency event arose (in circumstances where written notice is not provided in the first instance) and the Customer shall not unreasonably restrict or prevent the ESCO from accessing the Premises to undertake such Works.

⁵ Select either "Premises" or "Systems" as applicable.

8. PERMITS AND APPROVALS

- 8.1 The Customer shall be responsible for procuring and maintaining the licences, permits and approvals set out in Schedule 4 (*Permits, Licences and Approvals to be Maintained by Customer*) at the Customer's cost.
- 8.2 The ESCO shall be responsible for procuring and maintaining all licences, permits and approvals required under Law to perform the Works at its own cost, other than those to be procured and maintained by the Customer pursuant to clause 8.1.
- 8.3 The ESCO shall during the performance of the Works comply with all licences, permits and approvals granted in respect of the Works.
- 8.4 The Customer shall provide reasonable assistance to the ESCO to procure the licences, permits and approvals that are the ESCO's responsibility under clause 8.2.

9. PROGRAMME

- 9.1 The Programme shall be based on the preliminary programme set out in Schedule 5 (*Preliminary Programme*), which shows in general terms the ESCO's plan for scheduling and coordinating the performance of the Works, having due regard to the Target Operations Date.
- 9.2 The ESCO shall within twenty (20) Business Days of the Effective Date, submit to the Customer a programme detailing how and when the ESCO proposes to carry out each stage of the Works (this initial programme and any subsequent revision in accordance with this Contract, the "**Programme**").
- 9.3 The ESCO shall submit an updated Programme to the Customer if the Programme becomes inconsistent with:
- 9.3.1 actual progress; or
 - 9.3.2 the ESCO's obligations under this Contract.

10. ESCO'S GENERAL PERFORMANCE OBLIGATIONS

Construction Phase

- 10.1 The ESCO shall carry out or procure the carrying out of the Works set out in Schedule 7 (*Scope of Works and Services*) in accordance with the terms of this Contract.
- 10.2 The ESCO shall perform the Works with all the skill, care and diligence reasonably to be expected from a competent and appropriately qualified person experienced in providing works of a similar scope, complexity, purpose and size to the Works.
- 10.3 During the performance of the Works the ESCO shall ensure that:
- 10.3.1 it complies with Good Industry Practice;
 - 10.3.2 it completes the Works in accordance with the requirements of this Contract;
 - 10.3.3 the Works are performed by competent and appropriately qualified personnel;
 - 10.3.4 it will promptly remove any debris or rubbish at the Premises arising from the performance of the Works;
 - 10.3.5 it complies with any health and safety policies and procedures imposed by the Customer at the Premises; and

10.3.6 it complies with all applicable Laws.

- 10.4 The ESCO shall be responsible for supervising and directing all the Works to be performed under this Contract. The ESCO shall be responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Works under this Contract.
- 10.5 The ESCO shall 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 Works.
- 10.6 The ESCO shall perform the Works in such a manner so as not to harm the structural integrity of the Premises or its operating systems and so as to conform to the standards set out in Schedule 12 (*Standards of Comfort*). The ESCO shall repair and restore to its original condition any damage to the Premises caused by the ESCO or its Sub-Contractors, agents, representatives or other parties it has permitted on the Premises, at the ESCO's cost and expense.
- 10.7 Any work forming part of the Works performed by the ESCO prior to the date of this Contract shall be treated as having been performed under the terms and conditions of this Contract and the Parties shall be bound accordingly.

Services Phase

- 10.8 The ESCO shall service and maintain the Equipment and the Existing Equipment in accordance with Schedule 14 (*ESCO's Maintenance Obligations*). The consideration payable to the ESCO for such work shall be included in the Contract Price or specified as a separate Maintenance Fee in Schedule 6 (*Contract Price and Payment Schedule*).
- 10.9 Except as set forth in clause 10.10 or clause 11.10 and subject to the availability of any manufacturer's warranties or insurance policies, all costs associated with replacing any Equipment or Existing Equipment or components of Equipment or Existing Equipment shall be charged on a cost reimbursable basis to the Customer, subject to the ESCO obtaining the prior written approval of the Customer to the incurring of such costs. If the Customer refuses to grant the ESCO approval to incur such costs and that affects the achievement of the Energy Savings, the matter shall be referred to an independent expert for an expert determination in accordance with clause 34 and the Energy Savings may be adjusted as may be directed by the expert.
- 10.10 The ESCO represents and warrants to the Customer that all items of Equipment or Existing Equipment with a lifecycle expiring prior to the end of the Term are specifically identified in Schedule 8 (*Equipment and Existing Equipment*) and the ESCO has taken the need to replace such items of Equipment and Existing Equipment into account in the preparation of the Energy Savings Report and the determination of the Contract Price.
- 10.11 The ESCO shall have no liability to the Customer for any interruption to the energy supply to the Premises where such interruption of supply is due to any event outside of the ESCO's reasonable control.

11. EQUIPMENT

Risk and Title

- 11.1 The ESCO shall maintain ownership of all Equipment and other property brought onto the Premises by the ESCO for the purposes of this Contract and title in the Equipment shall only pass in accordance with clause 11.2.
- 11.2 Title to the Equipment installed at the Premises shall not pass to the Customer until the Customer has paid the ESCO the Contract Price (as may be adjusted in accordance with the terms of this Contract) in full, at which time title shall pass to the Customer.
- 11.3 Until title passes to the Customer in accordance with clause 11.2, the Customer shall not remove the Equipment from the Premises and shall ensure the Equipment is not damaged and no serial

numbers, name plates or other means of identification are removed or obscured. The Customer shall be liable for any such removal or damage to the Equipment during this period and any remedial or repair costs incurred by the ESCO arising from a breach by the Customer of this clause 11.3 shall be charged on a cost reimbursable basis to the Customer. Such payments shall be due within ten (10) Business Days of the ESCO sending the Customer a written demand for payment.

- 11.4 Notwithstanding that any Equipment may have been affixed to the Premises, until title in the Equipment passes to the Customer in accordance with clause 11.2, the ESCO shall be entitled to remove any Equipment from the Premises at any time, provided that the ESCO shall only exercise such right where the Customer is in default of its obligations to pay the ESCO in accordance with this Contract and after giving the Customer at least twenty (20) Business Days written notice of its failure to make payment and the ESCO's intention to remove the Equipment from the Premises.
- 11.5 Risk in the Equipment shall pass to the Customer upon its installation at the Premises.
- 11.6 The ESCO shall assign to the Customer any and all manufacturer warranties relating to the Equipment (including warranties relating to spare parts used and installed when repair is necessitated by malfunction) as soon as is reasonably practicable upon title in the Equipment passing to the Customer in accordance with clause 11.2.
- 11.7 If any defect or fault occurs in the Equipment during the Term, the Customer hereby grants the ESCO authority to make all necessary manufacturer warranty claims in relation to the Equipment on behalf of the Customer in order to rectify or replace the defective Equipment.

Equipment Warranties

- 11.8 The ESCO warrants to the Customer that all Equipment and materials provided under this Contract (including any replacement Equipment under clause 11.13) shall be:
 - 11.8.1 new, unless otherwise specified in or permitted by this Contract;
 - 11.8.2 of good and merchantable quality;
 - 11.8.3 free from defects;
 - 11.8.4 installed properly in a good and workmanlike manner; and
 - 11.8.5 in compliance with the requirements of this Contract.
- 11.9 The warranties provided by the ESCO in clause 11.8 shall not apply to the extent that the Equipment is damaged or becomes defective in circumstances where:
 - 11.9.1 the Customer, its employees, contractors, agents, representatives or Tenants damage the Equipment;
 - 11.9.2 modifications are made to the Equipment by the Customer, its employees, contractors, agents, representatives or Tenants, which have not been authorised by the ESCO in writing;
 - 11.9.3 the Customer fails to operate the Equipment in accordance with Schedule 13 (*Customer's Operation and (if applicable) Maintenance Obligations*) or the manufacturer's instructions or, if applicable, maintain the Equipment in accordance with Schedule 13 (*Customer's Operation and (if applicable) Maintenance Obligations*); or
 - 11.9.4 normal wear and tear occurs.
- 11.10 The ESCO shall be fully responsible for replacing and installing any replacement Equipment at its own cost in circumstances where it has failed to discharge the warranties set out in clause 11.8.

Availability of Equipment

- 11.11 Where any of the Equipment or Existing Equipment is underperforming or unavailable for any reason during the Term of this Contract any reduction in energy consumption by that Equipment or Existing Equipment resulting from such underperformance or unavailability shall not be deemed to be an Energy Saving for the purposes of this Contract and the Energy Savings shall be adjusted to take account of such underperformance or unavailability.

Modification, Upgrade or Alteration of Equipment

- 11.12 During the Term of this Contract the Customer shall not, without the ESCO's prior written approval which shall not be unreasonably withheld or delayed, 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. Notwithstanding the foregoing, the Customer may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify the ESCO before taking any such actions. In the event of such an emergency, the Customer shall take all reasonable steps to protect the Equipment from damage and shall follow instructions for emergency action provided in advance by the ESCO.
- 11.13 The ESCO shall at all times have the right, subject to obtaining the Customer's prior written approval which shall not be unreasonably withheld or delayed, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that:
- 11.13.1 the ESCO complies with the standards of comfort and services set out in Schedule 12 (*Standards of Comfort*);
- 11.13.2 such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the Guaranteed Savings **[CHOICE: (i) [at the Premises] or (ii) [in respect of the Systems]]**⁶; and
- 11.13.3 any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be solely for the account of the ESCO.
- 11.14 The ESCO shall have the right to update any and all software to be used in connection with the Equipment in accordance with the intellectual property obligations set out in clause 25.
- 11.15 All replacements of and alterations or additions to the Equipment shall become part of the Equipment set out in Schedule 8 (*Equipment and Existing Equipment*) and the terms of this Contract shall apply with respect to the quality, installation and operation of such replacement, alteration or additions to the Equipment.

Emergencies

- 11.16 The Customer shall use its best efforts to notify the ESCO within four (4) hours upon becoming aware of the occurrence of:
- 11.16.1 any malfunction in the operation of the Equipment or any Existing Equipment that might materially impact upon the Guaranteed Savings;
- 11.16.2 any interruption or alteration to the energy supply to the **[CHOICE: (i) [Premises] or (ii) [Systems]]**⁷; or
- 11.16.3 any alteration or modification in any energy related equipment or its operation.

⁶ Select either "Premises" or "Systems" as applicable.

⁷ Select either "Premises" or "Systems" as applicable.

- 11.17 Any notice provided by the Customer to the ESCO in accordance with clause 11.16 which is not in writing shall be confirmed by the Customer in writing within three (3) Business Days of the notice provided under clause 11.16.
- 11.18 The ESCO shall respond to any emergency notification provided by the Customer in accordance with clause 11.16 within a reasonable time and thereafter shall promptly proceed with corrective measures.
- 11.19 If the Customer fails to notify the ESCO of the emergency or malfunction event within a reasonable time in accordance with clause 11.16 and if the event or circumstance is described in sub-clause 11.16 and the emergency or malfunction is not promptly corrected or remedied, the ESCO will have no liability under this Contract for any resulting reduction in Guaranteed Savings.
- 11.20 The ESCO shall maintain a written record of all service and maintenance Works it has performed at the Premises. This record shall indicate the reasons for the service and maintenance, description of the problem and corrective action taken. The ESCO shall ensure that this record is available for inspection by the Customer at all reasonable times and shall provide the Customer with a copy of the record upon receiving a written request from the Customer.

Damage

- 11.21 The Customer shall promptly notify the ESCO if it becomes aware of any damage to or destruction of the Equipment or Existing Equipment.

Handover on Contract Expiry

- 11.22 Within ninety (90) Days of the expiry of the Term, and provided that the Contract Price has been paid in full, the ESCO shall:
 - 11.22.1 demobilise from the Premises and leave the Premises in a clean and tidy manner;
 - 11.22.2 provide the Customer with all warranties, drawings, plans, instruction manuals, manuals and other documents procured under or in connection with the Works as may be required by the Customer to use the Equipment and maintain the **[CHOICE: (i) [Premises] or (ii) [Systems]]⁸** in an efficient and cost effective manner;
 - 11.22.3 hand over the Equipment in a condition which can be regarded as secure and operative taking account of normal wear and tear. The condition of the Equipment shall be comparable to the condition which is generally to be expected in the case of comparable services, comparative service lives and proper maintenance in accordance with Schedule 14 (ESCO's *Maintenance Obligations*); and
 - 11.22.4 return any documents, manuals, drawings, reports, Information, Confidential Information or other information created for the purposes of this Contract as may be reasonably requested by the Customer in writing.

12. CUSTOMER'S GENERAL PERFORMANCE OBLIGATIONS

- 12.1 The Customer shall continue throughout the Term of this Contract to provide the ESCO with all Information reasonably required by the ESCO to discharge its obligations under this Contract.
- 12.2 The Customer acknowledges that a failure to provide complete, accurate and true Information to the ESCO could detrimentally affect the ESCO's ability to discharge its obligations or exercise its rights under this Contract and the Customer warrants that, as far as it is reasonably aware, the Information provided from time to time to the ESCO under this Contract is true, correct, accurate and complete to the best of its knowledge.

⁸ Select either "Premises" or "Systems" as applicable.

- 12.3 The 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.
- 12.4 The Customer shall, upon receiving a written request from the ESCO, at all reasonable times arrange for the temporary shut down of facilities at the Premises (including, but not limited to, hot and chilled water systems) as may be reasonably required by the ESCO for the performance of the Works.
- 12.5 The Customer shall comply with the methods and procedures for operation designed for energy and water conservation by the ESCO as identified in Schedule 13 (*Customer's Operation and (if applicable) Maintenance Obligations*) and all methods and procedures shall be implemented and followed by the Customer on a regular and continuous basis.
- 12.6 If applicable, the Customer shall perform the maintenance and service obligations in respect of the Equipment and/or Existing Equipment set forth in Schedule 13 (*Customer's Operation and (if applicable) Maintenance Obligations*).

13. REPORTING

- 13.1 The Customer shall grant the ESCO a right once a month, upon receiving prior written notice, to inspect the **[CHOICE: (i) [Premises] or (ii) [Systems]]**⁹ to determine if the Customer is complying with its obligations as set out in this Contract. The Customer's compliance shall be measured in accordance with the checklist provided in Schedule 15 (*Facility Management Checklist*) as completed and recorded by the ESCO during its monthly inspections. The Customer shall have the right to witness such inspections carried out by the ESCO and shall be provided with a copy of the completed Facility Management Checklist upon completion by the ESCO if requested in writing.
- 13.2 The ESCO shall not interfere with the Customer's operations or Tenant's use of the Premises during any monthly inspections carried out by the ESCO in accordance with clause 13.1.

14. VARIATIONS

- 14.1 Any variation to this Contract shall only be valid if it is agreed in writing and signed by the authorised representatives of the Parties. A variation to this Contract may include the addition or omission of the Works, with any omission of the Works limited to a maximum of **[insert]** percent of the total Contract Price.
- 14.2 The Customer may issue a written request to the ESCO, during the Construction Period only, for a variation to this Contract in accordance with the terms of this clause ("**Variation Request**"). The Variation Request shall set out the variation required in sufficient detail to enable the ESCO to provide the Customer with a cost proposal to perform the variation ("**Cost Proposal**").
- 14.3 The ESCO shall provide the Customer with a Cost Proposal within ten (10) Business Days of receiving the Variation Request or such longer time as may be agreed by the Parties in writing. The ESCO's Cost Proposal shall include the following information at a minimum:
- 14.3.1 any delays to the Target Operations Date;
 - 14.3.2 a detailed breakdown of the cost implications (being either cost increases or decreases);
 - 14.3.3 the impact on this Contract, including the effect on the Guaranteed Savings; and
 - 14.3.4 any other information reasonably requested by the Customer.
- 14.4 Within ten (10) Business Days of receiving the Cost Proposal the Customer shall assess whether to instruct the ESCO to perform the Variation Request (in whole or in part) or to withdraw the Variation Request. The ESCO shall ensure that it is available to meet with the Customer at all reasonable times to discuss the Variation Request and its Cost Proposal. The ESCO shall also

⁹ Select either "Premises" or "Systems" as applicable.

ensure that it continues to perform all its obligations under this Contract irrespective of any Variation Request, unless so instructed by the Customer in writing.

14.5 If the Customer withdraws its Variation Request, the Customer shall pay the ESCO's reasonable costs incurred in preparing the Cost Proposal, subject to the ESCO providing a prior estimate of the likely costs involved before incurring such costs and providing the Customer with evidence to substantiate the costs incurred in preparing the Cost Proposal.

14.6 If, following the receipt of the ESCO Cost Proposal, the Customer instructs the ESCO to proceed with the Variation Request, the Parties shall record the variation in writing pursuant to a change order. The ESCO shall commence implementing any variation that has been agreed by the Parties and recorded in a change order in accordance with the terms of this clause without delay.

15. **OPERATIONS DATE**

When the ESCO reasonably considers that the Equipment and energy savings measures and services described in this Contract are ready for operation it shall give the Customer a written notice which nominates the date on which the Equipment will be available for operation. Subject to the terms of this clause, the date nominated in the notice shall be taken to be the "**Operations Date**". If the Equipment is not ready for operation by the date so notified by the ESCO, the Operations Date shall be the date that the Equipment is actually commissioned and available for operation.

16. **HAZARDOUS MATERIALS**

16.1 In the event that either the ESCO or the Customer discovers Hazardous Material at the Premises that is affecting or will affect the Works, it shall immediately notify the other Party in writing and the ESCO may suspend the relevant portion of the Works that is affected by the Hazardous Material and demobilise from that part of the Premises.

16.2 The Customer shall be responsible and liable for the storage, handling, use, transportation, treatment, disposal, discharge, leakage, detection, removal or containment of any Hazardous Materials at its expense and the ESCO shall not be obliged to undertake any further Works on the Premises until notified by the Customer in writing that the Hazardous Materials have been removed from the Premises and it is safe for the ESCO to proceed with the Works.

16.3 The ESCO shall be liable for any response, removal, cleanup, or other remedial action required under this Contract or by any applicable Law in respect of any Hazardous Material brought onto the Premises by the ESCO, its employees, Sub-Contractors, agents, representatives or any party for whom they may be liable.

17. **NOTICE OF MATERIAL CHANGES**

The Customer shall use its best endeavours to provide the ESCO with written notice identifying all actual or proposed Material Changes at least ten (10) Business Days before any actual or proposed Material Change is implemented or occurs. Notice to the ESCO of Material Changes which result because of a bona fide emergency or other situation which prevents advanced notification shall be deemed to be sufficient if the Customer provides such notice 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.

18. **STANDARDS OF COMFORT**

During the Term of this Contract, the ESCO shall maintain according to Schedule 14 (*ESCO's Maintenance Obligations*) the Equipment and Existing Equipment in a manner that shall provide the standards of comfort and levels of operation described in Schedule 12 (*Standards of Comfort*).

19. **ENERGY SAVINGS GUARANTEE**

- 19.1 The Parties agree that the ESCO shall not in any circumstances be at risk for any increased costs incurred by the Customer (or its Tenants) as a result of any changes to the tariff or charges payable for energy and water consumption, as may be imposed by the Dubai Electricity and Water Authority or the relevant utility company or supplier from time to time. For the avoidance of doubt, the Energy Savings will be calculated based on the fixed tariff rates for energy and water consumption specified in Schedule 9 (*Baseline Energy Consumption, Baseline Unit Rates and Baseline Energy Cost*), notwithstanding any subsequent increase in those rates during the Term.
- 19.2 The Energy Savings Guarantee is set out in Schedule 10 (*Energy Savings Guarantee*) in annual increments during the Operations Period (each year during the Operations Period, a Guarantee Year).

20. **MAINTENANCE OF RECORDS**

- 20.1 Each of the ESCO and the Customer shall keep complete and accurate records and all other data required for the purpose of the proper implementation of this Contract. Without limiting the foregoing or the other provisions of this Contract, the Customer shall keep and maintain during the Term:
- 20.1.1 monthly energy and water bills; and
- 20.1.2 a log of all relevant meter readings.
- 20.2 The ESCO shall have the right to inspect the abovementioned records and data during normal business hours following reasonable notice to the Customer.

21. **PAYMENTS**

- 21.1 In consideration of the ESCO carrying out the Works, the Customer shall pay the ESCO, in the manner and at the times specified in this Contract, the Contract Price.
- 21.2 The Contract Price may be adjusted only in accordance with the terms of this Contract.
- 21.3 The Customer shall pay the ESCO the Contract Price and, if applicable, Maintenance Fee in accordance with Schedule 6 (*Contract Price and Payment Schedule*).
- 21.4 The ESCO shall be liable to pay any applicable taxes, duties and fees arising from or in connection with the performance of this Contract and the Contract Price (and, if applicable, Maintenance Fee) shall not be adjusted for any of these costs, except as may be provided for in this Contract.
- 21.5 The Customer shall pay the ESCO the amount referred to in a Payment Claim submitted by the ESCO within thirty (30) Business Days of receipt of that Payment Claim.
- 21.6 All payments to be made by a Party to the other Party under this Contract shall be:
- 21.6.1 paid by 4.00pm (Emirate of Dubai time) on the date the payment is due;
- 21.6.2 in immediately available funds and (except as permitted under the express terms of this Contract) without set-off, abatement, counterclaims, conditions or, unless so required by Law, deductions or withholdings;
- 21.6.3 by way of electronic funds transfer to the bank account nominated by that Party in writing; and
- 21.6.4 in UAE Dirhams.
- 21.7 If there is any dispute about any amount invoiced by the ESCO pursuant to a Payment Claim, the undisputed amount of the Payment Claim shall be paid in accordance with this clause 21 and the

Customer shall promptly notify the ESCO of the disputed amount and the reasons for the dispute. The dispute shall be resolved in accordance with clause 33.2 and if it is unable to be resolved pursuant to that sub-clause, the dispute shall be referred to an independent expert for determination in accordance with clause 34. The expert shall be entitled to award default interest at the rate specified in clause 22.3 in favour of the ESCO where it determines that the disputed amount was manifestly correct or was not disputed by the Customer in good faith.

22. DELAYED PAYMENTS

- 22.1 A Party shall upon demand pay interest on any money overdue for payment by it to the other Party under this Contract from the date the amount became due and payable until those moneys are paid (such period, the "**Late Payment Period**"). The amount of such interest shall be calculated in accordance with clause 22.2 and clause 22.3.
- 22.2 The Late Payment Period shall be divided into consecutive thirty (30) Day interest periods (each a "**Default Interest Period**"). A Default Interest Period which would otherwise end on a Day which is not a Business Day shall end on the next Business Day (unless it would fall in the next month in which case it shall fall on the previous Business Day).
- 22.3 The applicable interest rate for each Default Interest Period for monies which are owing by a Party to the other Party shall be the EIBOR for that Default Interest Period plus two (2) per cent per annum.
- 22.4 Interest shall:
- 22.4.1 accrue from Day to Day;
 - 22.4.2 be calculated on the actual number of days elapsed on the basis of a three hundred and sixty (360) Day year; and
 - 22.4.3 be computed from and including the Day which the monies upon which interest is payable become owing by a Party to the other Party until but excluding the Day of payment of those monies.

23. LIMITATION OF LIABILITIES

- 23.1 Subject to clause 23.2 and clause 23.3, the aggregate liability of the ESCO to the Customer arising out of or in connection with this Contract shall not exceed and shall be limited to **[CHOICE: (i) [AED [insert]] or (ii) [the Contract Price]]**¹⁰.
- 23.2 The ESCO's limitation of liabilities referred to in clause 23.1 shall not apply to liabilities directly arising from:
- 23.2.1 the ESCO's fraudulent or wilful default or illegal acts;
 - 23.2.2 personal injury or death arising out of a negligent act or omission or failure by the ESCO to comply with its obligations under this Contract; or
 - 23.2.3 the ESCO's liability to indemnify the Customer in relation to claims resulting from any breach of Intellectual Property Rights by the ESCO.
- 23.3 Any liability of the ESCO:
- 23.3.1 to the Customer for which the ESCO receives proceeds under an insurance policy in satisfaction of an insured event out of which such liability arose, or liability that would have been met by insurance proceeds but where insurance proceeds are not available due to the ESCO's failure to comply with its obligations under clause 26; and

¹⁰ Select either a specified amount (which may be more or less than the Contract Price) or the Contract Price as the maximum liability of the ESCO under the Contract.

23.3.2 the costs incurred by the ESCO in complying with its defect rectification obligations under this Contract,

shall not be considered as part of the ESCO's limitation of liabilities referred to in clause 23.1.

23.4 Except as provided for in clause 19.2, neither Party shall be liable to the other Party for any Indirect Losses arising under or in connection with this Contract, whether such liability arises in contract, for negligence, strict liability, for breach or otherwise.

24. INDEMNITIES

24.1 The ESCO shall be responsible for and shall save, indemnify, defend and hold harmless the Customer from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities in respect of:

24.1.1 loss of or damage to the property of the Customer, Tenants or any third party, whether owned, leased or otherwise obtained under arrangement with financial institutions or provided by the Customer, to the extent that such loss or damage is caused by the ESCO's negligence or breach of this Contract or duty (whether legal or otherwise) or the ESCO's illegal or wilful misconduct;

24.1.2 personal injury including death, illness or disease to the extent that any such injury is caused by the ESCO's negligence or breach of this Contract or duty (whether legal or otherwise) or the ESCO's illegal or wilful misconduct;

24.1.3 any failure to effect or maintain the insurances required under clause 26 or any act or omission by the ESCO, which invalidates any such insurances or prevents a claim from being made under such insurance policy; and

24.1.4 any infringement or alleged infringement of Intellectual Property Rights arising out of or in connection with the performance of the obligations of the ESCO under this Contract as set out in clause 25.

24.2 The Customer shall take all reasonable steps to mitigate any loss or damage that has occurred and if the Customer fails to take such steps, the ESCO's liability shall be correspondingly reduced.

24.3 Except as otherwise expressly provided for in this Contract, all remedies available to either Party for a breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

24.4 A Party may recover a payment under an indemnity in this Contract before it makes the payment in respect of which the indemnity is given.

25. INTELLECTUAL PROPERTY

25.1 Each Party shall maintain ownership of their own Intellectual Property Rights that exist prior to the date of this Contract and neither Party shall acquire any interest in the Intellectual Property Rights of the other Party by virtue of this Contract.

25.2 The Parties agree that any Created Intellectual Property Rights shall automatically vest in the ESCO upon production without the need for further formality or documentation being required, so far as possible.

25.3 The ESCO hereby grants the Customer a perpetual, non-assignable, non-exclusive, royalty free and irrevocable licence to use its Intellectual Property in respect of any software, documents or materials provided by the ESCO for the **[CHOICE: (i) [Premises] or (ii) [Systems]]**¹¹ to allow the Customer to continue to operate, maintain and repair the Equipment and/or **[CHOICE: (i)**

¹¹ Select either "Premises" or "Systems" as applicable.

[Premises] or (ii) [Systems]]¹² for the purposes set out in this Contract only and not for any other purpose. The ESCO shall not be liable for providing new versions of software or other enhancements.

- 25.4 The Customer grants to the ESCO a perpetual, non-assignable, non-exclusive, royalty free and irrevocable licence to use its Intellectual Property in respect of any software, documents or materials provided by the Customer to the ESCO to allow it to discharge its obligations under this Contract only and not for any other purpose.
- 25.5 The ESCO shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in connection with the performance of this Contract.
- 25.6 Each Party warrants to the other that it owns or is licensed to use all Intellectual Property provided or granted under this Contract and that such Intellectual Property Rights do not infringe, contravene or violate the Intellectual Property Rights of any third party.
- 25.7 Each Party agrees to indemnify the other Party from and against all and any claims, losses, damages or costs sustained by that Party arising out of any claim by any third party in respect of a breach of the third party's Intellectual Property Rights.

26. **INSURANCE**

- 26.1 The ESCO shall effect and maintain at its own cost and expense for the Term of this Contract the insurances set out in Schedule 17 (*Insurances*) from a reputable insurance company reasonably acceptable to the Customer.
- 26.2 The Customer shall effect and maintain at its own cost and expense for the Term physical damage insurance in respect of the Equipment and the Existing Equipment from a reputable insurance company reasonably acceptable to the ESCO, for its full insurance value on a replacement and reinstatement basis against fire and usual risks against which a prudent owner of property of a similar type to the Equipment would insure.
- 26.3 Any proceeds of insurance received or receivable under insurances relating to the loss or damage of the Equipment or Existing Equipment received by either the ESCO or the Customer shall be promptly applied in the repair and reinstatement of the Equipment or Existing Equipment.

27. **CONFIDENTIALITY**

- 27.1 Except to the extent set out in this clause 27, or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
 - 27.1.1 treat the other Party's Confidential Information as confidential; and
 - 27.1.2 not disclose the other Party's Confidential Information to any other person without the other Party's prior written consent.
- 27.2 Clause 27.1 shall not apply to the extent that:
 - 27.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure;
 - 27.2.2 such information was in the possession of the Party making the disclosure without an obligation of confidentiality prior to its disclosure by the other Party;
 - 27.2.3 such information was obtained from a third party without an obligation of confidentiality;
 - 27.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

¹² Select either "Premises" or "Systems" as applicable.

- 27.2.5 it is independently developed without access to the other Party's Confidential Information.
- 27.3 The ESCO may only disclose the Customer's Confidential Information to its employees, Sub-Contractors, agents, representatives and advisers involved in the provision of the Works and who need to know the information, and will ensure that such persons are aware of and comply with these confidentiality obligations.
- 27.4 The ESCO shall not, and will procure that its employees, Sub-Contractors, agents, representatives and advisers to whom it discloses such Confidential Information do not, use the Customer's Confidential Information otherwise than for the purposes of this Contract.
- 27.5 The Customer may only disclose the ESCO's Confidential Information to its employees, contractors, agents, representatives and advisers involved in the receipt of the Works and management of this Contract and who need to know such information, and will ensure at all times that such persons are aware of and comply with these confidentiality obligations.
- 27.6 The Customer shall not, and will procure that its employees, agents, contractors and advisers to whom it discloses Confidential Information do not, use the ESCO's Confidential Information otherwise than for the receipt of the Works and management of this Contract.
- 27.7 Nothing in this clause 27 will prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- 27.8 Save as otherwise set out in this Contract, no announcement, circular, advertisement or other publicity in connection with this Contract, its subject matter or any ancillary matter will be made or issued by or on behalf of either Party (save as required by Law) without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).
- 27.9 The Parties agree that damages will not be an adequate remedy for any breach of this clause 27.
- 27.10 Upon completion of the Term or the early termination of this Contract or upon either Party's written request, each Party shall return to or destroy the other Party's Confidential Information in its possession or control and the ESCO shall erase any of the Customer's Confidential Information held electronically.
28. **CHANGE IN LAW**
- 28.1 In the event that there is a change in Law after the Effective Date, the ESCO shall be entitled to submit a written request to the Customer for an adjustment to the Contract Price and, if applicable, Maintenance Fee to take into account any increase in costs resulting from a change in Laws, including the introduction of new Laws and the repeal or modification of existing Laws.
- 28.2 The Customer shall make a reasonable determination in respect of the ESCO's request and either accept or reject the ESCO's request for an adjustment to the Contract Price.
- 28.3 If the ESCO disagrees with the Customer's determination, the Parties shall resolve the matter in accordance with the dispute resolution regime set out in clause 33.
29. **FORCE MAJEURE**
- 29.1 If either Party is prevented or delayed in the performance of any of its obligations under this Contract (save for any obligation to make payment) by a Force Majeure Event, then:
- 29.1.1 the affected Party's obligations under this Contract shall be suspended for so long as the Force Majeure Event continues and to the extent that the affected Party is so prevented, hindered or delayed;

- 29.1.2 within ten (10) Business Days after commencement of the Force Majeure Event the affected Party shall notify the other Party in writing of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform its obligations under this Contract;
- 29.1.3 the affected Party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Contract; and
- 29.1.4 immediately after the cessation of the Force Majeure Event the affected Party shall notify the other Party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Contract.

29.2 If either Party is prevented from the performance of all or substantially all of its obligations for a period exceeding one hundred and eighty (180) consecutive Days, the other Party may terminate this Contract by giving not less than twenty (20) Business Days notice in writing to the other Party, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

30. **SUSPENSION**

30.1 If the Customer fails to pay a sum due and payable in accordance with the terms of this Contract for a period of fifteen (15) Business Days after the due date of a Payment Claim submitted by the ESCO to the Customer in accordance with the terms of this Contract (save where that sum is being disputed in accordance with this Contract), the ESCO may provide the Customer with written notice of its intention to suspend or slow down the Works.

30.2 If after receiving a notice of suspension in accordance with clause 30.1 the Customer fails to pay the outstanding sum demanded within ten (10) Business Days, the ESCO shall be immediately entitled to suspend or slow down the provision of the Works. Such suspension may include the deactivation of any Equipment or measures.

30.3 The ESCO shall immediately resume the Works upon receiving payment of the outstanding sums from the Customer.

30.4 In the event that the Works are suspended in accordance with clause 30.2 the ESCO shall be entitled to an adjustment to the Contract Price in respect of the reasonable costs the ESCO has incurred during the suspension period, including (but not limited to) demobilisation and remobilisation costs and storage of Equipment and (if applicable) Existing Equipment costs.

31. **TERMINATION**

Notice of Default

31.1 In the event that either Party is in default of any of its obligations under this Contract (including if a representation or warranty given by a Party under this Contract (other than a representation by the Customer regarding the Information, in which case the remedy shall be an appropriate adjustment to the Baseline Energy Cost) proves to be untrue), the Party not in default may provide the defaulting Party with written notice of its default ("**Notice of Default**").

Customer's Termination Rights

31.2 The Customer shall be entitled to terminate this Contract immediately by written notice to the ESCO during the Term of this Contract:

31.2.1 if the ESCO commits a material breach of any of the terms of this Contract and following receipt of a Notice of Default the ESCO fails to:

- (a) remedy or overcome to the satisfaction of the Customer the effects of such breach within twenty (20) Business Days of receipt of such Notice of Default;

- (b) in circumstances where the breach cannot be remedied, or the effects of such breach cannot be overcome, within twenty (20) Business Days, provide a detailed rectification plan acceptable to the Customer within twenty (20) Business Days of receipt of the Notice of Default; or
 - (c) implement a rectification plan provided under paragraph (b) (above) in all material respects and within the timeframes indicated in the rectification plan;
- 31.2.2 if the ESCO fails to pay to the Customer an outstanding undisputed sum within thirty (30) Business Days after receiving a letter of demand requesting payment of the outstanding undisputed sum;
- 31.2.3 if the ESCO has reached the limit of the overall cap on liability under clause 23.1;
- 31.2.4 in accordance with clause 29.2 for a prolonged Force Majeure Event, in which case further written notice under this clause 31 shall not be required; or
- 31.2.5 if an Insolvency Event occurs in respect of the ESCO.
- 31.3 The Customer may terminate this Contract in its absolute discretion and without cause by providing the ESCO with at least twenty (20) Business Days notice in writing.
- 31.4 The right of the Customer to terminate this Contract for breach shall be without prejudice to any other rights or remedy either Party may have in respect of the breach concerned or any other breach.

ESCO's Termination Rights

- 31.5 The ESCO shall be entitled to terminate this Contract immediately by written notice to the Customer during the Term of this Contract:
 - 31.5.1 if the Customer commits a material breach of any of the terms of this Contract which fundamentally deprives the ESCO of the benefit of this Contract and, following receipt of a Notice of Default, the Customer fails to:
 - (a) remedy or overcome to the satisfaction of the ESCO the effects of such breach within twenty (20) Business Days of receipt of such Notice of Default;
 - (b) in circumstances where the breach cannot be remedied, or the effects of such breach cannot be overcome, within twenty (20) Business Days, provide a detailed rectification plan acceptable to the ESCO within twenty (20) Business Days of receipt of the Notice of Default; or
 - (c) implement a rectification plan provided under paragraph (b) (above) in all material respects and within the timeframes indicated in the rectification plan;
 - 31.5.2 if the Customer fails to pay the ESCO an outstanding undisputed sum within twenty (20) Business Days after receiving a letter of demand requesting payment of the outstanding undisputed sum;
 - 31.5.3 in accordance with clause 29.2 for a prolonged Force Majeure Event in which case further written notice under this clause 31 shall not be required;
 - 31.5.4 if an Insolvency Event occurs in respect of the Customer; or
 - 31.5.5 if the Works are suspended under clause 30 for a period of ninety (90) or more consecutive Days.

Consequences of Termination

31.6 If this Contract is terminated by the Customer in accordance with clauses 31.2.1, 31.2.2, 31.2.3 or 31.2.5 the Customer shall be entitled to complete the Works itself or employ another energy savings company to do so. The Customer shall thereafter promptly fix and determine:

31.6.1 all outstanding undisputed sums payable to the ESCO less any amounts payable by the ESCO to the Customer under this Contract (including any amounts arising out of a default that led to the termination of this Contract); and

31.6.2 the costs of any Equipment which is properly installed at the Premises or has been delivered to the Premises and has not been paid for by the Customer

(the amount certified by the Customer under this clause being the "**Termination Value**").

Where the Termination Value is a positive amount, the Customer shall pay the ESCO the Termination Value within ninety (90) Days of the termination date. Where the Termination Value is a negative amount the ESCO shall pay the Customer the Termination Value within ninety (90) Days of the termination date. Payment of the Termination Value shall be without prejudice to any rights the Customer may have to the payment of damages, or to any other right or remedy under Law in respect of the default that led to termination of this Contract or any other breach or default by the ESCO.

31.7 If this Contract is terminated by the Customer in accordance with clause 31.2.4 or 31.3 or by the ESCO in accordance with clause 31.5 the Customer shall pay the ESCO (within ninety (90) Days of the termination date or if later within ninety (90) Days of the collection of such amounts by the ESCO with supporting particulars):

31.7.1 all outstanding undisputed sums due and payable to the ESCO less any amounts due and payable by the ESCO to the Customer under this Contract;

31.7.2 the cost of Equipment ordered for the Premises which has been delivered to the ESCO or for which the ESCO is liable to accept delivery, and in both instances the Equipment shall become the property of the Customer upon receipt of payment; and

31.7.3 any costs or liabilities reasonably incurred by the ESCO in anticipation of completing the Works.

31.8 Following termination of this Contract under clause 31.2, 31.3 or clause 31.5 and, if applicable, payment to the ESCO of the Termination Value or aggregate termination amount under clause 31.7, the ESCO shall promptly:

31.8.1 demobilise from the Premises and leave the Premises in a clean and tidy manner;

31.8.2 provide the Customer with all warranties, drawings, plans, instruction manuals, manuals and other documents procured under or in connection with the Works as may be required by the Customer to use and maintain the Equipment in an efficient and cost effective manner;

31.8.3 use its reasonable endeavours to assign any Sub-Contracts to the Customer as may be requested by the Customer in writing;

31.8.4 provide the Customer with all Existing Equipment in its possession as may be requested by the Customer in writing; and

31.8.5 return any documents, manuals, drawings, reports, Information, Confidential Information or other information created for the purposes of this Contract as may reasonably be requested by the Customer in writing.

31.9 Payment in full by the Customer to the ESCO of the amounts set out in clause 31.7 (and disputed amounts upon the resolution of the dispute in accordance with clause 33) is in full and final satisfaction of the ESCO's claims and rights against the Customer for termination of this Contract and the circumstances or default which gave rise to such termination, whether under this Contract, at Law or otherwise.

32. **GOVERNING LAW AND LANGUAGE**

This Contract shall be governed by the laws of the Emirate of Dubai and the federal laws of the UAE as applicable in the Emirate of Dubai.

33. **DISPUTE RESOLUTION**

33.1 If a dispute or difference arises under or in connection with this Contract (including a dispute relating to the existence, validity or termination of this Contract or any non-contractual obligation arising out of or in connection with this Contract), then either Party shall provide the other Party with a written notice of dispute ("**Notice of Dispute**").

33.2 Upon receiving a Notice of Dispute in accordance with clause 33.1, such dispute shall be referred in writing to the senior members of each of the Customer and the ESCO who shall endeavour to resolve the dispute amicably, in good faith, within twenty (20) Business Days of such referral.

33.3 Subject to the terms of clause 34, if the Parties are unable to resolve the dispute within the twenty (20) Business Day period referred to in clause 33.2, the Parties hereby agree that the dispute shall be subject to the exclusive jurisdiction of the courts of the Emirate of Dubai.

33.4 Pending final resolution of any court proceedings under this Contract, the ESCO shall continue performing its duties and obligations under this Contract without delay and the Customer shall continue to pay all undisputed sums in accordance with the terms of this Contract.

34. **EXPERT DETERMINATION**

34.1 This clause shall apply where a dispute or difference arises under or in connection with this Contract which relates to:

34.1.1 the determination or calculation of any energy or water consumed in respect of the ***[CHOICE: (i) [Premises or any system or systems or sub-system or sub-systems located at the Premises] or (ii) [Systems]]***¹³;

34.1.2 the calculation of the Adjusted Energy Usage for a period following the occurrence of a Material Change;

34.1.3 the determination or calculation of the Energy Savings for any Guarantee Year;

34.1.4 any other technical matters in respect of the measurement, calculation, verification or determination of Energy Savings;

34.1.5 or where a particular provision of this Contract expressly provides for expert determination; or

34.1.6 upon the written agreement of the Parties.

34.2 In the event that a dispute or difference arises as set out in clause 34.1, the Parties shall comply with clause 33.1 and 33.2 above. In the event that the Parties are unable to resolve the dispute amicably within twenty (20) Business Days of a reference under clause 33.2 then either Party may refer the dispute to an independent expert for determination.

¹³ Use option (i) if the energy savings is not measured in respect of a System, but rather in respect of the Premises. If energy savings are only being measured in respect of a System, then insert option (ii).

- 34.3 The independent expert shall be appointed within ten (10) Business Days of the expiry of the amicable resolution period referred to in clause 34.2 and be selected by the Parties from the list of experts set out in Schedule 18 (*Experts*). In the event that:
- 34.3.1 there are no experts listed in Schedule 18 (*Experts*);
 - 34.3.2 the Parties cannot agree on the appointment of an expert from the list in Schedule 18 (*Experts*) within ten (10) Business Days of the expiry of the amicable resolution period referred to in clause 34.2; or
 - 34.3.3 for any reason the expert nominated from the list in Schedule 18 (*Experts*) is unable or refuses to be appointed,
- the expert shall be nominated by the RSB upon receiving a written request from either Party and the RSB shall be requested to make the appointment within fifteen (15) Business Days. In doing so, the RSB may take such independent advice as it thinks fit.
- 34.4 The expert shall be entitled to request written and oral submissions from the Parties as may be necessary in the circumstances to resolve the matter. Any information provided by the Parties to the expert shall also be provided to the other Party. Further, the expert shall be entitled to obtain such independent professional and/or technical advice as he or she may reasonably require and to obtain any necessary secretarial assistance as is reasonably necessary.
- 34.5 The Parties agree that the expert may in its reasonable discretion determine such other procedures to assist with the conduct of the determination as it considers necessary.
- 34.6 The expert shall render its determination of the matter in dispute in writing within thirty (30) Business Days of being appointed by the Parties or such later time as may be agreed by the Parties in writing.
- 34.7 The expert shall act as an expert and not an arbitrator. The Parties agree that, in respect of a decision rendered by an expert:
- 34.7.1 if the sum in dispute is below *[insert]*, the expert's decision shall (except in the case of fraud or where the expert's impartiality is challenged by either Party on reasonable grounds) be binding on the Parties and shall be deemed to form a binding term of this Contract and a failure to comply with such a decision rendered by an expert shall be deemed to be a breach of this Contract; and
 - 34.7.2 if the sum in dispute is above *[insert]*, the expert's decision shall be binding, save in the case of fraud, the impartiality of the expert is challenged or where either Party serves a written notice on the other Party within thirty (30) Days of the expert's decision having been notified to it, stating its intention to commence proceedings in the courts of the Emirate of Dubai, provided that the notifying Party commences proceedings within a further thirty (30) Day period of serving such notice. Any decision rendered by an expert may be used as evidence in such court proceedings.
- 34.8 Unless the expert shall make any award of such costs and expenses which award, if made, shall be part of the expert's determination, the fees of the expert and any independent advisors to the expert (and any costs of his or her appointment) shall be shared equally by the Parties. Each Party shall bear their own costs arising from or associated with preparing any submissions or providing any documents to the expert, including the cost of all counsel, witnesses and employees retained by it.
- 34.9 Pending final resolution of any dispute under this Contract, the ESCO shall continue performing its duties and obligations under this Contract without delay and the Customer shall continue to pay all undisputed sums in accordance with the terms of this Contract.

35. **NOTICES**

35.1 Any notice or other communication pursuant to or in connection with this Contract shall be in writing in the English language and may be delivered personally or sent by:

35.1.1 post (air mail if overseas);

35.1.2 by express courier; or

35.1.3 by fax,

to the address for that Party set out in clause 35.2.

35.2 Each Parties' address for service is as follows:

35.2.1 Customer:

Address: [insert address]

Attention: [insert]

Fax: [insert fax number]

35.2.2 ESCO

Address: [insert address]

Attention: [insert]

Fax: [insert fax number]

35.3 Subject to clause 35.4, any notice or other communication shall be deemed to have been served:

35.3.1 if delivered personally, when left at the address referred to in clause 35.2;

35.3.2 if sent by post (except air mail), five (5) Business Days after posting it;

35.3.3 if sent by air mail, six (6) Business Days after posting it;

35.3.4 if sent by express courier, the date of actual delivery (as evidenced by the courier company's delivery receipt); or

35.3.5 if sent by fax, when clearly received in full, provided that a copy of the notice or communication is also delivered personally or sent by mail on the same day as the date of transmission or the next Business Day following the despatch of the facsimile to the address referred to in clause 35.2.

35.4 If a notice is sent or delivered on a day other than a Business Day or after 6.00 pm (Emirate of Dubai time) on a Business Day, it shall be deemed to have been given on the first Business Day thereafter.

36. **REPRESENTATIVES**

36.1 The Customer Representative and the ESCO Representative shall be the people identified in Schedule 19 (*Parties' Representatives*) and they shall be the primary point of contact on behalf of each Party during the Term.

36.2 The Parties agree that the Customer Representative and the ESCO Representative have the authority to send and receive notices under this Contract and are authorised to act on behalf of the

Customer and the ESCO respectively during the course of this Contract and with respect to the discharge of each Party's contractual obligations.

36.3 The Customer shall be entitled to replace the Customer Representative subject to providing the ESCO with prior written notice.

36.4 The ESCO shall be entitled to replace the ESCO Representative with a person of equivalent experience and expertise with the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.

37. **WAIVER**

37.1 The failure by any Party to exercise a right or remedy under this Contract or any delay in exercising a right or remedy under this Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies the Parties may otherwise have, unless such waiver is in writing and signed by the Party or Parties to be bound. Any waiver or consent given by a Party will only be effective if given or confirmed in writing.

37.2 No single or partial exercise of any right or remedy under this Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

37.3 Except as otherwise stated in this Contract, the Parties' rights and remedies contained in this Contract are in addition to, and not exclusive of, any other rights or remedies available at Law.

38. **REPRESENTATIONS AND WARRANTIES**

38.1 Each Party represents and warrants to the other Party that:

38.1.1 it is validly existing under the laws of the relevant jurisdiction in which it was established;

38.1.2 it has the requisite power and authority to enter into and to perform its obligations under this Contract which when executed will constitute valid and binding obligations on it in accordance with its terms;

38.1.3 each approval, licence, authorisation, consent or permission (each an "**Authorisation**") which is required by it in connection with the entry into, performance, validity and enforceability of this Contract and the transactions contemplated under it has been obtained or effected from the date such Authorisation is required and is in full force and effect and it has complied with such Authorisation;

38.1.4 its obligations under this Contract are legal, valid and binding and are enforceable against it in accordance with their terms, except to the extent limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting creditor rights generally;

38.1.5 the entry into this Contract and the performance by it of its obligations under it do not conflict with:

(a) its constituent documents;

(b) any law or regulation to which it is subject; or

(c) any document which is binding on it or its property or assets;

38.1.6 it is not a Party to any litigation or arbitration, nor is it bound by any order, injunction, declaration, judgment or award of any court, arbitration or other forum which would adversely affect its ability to perform its obligations under this Contract;

38.1.7 it is not entitled to any immunity from a suit, execution, attachment or other legal or arbitral proceedings in the UAE or elsewhere; and

38.1.8 prior to the Effective Date, it has not paid or received any amounts or consideration of whatever nature including, without limitation, any commissions, discounts, gifts, presents, in-kind commissions or cash amounts to any third party in relation to this Contract.

38.2 Each Party acknowledges that in entering into this Contract it has not relied on any representations or warranties about its subject matter except as expressly set out in the written terms of this Contract.

39. **ASSIGNMENT AND SUB-CONTRACTING**

39.1 The Customer may assign or transfer its rights and obligations under this Contract to a purchaser of the Premises or its business, or a third party in connection with a solvent amalgamation, merger or reconstruction of its business with the prior written consent of the ESCO, which consent shall not be unreasonably withheld or delayed.

39.2 Subject to clause 39.3, the ESCO shall not be entitled to assign or transfer its rights or obligations under this Contract to any Party without the prior written consent of the Customer.

39.3 Notwithstanding clause 39.2, the ESCO may at any time assign the whole (but not part of) its rights and obligations under this Contract to an Affiliate of it subject to the condition that the assignee will have entered into a valid and effective covenant with the Customer (on terms acceptable to the Customer) to be bound by the terms of this Contract to the extent that they apply to the ESCO, and the ESCO shall also remain liable as primary obligor for the performance by the assignee of its obligations under this Contract.

39.4 This Contract shall bind and enure to the benefit of the respective successors and assigns of the Parties.

39.5 Save with the prior written consent of the Customer, the ESCO shall not be entitled to sub-contract all or substantially all of its obligations under this Contract. The ESCO shall be entitled to sub-contract some or part of its obligations under this Contract, subject to obtaining the Customer's prior written consent, such consent not to be unreasonably withheld or delayed.

39.6 The ESCO shall remain fully liable for any acts and omissions performed by its Sub-Contractors and shall not be relieved from any of its duties or obligations under or in connection with this Contract in respect of any Works that are performed by a Sub-Contractor.

40. **SEVERABILITY**

If any provision of this Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of this Contract and the remainder of the unaffected provisions shall continue to be valid and binding on the Parties.

41. **RELATIONSHIP OF THE PARTIES**

Nothing in this Contract shall be construed as creating a partnership, joint venture, pooling arrangement or formal business organisation or structure of any kind between the Parties or as constituting either Party as the agent of the other Party for any purpose whatsoever and neither Party shall have the authority or power to bind the other Party or to contract in the name of or create a liability against the other Party in any way or for any purpose.

42. **AMENDMENT**

Unless otherwise expressly provided for in this Contract, this Contract (including the Schedules) can only be amended or replaced by another document signed by the Parties.

43. **LIABILITY FOR EXPENSES**

Each Party shall pay its own expenses incurred in negotiating, executing and registering this Contract.

44. **EXCLUSION OF LEGISLATION**

Any legislation or Law that adversely affects an obligation of a Party, or the exercise of any right or remedy, under or relating to this Contract is excluded to the full extent permitted by Law.

45. **FURTHER ASSURANCES**

A Party shall do anything (including execute any document) and must ensure that its employees, agents and representatives do anything (including execute any document), that the other Party may reasonably require to give full effect to this Contract.

46. **SURVIVAL**

The following provisions of this Contract are intended to survive and shall apply following expiry or termination of this Contract and shall continue in full force and effect notwithstanding such expiry or termination:

46.1 this clause 46, clauses 23, 24, 25, 27, 31 and 33 and any other clause expressed to survive its termination; and

46.2 any provisions of this Contract necessary for or incidental to the operation of those provisions.

47. **ENTIRE AGREEMENT**

This Contract when executed, including all Schedules, shall constitute the entire agreement between the Parties and supersedes and replaces any previous agreements, negotiations, arrangements or understandings between the Parties in respect of that subject matter.

48. **COUNTERPARTS**

This Contract may consist of a number of copies, each signed by one or more Parties to this Contract. If so, the signed copies are treated as making up the one document.

[End of Contract]

The Parties have duly executed this Contract as an agreement on the date hereof.

Executed for and on behalf of

[INSERT CUSTOMER NAME]

by

Signature:

Signature:

Name in Capitals:

Name in Capitals:

[Position]

Executed for and on behalf of

[INSERT ESCO NAME]

by

Signature:

Signature:

Name in Capitals:

Name in Capitals:

[Position]

SCHEDULE 1

PREMISES

SCHEDULE 2
INFORMATION PROVIDED BY CUSTOMER

SCHEDULE 3
ENERGY SAVINGS REPORT

SCHEDULE 4

PERMITS, LICENCES AND APPROVALS TO BE MAINTAINED BY CUSTOMER

SCHEDULE 5
PRELIMINARY PROGRAMME

SCHEDULE 6
CONTRACT PRICE AND PAYMENT SCHEDULE

SCHEDULE 7
SCOPE OF WORKS AND SERVICES

SCHEDULE 8
EQUIPMENT AND EXISTING EQUIPMENT

PART A – EQUIPMENT

PART B – EXISTING EQUIPMENT¹⁴

¹⁴ Refer to footnote number 3 in relation to "Existing Equipment".

SCHEDULE 9

BASELINE ENERGY CONSUMPTION, BASELINE UNIT RATES AND BASELINE ENERGY COST

[Parties to describe the Baseline Energy Consumption, Baseline Unit Rates and Baseline Energy Cost. An example of how this could be set out is indicated below and will need to be amended on a case by case basis:

Guarantee Period	Baseline Energy Consumption (Units)		Baseline Unit Rates (Dirhams)		Baseline Energy Cost (Dirhams)
	[kWh]	[IG]	[per kWh]	[per IG]	
Year 1					
Year 2					
Year 3					
Year 4					

J

SCHEDULE 10

ENERGY SAVINGS GUARANTEE

1. The ESCO hereby agrees and guarantees that it shall deliver the following Energy Savings for each Guarantee Year:

Guarantee Year	Guaranteed Savings (Dirhams)
1	
2	
3	
4	

2. Within twenty (20) Business Days after the end of each Guarantee Year, the ESCO shall send a report to the Customer detailing the Energy Savings for that Guarantee Year and if applicable, a statement of the amount due to the Customer by the ESCO under paragraph 4 (below).
3. [If the Energy Savings for a Guarantee Year exceed the Energy Savings Guarantee for that Guarantee Year, the ESCO may for the purpose of complying with paragraph 4 (below) roll the excess forward to meet all or part of any shortfall in Energy Savings in the next or in any subsequent Guarantee Year. To avoid doubt, excess Energy Savings may only be applied once.]¹⁵
4. Where the Energy Savings for a Guarantee Year (including any excess Energy Savings for an earlier Guarantee Year applied in accordance with paragraph 3 above) are less than the Energy Savings Guarantee for that Guarantee Year as set forth in paragraph 1 (above), the ESCO shall pay the difference between the Energy Savings Guarantee and the Energy Savings (the "**Energy Savings Shortfall**") to the Customer within forty (40) Business Days of the end of the applicable Guarantee Year.
5. No other claims, promises or other indications of savings as communicated by the ESCO to the Customer or its employees, agents or representatives, either verbally or in writing, at any time shall be guaranteed or binding in any way on the ESCO, unless this guarantee is the subject of a written agreement between the authorised representatives of the Parties.
6. The Energy Savings Guarantee applies to an overall level of savings in relation to the **[CHOICE: (i) [Premises] or (ii) [Systems]]**¹⁶, and saving levels in respect of individual items of Equipment, software, technologies or measures are not guaranteed.
7. Any dispute arising in relation to this Energy Savings Guarantee shall be resolved in accordance with the dispute resolution regime provided for in clause 33 of this Contract.
8. For the avoidance of doubt, all Energy Savings should be for the account of the Customer and the ESCO shall have no entitlement to or interest in any Energy Savings.

¹⁵ If this is not agreed, delete and insert "Not Used". The Parties are free to agree any regime that is appropriate to deal with excess energy savings, such as the above mentioned roll-forward mechanism, a bonus regime, etc.

¹⁶ Select either "Premises" or "Systems" as applicable.

SCHEDULE 11
ENERGY SAVINGS MEASUREMENT AND VERIFICATION

SCHEDULE 12
STANDARDS OF COMFORT

[This Schedule should set out, for example, the heating and cooling levels to be maintained in the Premises subsequent to the installation of Equipment]

SCHEDULE 13

CUSTOMER'S OPERATION AND (IF APPLICABLE) MAINTENANCE OBLIGATIONS

SCHEDULE 14
ESCO'S MAINTENANCE OBLIGATIONS

SCHEDULE 15
FACILITY MANAGEMENT CHECKLIST

SCHEDULE 16

MATERIAL CHANGES

[Examples of Material Changes that may be included by the Parties in the Contract could be as follows:

1. *manner of use of the Premises by the Customer;*
2. *hours of operation for the Premises or for any Existing Equipment, Equipment or energy using systems operating at the Premises;*
3. *permanent changes in the Standards of Comfort set out in Schedule 12 (Standards of Comfort);*
4. *occupancy of the Premises;*
5. *structure of the Premises;*
6. *types and quantities of equipment used at the Premises;*
7. *modification, renovation or construction at the Premises;*
8. *the Customer's failure to provide maintenance and repairs to the Equipment and Existing Equipment in accordance with Schedule 13 (Customer's Operation and (if applicable) Maintenance Obligations);*
9. *any other conditions other than climate affecting energy use at the Premises including but not limited to the replacement, addition or removal of energy and water consuming devices whether plug in or fixed assets;*
10. *additional enhancements to or reductions of the Works requested by the Customer which differ from those proposed in the Energy Savings Report;*
11. *variations instructed by the Customer in accordance with this Contract that results in an increase or decrease in the amount of energy or water used within the Premises;*
12. *modifications, alterations or overrides of the energy management system, Schedules or hours of operation, set back/start up or holiday schedules;*
13. *a Force Majeure Event, with the consequences of a Force Majeure Event being subject to the regime set out in clause 29; or*
14. *any increased energy and/or water consumption arising out of a suspension under clause 30.]*

SCHEDULE 17

INSURANCES

The ESCO shall procure from one or more reputable insurers and at all times maintain the following insurances in accordance with the terms of clause 26 of the Contract.

1. **[Professional liability insurance¹⁷**

1.1 *Insured parties:*

1.2 *Coverage:*

1.3 *Sums Insured:*

1.4 *Coverage Period:*

1.5 *Amount:*

2. **Contractor's all risk insurance**

2.1 *Insured parties:*

2.2 *Coverage:*

2.3 *Sums Insured:*

2.4 *Coverage Period:*

2.5 *Amount:*

3. **Worker's compensation insurance**

3.1 *Insured parties:*

3.2 *Coverage:*

3.3 *Sums Insured:*

3.4 *Coverage Period:*

3.5 *Amount:*

4. **Motor vehicle insurance**

4.1 *Insured parties:*

4.2 *Coverage:*

4.3 *Sums Insured:*

4.4 *Coverage Period:*

4.5 *Amount:*

¹⁷ Select the insurances as appropriate and agreed by the Parties or include any other insurance to be maintained by the ESCO.

5. **Shipping and cargo insurance**

5.1 *Insured parties:*

5.2 *Coverage:*

5.3 *Sums Insured:*

5.4 *Coverage Period:*

5.5 *Amount:*

6. **Third party liability insurance**

6.1 *Insured parties:*

6.2 *Coverage:*

6.3 *Sums Insured:*

6.4 *Coverage Period:*

6.5 *Amount:]*

SCHEDULE 18

EXPERTS

1. The Parties agree to the appointment of one of the following experts in accordance with clause 34 as may be required from time to time:
 - 1.1 *[insert expert]*
 - 1.2 *[insert expert]*
 - 1.3 *[insert expert]*
 - 1.4 *[insert expert]*
2. The expert when selected:
 - 2.1 will not be bound by the rules of evidence;
 - 2.2 shall determine whether or not the issue in dispute falls within the categories identified in clause 34.1;
 - 2.3 may proceed in any manner he or she thinks fit;
 - 2.4 may conduct any investigation which he or she considers necessary to resolve the dispute or difference;
 - 2.5 may examine such documents, and interview such persons, as he or she may require; may make such directions for the conduct of the determination as he or she considers necessary; and
 - 2.6 shall disclose to the parties any:
 - 2.6.1 interest he or she has in the outcome of the determination;
 - 2.6.2 conflict of interest;
 - 2.6.3 conflict of duty;
 - 2.6.4 personal relationship that the expert has with either Party, or either Party's representatives, witnesses or experts; and
 - 2.6.5 other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
 - 2.6.6 shall not communicate with one party without the knowledge of the other Party.

SCHEDULE 19

PARTIES' REPRESENTATIVES

The Parties agree that the following shall be their representatives for the purposes of this Contract and confirm that the below representatives have the requisite authority and power to provide and receive notices on their behalf:

Customer's Representatives

Name:

Position:

Address:

Telephone:

Fax:

Email:

ESCO's Representatives

Name:

Position:

Address:

Telephone:

Fax:

Email:

SCHEDULE 20

SYSTEMS

[Delete this Schedule if energy savings measures relate to the entire Premises and not to a specific system or systems]