

ENERGY SERVICES CONTRACT

This is an Energy Services Contract (this "Contract") by and between Schneider Electric Buildings Americas, Inc. ("ESCO") and [Customer Legal Name Here] ("Customer"), dated _____, 20____ (the "Effective Date ") whereby ESCO agrees to provide and perform the energy conservation measures ("ECMs") set forth in the Contract Documents including the Schedules and Exhibit(s) listed below and incorporated fully herein, subject to the terms and conditions set forth herein:

Schedule A: Scope of Work

Schedule B: Performance Assurance Support Services Agreement

Schedule B: Exhibit A – Performance Assurance Support Services

Schedule C: Performance Guarantee

Schedule D: Measurement & Verification ("M&V") Plan

Schedule E: Customer Responsibilities for Performance Guarantee

RECITALS

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

WHEREAS, Customer is authorized under the laws of the State of _____ (hereinafter the "State") to enter into this Contract for the purposes set forth herein.

WHEREAS, ESCO is knowledgeable about certain procedures for controlling energy and water consumption and reducing operating costs through services provided and equipment installed and maintained at project sites similar in scope and scale of Customer; and

WHEREAS, under a separate agreement with the Customer, the ESCO has performed an Investment Grade Audit (defined below) and has prepared an Investment Grade Audit Report and the Parties hereby acknowledge that the Investment Grade Audit Report has been reviewed and accepted by the Customer; and

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

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

**Customer Legal Name Here
[Include State]**

**Schneider Electric Buildings
Americas, Inc.**

By	_____	By	_____
	(Signature)		(Signature)
Print Name	_____	Print Name	_____
Title	_____	Title	_____

DEFINITIONS

1. "Actual Savings" is defined as the sum of the total savings realized using the procedures for measured of savings as set forth in Schedule D plus all adjustments and non-measured savings.
2. "Annual Savings Guarantee" is the amount of the Actual Savings that is guaranteed by ESCO for a twelve (12) month period beginning on the Savings Guarantee Commencement Date and any subsequent twelve (12) month anniversary thereafter.
3. "Change Order" is defined as a written change to any term of this Contract, including but not limited to changes to the Scope of Work, Contract Price, Contract Time, and Performance Guarantee, that is executed by both parties.
4. "Contract Documents" consist of this Contract with the terms and conditions set forth herein, the Schedules and Exhibits identified above, and any mutually agreed upon written modification issued after execution of this Contract as provided in a Change Order. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by ESCO. The Contract Documents are correlative and complimentary, and ESCO'S performance shall be required only to the extent consistent with the Contract Documents.
5. "Date of Commencement" is the later of the Effective Date or the date funding occurs.
6. "Day" as used herein shall mean calendar day unless otherwise specifically designated.
7. "Excess Savings" is the amount of Actual Savings in excess of the Performance Guarantee to date including any savings achieved during construction.
8. "Guarantee Year" is the twelve (12) month period beginning on the Savings Guarantee Commencement Date and each subsequent twelve (12) month anniversary thereafter.
9. "Investment Grade Audit or "IGA" shall mean the services provided under separate agreement wherein the ESCO set forth, among other things, (a) an assessment of the energy characteristics of the Project Site(s), (b) an analysis of energy, water, and wastewater related to the Project Site(s), and (c) recommendations to achieve cost and/or energy, water, and wastewater savings.

10. "IGA Fee" All costs incurred during the IGA phase.
11. "Performance Guarantee" is the sum of the Annual Savings Guarantee for each year of the guarantee term as set forth in Schedule C unless terminated earlier in accordance with the Contract Documents.
12. "Performance Period" is defined as the period beginning on the Savings Guarantee Commencement Date and extending through the time period as defined in the Performance Guarantee.
13. "Project" shall mean the equipment, services and improvements to the Project Site(s) to be constructed by ESCO in accordance with and subject to the terms and conditions of this Contract as more specifically set forth in Schedule A (Scope of Work). For the avoidance of doubt, notwithstanding the original scope of the Project as contemplated in the IGA, the Scope of Work attached as Schedule A shall represent the entirety of the intended and agreed upon scope for the Project.
14. "Project Site(s): The facilities of the Customer, identified in the Scope of Work, in need of energy, demand, water and operating equipment and services designed to reduce consumption and associated costs.
15. "Savings Guarantee Commencement Date" means the first day of the first utility billing period following the month in which ESCO delivers to Customer the final Substantial Completion Letter.
16. "Substantial Completion" refers to and shall mean the point at which Work is sufficiently implemented in accordance with the Contract Documents so as to be operational and fit for use by Customer and fully complete except for minor items, adjustments and/or corrections.
17. "Substantial Completion Letter" shall have the meaning set forth in Section 9.3 hereof.
18. "Warranty Period" is for one (1) year from the date set forth in the applicable Substantial Completion Letter, unless a different period is stated in the Scope of Work.
19. "Work" means the services required to be performed by ESCO pursuant to Schedule A (Scope of Work), whether completed or partially completed, and all labor, materials, equipment and services required to be provided in order for ESCO to perform such services in accordance with the Contract Documents. Work may refer to the whole or parts of the Scope of Work.

TERMS AND CONDITIONS OF IMPLEMENTATION PORTION OF CONTRACT

ARTICLE 1 – DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

1.1 ESCO projects it will achieve Substantial Completion of the Work within XXX days from Date of Commencement (the “Contract Time”), subject to adjustments of this Contract Time as provided in the Contract Documents.

ARTICLE 2 – CONTRACT PRICE AND PAYMENTS

2.1 The total of all implementation contract payments shall be \$PROJECT COST (the “Contract Price”). ESCO shall invoice Customer for construction progress payments which shall be paid to ESCO monthly based on the percentage completion of items delineated on a “Schedule of Values” completed during the prior month. The Schedule of Values will be developed by ESCO and provided to Customer at the beginning of project implementation. The Schedule of Values will be based upon the project cost less the Project Mobilization Payment. Payment of invoice is due thirty (30) days after the invoice application date. If receipt of any payment exceeds the thirty (30) days after the invoice application date, Customer shall pay to ESCO a 1% late penalty per month and ESCO reserves the right to terminate this Contract due to non-payment upon seven (7) days prior written notice.

2.2 Within ten (10) days of the Date of Commencement, Customer shall make payment to ESCO for the IGA Fee as defined above, plus a payment of 10% of the total Contract Price (“Project Mobilization Fee”) for expenses relating to procurement of equipment, materials, and/or bonds, and any other project start-up and mobilization expenses. The total payment of the IGA Fee and Project Mobilization Fee shall not exceed 25% of the total Contract Price.

2.3 For the initial one (1) year beginning at the Savings Guarantee Commencement Date, Customer shall receive the services as described in the Performance Assurance Support Services Agreement at no additional cost. Thereafter, the Performance Assurance Support Services Agreement shall automatically renew for a period of one (1) year, whereby Customer can maintain the current service, upgrade the level of service, or terminate, as provided for in Schedule B.

ARTICLE 3 – CUSTOMER

3.1 Except for permits, licenses, inspections and associated fees that are explicitly the responsibility of ESCO under the Contract Documents, Customer shall secure and pay for necessary approvals, inspections, easements, assessments and charges required for the use or occupancy of permanent structures or permanent changes in facilities, including, but not limited to inspections for concrete and/or earthen compaction, where applicable.

3.2 If ESCO fails to correct Work that is not in material accordance with the requirements of the Contract Documents within the Warranty Period or repeatedly fails to carry out the Work in accordance with the Contract Documents (“Defective Work”), Customer shall provide written notice to ESCO detailing any alleged deficiencies. If the noticed deficiencies are not resolved or if ESCO does not diligently commence to address such deficiencies within thirty (30) days of receipt of the written notice, Customer may order ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, the right of Customer to stop the Work shall not give rise to a duty on the part of Customer to exercise this right for the benefit of ESCO or any other person or entity.

3.3 Customer acknowledges that any equipment or system not specifically included in the Scope of Work is assumed to be in normal working order. Customer agrees to repair or replace as necessary any defective

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existing equipment that is intended to be reused.

3.4 Information under Customer's control shall be furnished by Customer with reasonable promptness as requested by ESCO.

3.5 Customer shall notify ESCO in writing of any or all uses or restrictions in usage relating to Project Site(s).

3.6 The foregoing are in addition to any other duties and responsibilities of Customer set forth herein or in any other Contract Documents, including but not limited to those duties and responsibilities set forth in Schedule E.

3.7 Customer shall provide facility access adequate to the requirements of ESCO and their subcontractors in accordance with the project schedule. Keys, access cards, and/or escorts will be provided for all facilities involved in the scope of Work in a quantity sufficient to facilitate execution of scopes at multiple locations with multiple trades. Customer is subject to Change Orders for delays resulting from limited or restricted access for scheduled or previously coordinated work. Keys and/or access cards will be issued to ESCO project personnel and subcontractor site foreman or lead personnel as necessary.

ARTICLE 4 – ESCO

4.1 ESCO shall supervise and direct the Work, using ESCO'S skill and attention. ESCO shall be solely responsible for and have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

4.2 Unless otherwise provided in the Contract Documents, ESCO shall provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Work.

4.3 ESCO warrants to Customer that for the applicable Warranty Period the materials and equipment manufactured by ESCO will be of good quality and new unless the Contract Documents require or permit otherwise, and further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. ESCO'S warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by or for ESCO, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. ESCO shall repair or replace defective material or equipment and re-perform Work to correct any defect within the Warranty Period. ESCO does not warrant products not manufactured by ESCO, but it will pass on to Customer any manufacturer's warranty to the extent permitted. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OR TRADE), AND ESCO WILL NOT BE RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF CUSTOMER UNLESS REQUIRED BY APPLICABLE STATE LAW. ESCO'S RESPONSIBILITY IN WARRANTY OR CONTRACT SHALL NOT EXCEED THE CONTRACT PRICE PAID FOR THE SPECIFIC PRODUCT OR SERVICE THAT GIVES RISE TO THE CLAIM EXCLUDING THIRD PARTY CLAIMS FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE OR AS MAY BE REQUIRED BY LAW.

4.4 Unless otherwise provided in the Contract Documents, the Contract Price excludes all present or future sales taxes, revenue or excise taxes, value-added taxes, import and export duties and any other taxes, surcharges or duties now existing or hereafter imposed by Government authorities upon equipment and/or services provided by ESCO. ESCO is required to impose taxes on orders and shall invoice Customer for such taxes and/or fees according to state and local statute, unless Customer timely furnishes

ESCO with a properly completed exemption certificate acceptable to the authorities imposing the tax or fees.

4.5 ESCO shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work.

4.6 ESCO shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, ESCO shall remove from and about Project waste materials, rubbish, ESCO'S tools, equipment, machinery and surplus material.

4.7 ESCO shall provide Customer access to the Work in preparation and progress wherever located.

4.8 ESCO shall pay all royalties and license fees required for the manufacture, sale and/or use of the designs, processes, devices, materials, and other products provided by ESCO pursuant to the Contract Documents ("Products"). ESCO shall defend Customer from suits or claims for infringement of patent rights caused by the manufacture, sale and/or use of any such Products, and shall hold Customer harmless from loss on account thereof. In the event any Product is found to infringe a third party's intellectual property rights, ESCO shall, at its expense and at its sole option, either; (i) procure the right for Customer to continue using such Product, (ii) modify such Product to render it non-infringing (provided such modification does not materially degrade the performance, functioning or operation of the Product), (iii) replace such Product with functionally equivalent, compatible, non-infringing Product, or (iv) refund or credit the amount paid for the infringing Product. Notwithstanding the foregoing, ESCO's obligations hereunder shall not apply to the extent (1) the alleged infringement is based upon or caused by ESCO's products being modified or combined with any other design, process, device, material, or product without ESCO's prior written approval, or (2) ESCO provided the allegedly infringing Product subject to specific requirements of the Customer, unless ESCO knew of the alleged infringement and failed to inform Customer.

4.9 Except to the extent of the negligence or willful misconduct of Customer, or its agents, representatives, employees, officers, directors or assigns, ESCO shall indemnify, defend and hold harmless Customer, and agents and employees thereof from and against all third party claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees, arising out of or resulting from performance of the Work provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the Work itself), but only to the extent caused in whole or in part by negligent acts or omissions of ESCO, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

4.10 NOTWITHSTANDING ANYTHING IN THE CONTRACT DOCUMENTS TO THE CONTRARY, ESCO SHALL NOT BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER. The remedies of Customer set forth herein are exclusive where so stated and the total cumulative liability of ESCO with respect to this Contract or anything done in connection therewith, such as the use of any product covered by or furnished under the Contract, whether in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the Contract Price for the specific product, equipment, material or service work performed that gives rise to the claim, excluding third party claims for personal injury, or claims of tangible property damage to the extent caused by ESCO's negligence or as may be required by law. The foregoing limitations and exclusions of liability shall only apply to the extent permitted by the Constitution and laws of the State.

ARTICLE 5 – DISPUTE RESOLUTION

5.1 To the extent allowed by applicable law, any controversy or claim arising out of or relating to this Contract or the Contract Documents, or any breach thereof, shall be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

The arbitration proceeding location shall be in the county in which the Project is located.

ARTICLE 6 – SUBCONTRACTS

6.1 A Subcontractor is a person or entity who has a direct contract with ESCO to perform a portion of the Work at the site.

6.2 Unless otherwise stated in the Contract Documents or the bidding requirements ESCO, if requested in writing by Customer, shall furnish in writing to Customer the names of the Subcontractors to whom ESCO plans to award Work. Contracts between ESCO and Subcontractors shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to ESCO by the terms of the Contract Documents, and to assume all the obligations and responsibilities which ESCO, by the Contract Documents, assumes toward Customer.

ARTICLE 7 – CHANGES IN THE WORK

7.1 Customer may request changes in Work consisting of additions, deletions or modifications, whereby, the Contract Price, Contract Time and/or Performance Guarantee shall be adjusted accordingly. Such changes in the Work shall be authorized by written Change Order that shall be mutually agreed to and signed by Customer and ESCO. The parties shall negotiate in good faith and use their best efforts to execute any Change Order, and any Change Order must be fully executed in writing by Customer and ESCO prior to any actual changes being implemented.

7.2 The cost or credit to Customer from a change in the Work shall be determined by mutual agreement and, in the absence of a mutual agreement being reached within a reasonable amount of time after the request for such Change Order was made, the cost or credit to Customer shall be decided by the dispute resolution process as provided in the Contract Documents.

7.3 In the event of any suspension or delay due to the acts or omissions of Customer or Customer directives to stop Work for any reason, through no fault of ESCO, the Contract Time for Substantial Completion shall be extended to reflect such period of interruption and the Contract Price shall be equitably adjusted to recover ESCO'S costs of demobilization, delay and remobilization related to such suspension or delay. ESCO agrees it will cooperate with Customer and mitigate such costs to the extent commercially reasonable. If such suspension or delay continues for more than ninety (90) consecutive days, through no act or fault of ESCO, ESCO may terminate this Contract and recover from Customer payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination and damages.

ARTICLE 8 – TIME

8.1 The date of Substantial Completion is the date certified by ESCO in accordance with Article 9.3.

8.2 If ESCO is delayed at any time in progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, unusually severe shortages in the available supply of and/or unusually severe increases in the cost of materials or equipment needed for performance of the Work, delays of common carriers, or any other causes which are beyond the reasonable control of ESCO, then the parties hereto agree to execute a Change Order allowing for a mutually agreeable extension of time for performance of ESCO'S Work to cover such delay.

8.3 Customer acknowledges that the prevailing COVID epidemic/pandemic and the evolving situation surrounding the same may trigger stoppages, hindrances and/or delays in ESCO's (or its subcontractors' or suppliers') ability or capacity to perform the contracted Work and/or to produce, deliver, install or service

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any applicable products, irrespective of whether such stoppages, hindrances and/or delays are due to measures imposed by authorities or deliberately implemented by ESCO (or its subcontractors or suppliers) as preventive or curative measures to avoid harmful contamination or exposure of ESCO's (or its subcontractors' or suppliers') employees. Customer therefore recognizes that such circumstances shall be considered as a cause for excusable delay and shall not expose ESCO to contractual sanctions (including without limitation delay penalties, liquidated damages or other damages) or termination for default.

ARTICLE 9 – PAYMENTS AND COMPLETION

9.1 Payments shall be made as provided in Article 2 of the Contract.

9.2 Payments may be withheld on account of (1) Defective Work not remedied per Article 3.2, (2) failure of ESCO to make payments properly to the Subcontractors or for labor, materials or equipment, or (3) repeated failure to carry out the Work in accordance with the Contract Documents.

9.3 Upon Substantial Completion of the Work or any portion of the Work, ESCO will issue Customer a Substantial Completion Letter for the applicable Work.

9.4 Final payment shall not become due until ESCO has delivered to Customer a conditional release of all liens arising out of this Contract covering all labor, materials, and equipment for which a lien could be filed. Upon receipt of final payment, ESCO shall deliver an unconditional and final waiver and release of all liens.

9.5 The making of final payment shall constitute a waiver of claims by Customer except those arising from (1) liens, claims, security interests or encumbrances arising out of the Contract and which are unsettled, (2) failure of the Work to comply with the requirements of the Contract Documents, or (3) terms of special warranties required by the Contract Documents.

ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

10.1 ESCO shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. ESCO shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby, (2) the Work and materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto.

10.2 ESCO shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss.

10.3 The Work or service to be performed by ESCO pursuant to this Contract, and the compensation to be paid to ESCO hereunder for Work or services performed, expressly exclude any Work or service of any nature associated or connected with the identification, abatement, cleanup, control or removal of environmentally hazardous materials beyond what is specifically defined and identified in Schedule A of this Contract. "Hazardous Materials" to include, but not be limited to, asbestos and PCBs discovered in or on the premises. Customer agrees that all duties and obligations in connection with any hazardous materials located in or on the premises, other than those defined in Schedule A, are strictly the responsibility of Customer. Customer will provide any hazardous materials testing documentation and reports, and information from previous sources or vendors used in hazardous materials testing. Customer warrants and represents to the best of Customer's knowledge there are no hazardous materials in or on the premises which will affect, be affected by, come in contact with, or otherwise impact upon or interfere with the Work to be performed by ESCO pursuant to this Contract.

10.4 Should ESCO become aware or suspect the presence of hazardous materials beyond those to be addressed in Schedule A during performance of its Work under this Contract, ESCO will be authorized to cease Work in the affected area immediately, and will promptly notify Customer of the conditions discovered. Should ESCO stop Work because of the discovery or suspicion of hazardous materials, the time for performance of ESCO'S Work or service will be extended to cover the period required for abatement, cleanup, or removal of the hazardous materials. ESCO will not be held responsible for any claims, damages, costs, or expenses of any kind associated with the period during which ESCO has stopped Work as a result of hazardous materials. If appropriate, ESCO will be entitled to an equitable adjustment of the Contract Price for any increased costs or other charges incurred by ESCO in connection with the existence of its rights under this paragraph.

10.5 Customer will be responsible for taking all necessary steps to correct, abate, clean up, or control hazardous materials not addressed by ESCO in Schedule A in accordance with all applicable statutes and regulations. Customer specifically agrees, to the extent allowed by state law, to indemnify and to hold ESCO, its officers, agents and employees harmless from and against any and all claims, demands, damages, or causes of action in any way arising out of the release of hazardous materials into the air, soil, or any water system or water course, or any actions taken in connection with same, or any failure to act.

ARTICLE 11 – INSURANCE AND BONDS

11.1 **Required Insurance.** ESCO shall, at its sole cost and expense, maintain in effect the following policies of insurance for the applicable period(s) set forth in Article 11.2:

11.1.1 *Commercial General Liability Insurance.* A policy of commercial general liability insurance, written on an "occurrence" basis, with a limit of not less than two million dollars (\$2,000,000) per occurrence ("*General Liability Policy*").

11.1.2 *Automobile Liability Insurance.* A policy of automobile liability insurance, written on an "occurrence" basis, with a combined single limit of not less than one million dollars (\$1,000,000) per accident for bodily injury and property damage ("*Auto Liability Policy*"). The Auto Liability Policy must include coverage for owned, hired and non-owned automobiles.

11.1.3 *Workers' Compensation and Employer's Liability Insurance.* Workers' compensation insurance as required by California law, and employer's liability insurance, written on an "occurrence" basis, with a limit of not less than two million dollars (\$2,000,000).

11.1.4 *Professional Liability Insurance.* Professional liability insurance, written on a claims-made (and reported) basis, with a limit of not less than two million dollars (\$2,000,000) per claim ("*Professional Liability Policy*").

11.2 **Duration of Insurance.** The insurance required pursuant to this Article 11 shall be procured by ESCO prior to ESCO's commencement of the Project and shall be maintained in effect by ESCO at least until the date that is one year following the earlier of the termination of this Agreement or the Date of Substantial Completion of the Project. Notwithstanding the foregoing, ESCO shall maintain the Professional Liability Policy in effect at least until the date that is three years following the earlier of the termination of this Agreement or the Date of Substantial Completion of the Project.

11.3 **Insurer Rating Standards.** The insurance policies required pursuant to this Article 6 must be issued by one or more insurers that are (i) licensed to do business in the State of California and (ii) have an A.M. Best Company rating of not less than "A-" and a financial size category of not less than "VII."

11.4 **Additional Insureds.** Customer, members of Customer's Governing Body, and Customer's other officers, employees, and agents (collectively, including the Governing Body, the "*Customer Agents*"), shall

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all be named as additional insureds on ESCO's General Liability Policy and Auto Liability Policy. The additional insured endorsements will be provided on the most current versions of ISO Form CG 2010 and ISO Form CG 2037 or their substantial equivalents.

11.5 **Waiver of Subrogation.** Each of the General Liability Policy and the Auto Liability Policy shall provide a waiver of transfer of rights of recovery in favor of Customer.

11.6 **ESCO Insurance is Primary.** The General Liability Policy and the Auto Liability Policy must be endorsed to provide that they are primary and non-contributory.

11.7 **Premiums, Deductibles and Self-Insured Retentions.** ESCO shall be solely responsible for paying any and all deductibles and self-insured retentions applicable to any of the insurance policies that ESCO is required to have in effect pursuant to this Article 6.

11.8 **Evidence of Coverage.** Prior to commencing the Work, ESCO must provide to Customer duly authorized and executed certificates of insurance evidencing that the insurance policies required to be maintained by ESCO pursuant to this Article 6 are in effect (each a "Certificate of Insurance") As applicable, the Certificates of Insurance must identify those who are additional insureds in accordance with this Article 6. Not less than thirty days prior to the expiration of any insurance policy that ESCO is required to maintain pursuant to this Article 6, ESCO must provide an updated Certificate of Insurance to Customer evidencing the renewal of such policy.

11.9 **Notice of Change in Policies.** ESCO shall notify Customer within thirty (30) days of its receipt of written notice from an applicable insurer that a policy required hereunder will expire without renewal or will be canceled, terminated, or materially reduced in coverage.

11.10 **Review of Coverage.** Customer's failure to identify any non-compliance by ESCO with the requirements of this Article 6 shall not be deemed or construed to relieve ESCO from any of its obligations hereunder.

11.11 **Subcontractor Insurance.** ESCO shall require each Subcontractor to maintain such levels and types of insurance coverage as are appropriate for the Work to be performed by such Subcontractor.

11.12 **Bonds.** If required in the Contract Documents, and upon Customer's request and expense, ESCO shall provide payment and performance bonds for 100% of the Contract Price to secure the faithful performance of the Work, compliance with the terms of this Contract and to insure ESCO'S payment obligations to its Subcontractors and suppliers related to the Work. Notwithstanding any provision to the contrary herein, any payment and performance bonds associated with this Contract guarantee only the performance of the installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of the Contract.

ARTICLE 12 – TERMINATION OF THE CONTRACT

12.1 If Customer fails to make payments to ESCO as required in this Contract, through no fault of ESCO, ESCO may, upon ten (10) business days written notice to Customer, suspend or terminate the Contract and recover from Customer payment for all Work executed and for proven loss with respect to materials, equipment, tools, and machinery, including reasonable overhead, profit and damages applicable to the

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Project.

12.2 If Customer (1) fails or neglects to maintain Customer responsibilities as set forth in Schedule E, or (2) fails to fulfill any of its other obligations or responsibilities under the Contract Documents, ESCO may, after delivery of written notice and providing Customer ten (10) business days to cure, suspend or terminate the Contract, including, but not limited to the termination of any obligation of ESCO to provide the Performance Guarantee.

12.3 If ESCO breaches a material provision of this Contract, Customer has provided written notice to ESCO detailing the alleged breach, and within ten (10) business days of receipt of the written notice the alleged breach is either not cured or ESCO has not diligently commenced to cure such breach, Customer may make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due ESCO.

12.4 Subject to Article 13.2, termination of any of the Contract Documents shall release ESCO of all remaining obligations under all of the Contract Documents as of the effective date of such termination.

12.5 Any remedies provided for in this Article 12, shall not be exclusive of any additional remedies available to a party pursuant to this Contract, in equity or in the law.

ARTICLE 13 – OTHER CONDITIONS OR PROVISIONS

13.1 Severability. If any provision of this Contract is determined to be invalid, illegal, or unenforceable as written, such provision shall be construed consistent with and to the fullest extent permitted under the law, and any such determination shall not affect or impair the validity, legality and enforceability of the remaining provisions.

13.2 Survival of Obligations. The obligations of the Parties under this Contract that by their nature would continue beyond expiration, termination or cancellation of this Contract (including, without limitation, the warranties, indemnification obligations, limitation of liability, effect of suspension or termination, confidentiality requirements and ownership and property rights) shall survive any such expiration, termination or cancellation. For the avoidance of doubt, ESCO's obligations with regard to the Performance Guarantee shall not continue beyond expiration, termination or cancellation of this Contract.

13.3 Nothing herein shall be deemed to establish a relationship of principal and agent between ESCO and Customer, or any of their respective agents or employees, and this Contract and the Contract Documents may not be construed as creating any form of legal association or arrangement that would impose liability upon one party for the act or failure to act of the other party.

13.4 Ethics and Compliance with Law. Each party shall comply in all respects with all applicable legal requirements governing the duties, obligations, and business practices of that party. Neither party shall take any action in violation of any applicable legal requirement that could result in liability being imposed on the other party. In the event Customer has concerns related to ethics, compliance or ESCO's Principles of Responsibility, and/or any potential violations of these policies, Customer is welcome to make use of ESCO's GreenLine. The GreenLine is ESCO's global helpline for external stakeholders. It is a confidential channel through which Customers can ask questions and raise concerns. Reports can be made using the following link: <https://secure.ethicspoint.eu/domain/media/en/gui/104677/index.html>.

13.5 Import and Export. The products, software, services, information, other deliverables and/or the technologies embedded therein (hereinafter referred to as "Deliverables") provided by ESCO under this Contract contain or may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. Customer acknowledges and agrees that the supply, assignment and/or usage of Deliverables under this Contract shall fully comply with applicable US, EU and other national and international export control laws and/or regulations. Unless applicable export licenses have been obtained from the relevant authority and ESCO has approved, the Deliverables shall not (i) be exported and/or re-exported to any destination or party (including without limitation to any individual, group

and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. Customer also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems, unmanned air vehicles, nuclear weapons delivery systems, and/or in any design, development, production or use of or related to weapons (which may include, without limitation, chemical, biological or nuclear weapons). If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit ESCO from fulfilling any order, or would in ESCO's judgment otherwise expose ESCO to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, ESCO shall be excused from all affected obligations under such order and/or this Contract.

13.6 Cybersecurity.

13.6.1 Customer's Obligations for Its Systems. Customer is solely responsible for the implementation and maintenance of a comprehensive security program ("Security Program") that contains reasonable and appropriate security measures and safeguards to protect its computer network, systems, machines, and data (collectively, "Systems"), including those Systems on which it runs the Deliverables provided by ESCO, against Cyber Threats. "Cyber Threat" means any circumstance or event with the potential to adversely impact, compromise, damage, or disrupt Customer's Systems or that may result in any unauthorized access, acquisition, loss, misuse, destruction, disclosure, and/or modification of Customer's Systems, including through malware, hacking, or similar attacks. Without limiting the foregoing, Customer shall at a minimum:

- (a) have qualified and experienced personnel with appropriate expertise in cybersecurity maintain Customer's Security Program, and have such personnel regularly monitor cyber intelligence feeds and security advisories applicable to Customer's Systems or Customer's industry;
- (b) promptly update or patch its Systems or implement other appropriate measures based on any reported Cyber Threats and in compliance with any security notifications or bulletins, whether publicly disclosed on ESCO's security notification webpage at <https://www.se.com/ww/en/work/support/cybersecurity/security-notifications.jsp> or otherwise provided to Customer;
- (c) regularly monitor its Systems for possible Cyber Threats;
- (d) regularly conduct vulnerability scanning, penetration testing, intrusion scanning, and other cybersecurity testing on its Systems; and
- (e) meet the recommendations of ESCO's Recommended Cybersecurity Best Practices, available at <https://www.se.com/us/en/download/document/7EN52-0390/>, as may be updated by ESCO from time to time, and then-current industry standards.

13.6.2 Customer's Use of the Deliverables. ESCO may release Updates and Patches for its Deliverables from time to time. Customer shall promptly install any Updates and Patches for such Deliverables as soon as they are available in accordance with ESCO's installation instructions and using the latest version of the Deliverables, where applicable. An "Update" means any software that contains a correction of errors in a Deliverable and/or minor enhancements or improvements for a Deliverable, but does not contain significant new features. A "Patch" is an Update that fixes a vulnerability in a Deliverable. Customer understands that failing to promptly and properly install Updates or Patches for the Deliverables may result in the Deliverables or Customer's Systems becoming vulnerable to certain Cyber Threats or result in impaired functionality, and ESCO shall not be liable or responsible for any losses or damages that may result.

13.6.3 Identification of Cyber Threats. If Customer identifies or otherwise becomes aware of any vulnerabilities or other Cyber Threats relating to the Deliverables for which ESCO has not released a Patch, Customer shall promptly notify ESCO of such vulnerability or other Cyber Threat(s) via the ESCO Report a Vulnerability page (<https://www.se.com/ww/en/work/support/cybersecurity/report-a-vulnerability.jsp#Customers>) and further provide ESCO with any reasonably requested information relating to such vulnerability (collectively, "Feedback"). ESCO shall have a non-exclusive, perpetual and irrevocable

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right to use, display, reproduce, modify, and distribute the Feedback (including any confidential information or intellectual property contained therein) in whole or part, including to analyze and fix the vulnerability, to create Patches or Updates for its customers, and to otherwise modify its Deliverables, in any manner without restrictions, and without any obligation of attribution or compensation to Customer; provided, however, ESCO shall not publicly disclose Customer's name in connection with such use or the Feedback (unless Customer consents otherwise). By submitting Feedback, Customer represents and warrants to ESCO that Customer has all necessary rights in and to such Feedback and all information it contains, including to grant the rights to ESCO described herein, and that such Feedback does not infringe any proprietary or other rights of third parties or contain any unlawful information.

13.7 This Contract shall be governed by the laws of the State.

13.8 As between Customer and ESCO, any applicable statute of limitation shall commence to run and any alleged cause of action shall be deemed to have accrued (1) not later than the date of Substantial Completion for acts or failures to act occurring prior to the relevant date of Substantial Completion, or (2) not later than the date of the relevant act or failure to act by either party for acts or failures to act occurring after the date of Substantial Completion.

13.9 ESCO shall prepare and provide and Customer agrees to participate in press release(s) and business case studies limited to the business relationship with ESCO and Customer's use of ESCO's services. Customer agrees to grant ESCO the right to use Customer's trademarks, for the term contained herein, in connection with press releases, case studies or website marketing, advertisement, promotion, sale, and distribution of ESCO's services. Prior written notice of use shall be provided to Customer by ESCO and Customer's written approval is necessary for any press releases or case studies.

13.7 This Contract sets forth the entire understanding between the parties and supersedes all prior and contemporaneous oral or written understandings relating to the subject matter herein. This Contract may not be altered or modified except by a written instrument signed by a duly authorized representative of each party.

SCHEDULE A SCOPE OF WORK

Customer hereby acknowledges and agrees that the scope of work shall be limited to, and ESCO shall only perform, the following:

Scope of Work Description: (Attach additional pages as necessary)

SCHEDULE B PERFORMANCE ASSURANCE SUPPORT SERVICES AGREEMENT

This Performance Assurance Support Services Agreement (“Agreement”), is by and between Schneider Electric Buildings Americas, Inc. (“ESCO”), and “[Customer Legal Name Here] (“Customer”). To the extent that the terms and conditions in this Agreement conflict with the terms and conditions in the Contract, the terms and conditions of this Agreement shall control. Any capitalized terms used and not defined herein are as defined in the Contract.

Customer Legal Name Here	Schneider Electric Buildings Americas, Inc.
By _____ (Signature)	By _____ (Signature)
Print Name _____	Print Name _____
Title _____	Title _____
Date _____	Date _____

A. TERM

This Agreement shall commence at the Savings Guarantee Commencement Date and continue for one (1) year (the “Initial Term”) and shall automatically renew for additional one (1) year periods thereafter. After the Initial Term, Customer may terminate this Agreement at any time prior to thirty (30) days to the end of the then current term.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OR IN ANY CONTRACT DOCUMENT, IN THE EVENT THAT THIS AGREEMENT IS CANCELED OR TERMINATED BY CUSTOMER FOR ANY REASON, THE PERFORMANCE GUARANTEE SET FORTH IN SCHEDULE C SHALL BE DEEMED TO HAVE BEEN MET AND FULFILLED, NULL AND VOID AND OF NO FURTHER FORCE OR EFFECT AS OF THE EFFECTIVE TERMINATION DATE OF THIS AGREEMENT AND ESCO SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES ASSOCIATED WITH SUCH PERFORMANCE GUARANTEE.

B. SERVICE SCOPE AND PAYMENT

ESCO shall provide the Performance Assurance Support Services (the “Services”) to Customer as set forth in Exhibit A, Section 1 during the Initial Term.

After the end of Initial Term and each subsequent term thereafter, Customer may either (1) continue with the same level of Services as set forth in the previous term, (2) change the Services level by selecting one or more of the options as set forth in Exhibit A, Section 2 if any of this Agreement, or (3) terminate this Agreement and the Performance Guarantee in accordance with the termination provisions contained herein.

The available Services options may be amended from time to time at the sole discretion of ESCO.

1. After the Initial Term, the prices set forth in Exhibit A shall be adjusted upwards annually in accordance with the increase in Consumer Price Index ("CPI").
2. After the Initial Term, payment under this Agreement is due within thirty (30) days of the start of that year's term. ESCO reserves the right to add 1.5% per month to any balance due beyond thirty (30) days of invoice date. Customer acknowledges and understands that all charges are exclusive of any applicable federal, state, or local use, excise, sales taxes or similar fees whether charged to or against ESCO or Customer for the Services. Customer may utilize purchase orders for ease of administration and ordering purposes in implementation of this Agreement (to include: specific products or services, scope of work, quantities, price and delivery terms only), however, no pre-printed, additional, inconsistent or different terms contained or referenced in such purchase order shall have any force or effect, it being the intent of the parties that the terms of this Agreement shall apply.

C. ACCESS

Services provided under this Agreement will be performed during normal working hours (normal working hours shall mean 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding ESCO holidays) unless specifically stated otherwise in this Agreement. However, ESCO may have the need to access Customer facilities during non-normal working hours and on holidays in order to identify and troubleshoot energy savings issues. Therefore, Customer will provide and permit ESCO reasonable access to Customer's facility and equipment to the extent necessary for ESCO'S personnel to perform the Services. Customer shall also provide access to key personnel to discuss facility operating requirements. ESCO will use commercially reasonable efforts to minimize any disturbance with Customer's operations while providing the Services.

D. RELATIONSHIP

Customer and ESCO are independent contracting parties. Nothing in this Agreement shall be construed to make either party or any of its employees, the partner, joint venturer, agent, or legal representative of the other for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in the name of the other party. As an independent contractor, the mode, manner, method and means employed by ESCO in the performance of the terms and conditions of this Agreement shall be of ESCO'S selection and under the sole control and direction of ESCO. Under the terms of this Agreement, neither Customer nor any company in which it owns a controlling interest shall be required to furnish ESCO or any of its employees with any benefits, including but not limited to severance benefits, unemployment compensation or worker's compensation.

E. INSURANCE

Customer and ESCO shall each maintain insurance coverage, including without limitation, Workers' Compensation and Employer's Liability at statutory limits, Automobile Liability covering all owned, hired and other non-owned vehicles, and Commercial General Liability covering public liability and property damage with limits generally required for its respective industry and operations with not less than \$1,000,000 minimum coverage per occurrence. Such insurance shall be with reputable and financially responsible carriers authorized to transact business in the state in which the facility is located and the services are being performed with an A.M. Best's rating of at least A- VII.

F. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGE OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT REGARDLESS OF THE FORM OF ACTION OR THEORY OF RECOVERY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF ESCO WITH RESPECT TO THIS AGREEMENT OR ANYTHING DONE IN CONNECTION THEREWITH, SUCH AS THE USE OF ANY DELIVERABLE FURNISHED HEREUNDER SHALL NOT EXCEED THE PRICE PAID FOR THE SERVICE PERFORMED THAT GIVES RISE TO THE CLAIM ON WHICH SUCH LIABILITY IS BASED. CUSTOMER AGREES TO THE FOREGOING TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE.

G. EXCUSABLE DELAY

Any delay or failure of either party to perform its obligations hereunder (with the exception of payment) shall be excused, and time to perform extended, and shall not be held liable if and to the extent that the delay or failure to perform is caused by an event or occurrence beyond the reasonable control of the party whose performance is interfered with, and without its fault or negligence and which by the exercise of due diligence, said party is unable to prevent.

H. SUCCESSORS

Neither this Agreement nor any rights arising hereunder may be assigned, pledged, transferred or hypothecated by ESCO without the consent of Customer; such consent cannot be unreasonably withheld. No Work performed pursuant to this Agreement may be subcontracted in whole or in part by ESCO without the prior written consent of Customer; such consent cannot be unreasonably withheld.

I. ENTIRE AGREEMENT

This Agreement sets forth the entire understanding between the parties and supersedes all prior oral or written understandings relating to the subject matter herein. This Agreement may not be altered or modified in any way except by written instrument signed by a duly authorized representative of each party.

J. SEVERABILITY

If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

K. GOVERNING LAW

This Agreement will be governed, interpreted and construed by, under and in accordance with the laws, statutes and decisions of the state in which the Services are to be performed, without regard to its choice of law provisions. Venue shall be in the federal, state or municipal courts serving the county in which the Services are performed.

SCHEDULE B: EXHIBIT A PERFORMANCE ASSURANCE SUPPORT SERVICES

SECTION 1 – SERVICES DURING INITIAL TERM

ESCO shall provide the Performance Assurance Support Services (the “Services”) defined below to Customer during the Initial Term as defined in Schedule B.

REGIONAL PASS MANAGER TO INSERT PASS SERVICES

SECTION 2 – SERVICES AFTER INITIAL TERM

After the end of Initial Term and each subsequent term thereafter, Customer may either (1) renew the same level of Service as set forth in the Initial Term or previous term, (2) change the Service level by selecting one or more of the options defined below, or (3) terminate this Agreement and the Savings Guarantee in accordance with the termination provisions contained herein. All prices will be calculated at the time of renewal.

REGIONAL PASS MANAGER TO INSERT YEAR 3+ SERVICES PACKAGES, BUNDLES, AND OPTIONS

The available service options may be amended from time to time at the sole discretion of ESCO.

SCHEDULE C PERFORMANCE GUARANTEE

The Performance Guarantee provided by ESCO will be as follows:

Year	Measured Savings	Non-Measured Savings	Annual Guaranteed Savings	Cumulative Guaranteed Savings
0				
1				
2				
3				
Total				

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OR IN ANY CONTRACT DOCUMENT, IN THE EVENT THAT THE PERFORMANCE ASSURANCE SUPPORT SERVICES AGREEMENT IS CANCELED OR TERMINATED BY CUSTOMER FOR ANY REASON, THE PERFORMANCE GUARANTEE SET FORTH IN THIS SCHEDULE C SHALL BE DEEMED TO HAVE BEEN MET AND FULFILLED AS OF THE EFFECTIVE TERMINATION DATE OF THE PERFORMANCE ASSURANCE SUPPORT SERVICES AGREEMENT AND ESCO SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES ASSOCIATED WITH SUCH PERFORMANCE GUARANTEE.

The procedure used to calculate savings is described in Schedule D.

GUARANTEED SAVINGS RECONCILIATION

Customer, if required, will send ESCO all necessary utility or energy data as set forth in Schedule E herein. Within sixty (60) days of receipt of such information for the previous Guarantee Year, ESCO will determine the Actual Savings for such Guarantee Year hereafter defined as “Guaranteed Savings Reconciliation”.

In the event the Actual Savings for the corresponding twelve (12) months are less than the Annual Savings Guarantee, ESCO will pay Customer the difference between the Annual Savings Guarantee and the Actual Savings for the corresponding twelve (12) months (“Savings Shortfall”). ESCO will make payments for any Savings Shortfall to Customer within thirty (30) days of that year’s Guaranteed Savings Reconciliation. In the event of Excess Savings, such Excess Savings shall be used to offset any Shortfall Payment owed by ESCO.

If ESCO has written a savings shortfall check to Customer, and later Actual Savings exceed the Performance Guarantee to date, Customer will reimburse ESCO up to the amount of ESCO’S shortfall check(s), to the extent that the shortfall is made up by Excess Savings.

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SCHEDULE D MEASUREMENT & VERIFICATION PLAN

PROJECTED ANNUAL SAVINGS

The Performance Guarantee as established in Schedule C shall consist of savings from multiple scopes of work. The projected savings from each scope of work is presented in the table below.

Facility -OR- Utility Meter	Annual Projected Savings		
	Consumption	Demand	Units

The projected savings in the table above are provided for reference only and are not intended to construe a savings guarantee by meter, facility, or energy unit. The savings guarantee is fully defined in Schedule C.

ENERGY, WATER, AND OPERATIONS & MAINTENANCE (O&M) RATE DATA

The cost of energy in any period will be determined by applying the rates as defined below (“Baseline Energy Rates”), or the actual energy rates during the period, at the discretion of ESCO, to the energy used in a given period for each fuel type.

Utility Company:			
Rate Schedule:			
Component	Charge	Unit	Description
Determination of Billed kW:			

COMMON ECM ASSUMPTIONS

WEATHER DATA SOURCE

Data for weather compensation adjustments will be actual climate data obtained from the National Weather Service Station at WEATHER STATION NAME. In the event the specified weather station is de-activated, weather data will be collected from the nearest weather station with suitable observations. If the data source becomes unavailable or a superior source is identified, ESCO may select an alternative data source with Customer’s approval.

ANNUAL CALENDAR OF EVENTS

Provided below is a table summarizing the annual calendar of events that will be used as a basis in calculations, unless otherwise specified. In the event that there are any changes or deviations to this annual calendar, an appropriate adjustment will be made in accordance with the “Adjustment Schedule” set forth in Schedule E.

Date(s)	Event	Date(s)	Event

BUILDING OCCUPANCY SCHEDULES

Provided below is a table summarizing the building occupancy schedules used within the calculations, unless otherwise specified. In the event that there are any changes or deviations to this occupancy schedule, an appropriate adjustment will be made in accordance with the Adjustment Schedule set forth in Schedule E.

Facility	Day Type	Daily Schedule
	Weekday	
	Weekend/Holiday	
	Summer Weekday	

STANDARDS OF SERVICE AND COMFORT

Provided below is a table summarizing the temperature setpoints used within the calculations, unless otherwise specified. Customer agrees to operate the conditioned spaces in the facilities within the temperature ranges scheduled in the table below. In the event that there are any changes or deviations to these standards of service and comfort, an appropriate adjustment will be made in accordance with the Adjustment Schedule set forth in Schedule E.

	Heating	Cooling
Occupied	68°F	75°F
Unoccupied	50°F	99°F

MEASUREMENT & VERIFICATION DETAILS

<<<This page is intentionally left blank, and should be replaced by the project specific M&V plan modules. These can be found in the Energy Services Contract_M&V Modules.doc file. If an M&V solution which is not included in this document is needed, seek assistance from the M&V Lead.>>>

SCHEDULE E CUSTOMER RESPONSIBILITIES FOR PERFORMANCE GUARANTEE

GENERAL RESPONSIBILITIES

Customer acknowledges and agrees that proper maintenance is essential to any energy conservation program. Therefore, Customer agrees to undertake the following responsibilities:

Customer agrees to: (1) provide, or cause its suppliers to provide, periodic utility invoices to ESCO within ten (10) days of receipt, (2) execute all Customer responsibilities as outlined herein, and (3) provide to ESCO reasonable access to all Customer facilities and information necessary for ESCO to perform its responsibilities. Access will include, but is not limited to, the following items:

- All buildings listed within this Contract
- All buildings served by the meters listed within this Contract
- All mechanical equipment rooms in the buildings listed within this Contract
- All temperature control and energy management systems which control part or all of any of the buildings listed within this Contract
- Personnel with responsibility for operating and/or managing any of the buildings listed within this Contract
- Monthly utility invoices and billing history for all of the meters listed within this Contract
- Construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment as listed within this Contract
- Any data from meters or sub-meters relevant to M&V associated with this Contract

Customer will solely be responsible for providing communications and/or network interface to all buildings for operation and PASS support.

Customer will perform daily facilities monitoring and promptly review any alarm summaries.

Customer will designate a "Primary Operator" of the system. The Primary Operator is defined as the individual who will be trained by ESCO during the installation period and will be responsible for daily operation and maintenance of the equipment and systems necessary to achieve the Performance Guarantee. Customer will notify ESCO within five (5) days after the departure or termination of the Primary Operator. Within ten (10) days of the departure of the current Primary Operator, Customer will designate a new Primary Operator and shall provide ESCO access to train the new Primary Operator. ESCO shall train a new Primary Operator at the sole expense of Customer on a time and materials basis.

MAINTENANCE RESPONSIBILITIES

Customer agrees to use its best efforts to maintain the ECMs in original operating condition ("Original Operating Condition") with allowance for normal wear and tear. If an ECM is operating at any state other than the Original Operating Condition as defined above ("Failed ECM"), Customer agrees to (1) repair or replace the ECM immediately, and (2) contact a PASS representative at 1-800-274-5551 option 4, within 24 hours of such event. ESCO reserves the right to adjust the amount of Performance Guarantee associated with the Failed ECM for the duration of the failure in the Annual Savings Guarantee.

Customer will agree to maintain all parts of the Project site(s) where the ECM(s) reside including but not limited to components, equipment, machinery, energy management systems, structure of the facility(s), computer hardware, network and IT systems, either existing or newly installed. Customer must comply with the general maintenance requirements specified by equipment manufacturers and the maintenance tasking guidelines included in the operating and maintenance manual. Customer will be responsible to provide to

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ESCO documentation that proper maintenance has been performed at ESCO'S request within fifteen (15) days of written request.

Notwithstanding anything to the contrary contained herein, all ECM(s) must be maintained in proper working condition in all cases where the performance of said ECM(s) affects or could affect the ability to achieve, measure or verify the Annual Savings Guarantee. Should Customer refuse to perform the required maintenance as required in this Contract, ESCO and Customer shall agree to one of the following means of recourse: (1) ESCO will adjust the Performance Guarantee associated with that ECM pursuant to Schedule E, or (2) ESCO may terminate this Performance Guarantee and any and all obligations and liabilities of ESCO associated therewith upon fifteen (15) days written notice.

ADJUSTMENT RESPONSIBILITIES

In addition to the responsibilities of Customer set forth in this Schedule, Customer also agrees to undertake the responsibilities set forth in the Adjustment Schedule as necessary.

ADJUSTMENT SCHEDULE

Below is the procedure for accounting for non-routine adjustments for any of the utility meters included in Schedule D. A non-routine adjustment is required for any change outside of those explicitly defined in Schedule D that will impact the energy use or the verified savings under this Contract. It is Customer's responsibility to notify ESCO of any changes that may necessitate a non-routine baseline adjustment and to perform the required non-routine baseline adjustment steps identified below at Customer's sole expense.

CUSTOMER REQUIRED NON-ROUTINE BASELINE ADJUSTMENT RESPONSIBILITIES

If the required non-routine baseline adjustment steps are not performed, and the change is greater than the threshold limit, savings will be determined with the Assumed Savings Procedure Adjustment, as defined below. Actual Savings will be determined using the Assumed Savings Procedure Adjustment for all billing periods until the required non-routine baseline adjustment steps have been completed, or until the change which necessitated the non-routine baseline adjustment is no longer in place. If Customer fails to notify ESCO of a change necessitating a non-routine baseline adjustment or fails to provide details of the change, savings will be determined with the Assumed Savings Procedure Adjustment.

If the required non-routine baseline adjustment steps are not performed, and the change is less than the threshold limit, savings will be determined with the "Estimated Savings Procedure Adjustment". Actual Savings will be determined using the Estimated Savings Procedure Adjustment for all billing periods until the required non-routine baseline adjustment steps have been completed, or until the change which necessitated the non-routine baseline adjustment is no longer in place.

1. Addition of New Building or New Energy User

- All utility services to the building or energy user which affect the energy use of any meter included in Schedule D must be sub-metered at Customer's expense.
- Threshold limit: the lesser of 10% of the area served by any affected meter, as defined in Schedule D or 20,000 ft².

2. Addition to Existing Building

- All utility services to the addition which affect the energy use of any meter included in Schedule D must be sub-metered at Customer's expense.
- Threshold limit: the lesser of 10% of the area served by any affected meter, as defined in Schedule D or 20,000 ft².

3. Renovation / Modification to Existing Building or Utility Service

- All utility services for the affected portion of the building must be sub-metered before and after the change until the effect on the energy consumption has been determined at Customer's expense.

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- Threshold limit: the lesser of 10% of the area served by any affected meter, as defined in Schedule D or 20,000 ft².
- 4. Demolition / Abandonment of Existing Building or Utility Service**
- All utility services for the affected buildings must be sub-metered before and after the change until the effect on the energy consumption has been determined at Customer's expense.
 - Threshold limit: the lesser of 10% of the area served by any affected meter, as defined in Schedule D or 20,000 ft².
- 5. Re-commissioning of Out of Service Building**
- All utility services for the affected buildings must be sub-metered before and after the change until the effect on the energy consumption has been determined at Customer's expense.
 - Threshold limit: the lesser of 10% of the area served by any affected meter, as defined in Schedule D or 20,000 ft².
- 6. Change in Occupancy**
- Customer must perform, or cause to be performed, at Customer's expense, a calibrated computer simulation to account for the change. If the impact computed by the simulation is greater than 20% of the projected savings on the meter, the "Assumed Savings Procedure" listed below will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
 - Threshold limit: 5% of the total occupant count in the base year.
- 7. Change in Schedule**
- Customer must perform, or cause to be performed, at Customer's expense, a calibrated computer simulation to account for the change. If the impact computed by the simulation is greater than 20% of the projected savings on the meter, the Assumed Savings Procedure will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
 - Threshold limit: 5% of the total scheduled hours for the meter as defined in Schedule D.
- 8. Change in Set-points**
- Customer must perform, or cause to be performed, at Customer's expense, a calibrated computer simulation to account for the change. If the impact computed by the simulation is greater than 20% of the projected savings on the meter, the Assumed Savings Procedure will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
 - Threshold limit: An average of 0.5° from the set-points defined in Schedule D.
- 9. Change in Operational Calendar**
- Customer must perform, or cause to be performed, at Customer's expense, a calibrated computer simulation to account for the change. If the impact computed by the simulation is greater than 20% of the projected savings on the meter, the Assumed Savings Procedure will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
 - Threshold limit: 5% of the total scheduled hours for the meter as defined in Schedule D.
- 10. Change in Plug Load**
- Customer must perform, or cause to be performed, at Customer's expense, a simulation of energy impact to account for the change. If the computed impact is greater than 20% of the projected savings on the meter, the Assumed Savings Procedure will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
 - Threshold limit: 1% of the base year peak 15-minute average kW for the affected meter.

11. Customer Initiated ECMs

- Customer must develop and execute an M&V plan at Customer's expense, which has been reviewed and approved by ESCO, to evaluate the impact of the change. If the impact determined by the M&V plan is greater than 20% of the projected savings on the meter, the Assumed Savings Procedure will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
- Threshold limit: 2% of the projected savings on any affected meter.

12. Missing Bills

- Customer is required to provide ESCO with utility bills for meters defined in Schedule D within ten (10) days of receipt of each bill or provide ESCO direct access to retrieve the utility bills electronically. If utility bills are not received by ESCO within sixty (60) days of the end of the service date, the Assumed Savings Procedure will be used.

13. Failure to Operate ECMs According to Operational and Design Intent

- Customer agrees to operate the ECMs according to the Operational and Design Intent of the ECMs. Failure to do so will necessitate a baseline adjustment using the Assumed Savings Procedure.

14. Failure to Perform Project Specific Customer Responsibilities

- Customer agrees to perform the project specific Customer responsibilities as defined in Schedule E. Failure to do so will necessitate a baseline adjustment using the Assumed Savings Procedure.

15. Other Causes

- Any change that impacts the energy use on the meters defined in Schedule D that does not fit into any of the other categories may still require a non-routine baseline adjustment. Customer will notify ESCO before any change is made so that an agreeable adjustment strategy can be determined. If no agreeable adjustment method can be reached, the Assumed Savings Procedure will be used.

ASSUMED SAVINGS PROCEDURE ADJUSTMENT

- If the Actual Savings for the affected meter(s) in the prior Guarantee Year are greater than or equal to the projected savings for the affected meter(s), the Actual Savings from the prior Guarantee Year will be reported while savings are assumed for the affected meter(s).
- If the Actual Savings for the affected meter(s) in the prior Guarantee Year are less than the projected savings for the affected meter(s) and there have been less than twenty-four (24) months since the commencement of the Performance Period, Actual Savings will be reported at the projected savings level while savings are assumed for the affected meter(s).
- If the Actual Savings for the affected meter(s) in the prior Guarantee Year are less than the projected savings for the affected meter(s) and there have been twenty-four (24) months or more since the commencement of the Performance Period, Actual Savings will be reported as the average of the achieved savings over the two (2) most recent Guarantee Year plus half (1/2) of the difference between the projected savings and the average of the achieved savings over the two (2) most recent Guarantee Years.
 - If pursuant to the Assumed Savings Procedure, ESCO makes improvements to the Project beyond the original scope as defined in Schedule A., which results in an increase in the Actual Savings, an M&V plan accounting for those improvements will be executed and the resulting savings will be added to the Actual Savings.

ESTIMATED SAVINGS PROCEDURE ADJUSTMENT

- At ESCO'S sole discretion, ESCO will estimate the impact of the change using computerized building simulations, manual calculations, or other generally accepted estimating procedures and may ignore any changes which fall below the threshold limit.

