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Poland Deliverable Model Energy Performance Contract and Customer Agreement

Prepared by:

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Prepared for:

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Regional Energy Efficiency Project (180-0030)
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ENERGY PERFORMANCE CONTRACT- GUARANTEED SAVINGS

This Energy Performance Contract (EPC) is made this day [date] between "ESCO" [ESCO company], [address], and the "Owner", [client company], [address]. This EPC covers the services to be provided by ESCo to Owner in designing and implementing an energy reduction program in Owner's facilities and sets out the terms of these services and the promises made between both parties in undertaking this EPC.

ARTICLE 1 SCOPE OF WORK

- 1.01 Preliminary Energy Audit and Financial Review.** Upon signing of the EPC, ESCo will initiate a Preliminary Energy Audit and a preliminary financial review of Owner's facilities. These steps will be carried out at the expense of ESCo and will not be billed to Owner at any time. The Preliminary Energy Audit is carried out in order for ESCo to make an initial assessment of energy efficiency opportunities at Owner's facilities. The Preliminary Financial Review allows ESCo to determine whether it will be possible to secure bank financing or other third party financing to pay the costs of implementing any identified energy efficiency measures. In order to carry out these steps, ESCo will need cooperation from Owner in providing access to Owner's facilities, as well as in providing energy data and financial accounting data that may be reasonably requested. All such data provided to ESCo shall be kept confidential, and not disclosed to any other party without written consent of Owner.
- 1.02 Owner's Review of Audit Results.** Following completion of the Energy Audit and Financial Review, ESCo will provide Owner with a brief summary of the findings and recommendations for energy efficiency measures (Measures) to be studied in greater detail. If ESCo does not recommend any Measures, or Owner does not choose to pursue any Measures, then this EPC is terminated and there will be no further obligations from either party. If ESCo recommends further study of any Measures, Owner may sign a Letter of Agreement with ESCo to carry out a Feasibility Study of each Measure which Owner chooses to evaluate in greater detail. Each Letter of Agreement will be treated as a legal addendum to this EPC.
- 1.03 Feasibility Studies.** A Feasibility Study is a more detailed engineering and financial analysis of potential energy efficiency Measures. The Feasibility Study allows ESCo and Owner to evaluate whether it is economically justified to implement Measures identified during the Energy Audit. Initially, ESCo and Owner will agree before beginning the Feasibility Study what amount Owner shall pay to ESCo to conduct the study. ESCo may choose to bear some or all of the costs of the Feasibility Study, but these costs (as defined in Article 2.01(a)) will be reimbursed to ESCo from project financing if a Measure is eventually implemented. Following completion of the Feasibility Studies and review by Owner, ESCo will meet with Owner to review the results. Owner may request further clarifications of or changes to the Feasibility Study which ESCo will make every reasonable effort to accommodate. Based on this Feasibility Study, ESCo will recommend or not recommend a particular measure:
- (a) If ESCo does not recommend a particular Measure and chooses not to pursue implementation of that Measure, then the costs of preparing that portion of the Feasibility Study beyond what Owner has already agreed to pay ESCo are borne by ESCo and Owner has no further obligation with regard to that Measure. Owner may choose to implement that Measure at his own expense and with no payment to ESCo.
 - (b) If ESCo recommends implementing a Measure with performance guarantees and Owner agrees to have ESCo implement this Measure, then the Parties will negotiate an Implementation Agreement as defined in Article 1.04. The cost of producing this portion of the Feasibility Study will be rolled into the total costs of the Measure to be financed. ESCo will be reimbursed for this portion of the Feasibility Study once implementation of the Measure begins and bank or other financing is

committed.

- (c) If ESCo recommends implementing a Measure with performance guarantees but Owner does not agree to implement the Measure under an Implementation Agreement with ESCo, but Owner begins implementation of the Measure or a significantly similar Measure (without involvement of ESCo) within one (1) year of the submission of the feasibility study, then Owner will reimburse ESCo for the full costs of producing this portion of the Feasibility Study and shall pay to ESCo a fee of (-----) percent (—%) of the implementation costs of the measure within sixty (60) days of signing any other agreement (with contractors, vendors, or financial institutions) to implement the Measure. If Owner neither rejects nor accepts implementation of a Measure within sixty (60) days of the Feasibility Study's being submitted, the Measure will be considered rejected by Owner.

1.04 Implementation Agreement. Following acceptance of a Measure by Owner, the parties will negotiate an Implementation Agreement which elaborates how that particular Measure will be installed, financed, monitored and operated and the obligations of both parties during and after implementation. A sample Implementation Agreement is attached as "Schedule 1". While Implementation Agreements will vary depending on the type of Measure being implemented, they will typically cover at least the following items:

- (a) A list of the Measures to be installed by ESCo together with technical specifications, design requirements, costs and an implementation schedule;
- (b) A tender and procurement procedure that will satisfy both Owner and ESCo needs;
- (c) Terms and conditions for construction and installation including provisions for access to Owner's facilities at agreed times;
- (d) The schedule for payments and guarantees;
- (e) The methodology for calculating savings and the process for monitoring the results of the Measures;
- (f) The responsibilities of both parties in maintaining the installed equipment.

1.05 Financing of Measures. For each approved Measure, ESCo agrees to assist Owner to arrange financing between Owner and a bank or other lending facility (Lender). ESCo will help Owner prepare the necessary documentation in order to support the application for financing. Owner agrees to either accept such financing arranged by ESCo, subject to Owner's reasonable acceptance of Lender's terms and conditions, or to arrange its own financing. Owner will be the legal borrower of these funds, but ESCo will provide guarantees to Owner that project savings will minimally cover the costs of this financing (see Article 3).

1.06 Failure to Secure or Accept Financing. If ESCo fails to obtain a written commitment from a Lender for financing of a Measure within one year of signing an Implementation Agreement, then Owner may terminate that Implementation Agreement with no cost to Owner for the corresponding Feasibility Study and no further obligations by either Party. If within (a period to be negotiated) of signing an Implementation Agreement, ESCo is able to obtain a written commitment from a Lender to finance a Measure but Owner is unwilling to accept this financing, then the Measure's Implementation Agreement can be terminated by ESCo. Owner will pay ESCo for the corresponding Feasibility Study and loan preparation costs within thirty (30) days of refusing financing. Owner will be considered to have refused arranged financing if Owner does not sign an agreement with the Lender within ninety (90) days of a written commitment being sent

to Owner.

ARTICLE 2 CALCULATION OF TOTAL PROJECT COSTS

2.01 Total Project Costs. Total Project Costs for a Measure (or a series of Measures to be financed together as a Project) shall be comprised of the following items:

- (a) Feasibility Study. All time worked by ESCo staff or its subcontractors in preparation of an approved Feasibility Study shall be included in the Total Project Costs. ESCo labor charges will be calculated by taking the hours worked by each person multiplied by the respective hourly rates of such personnel as detailed in Schedule 2. The maximum cost that will be required to realize the feasibility study is (amount);
- (b) ESCo construction management costs. All Project development work carried out by ESCo from completion of a Feasibility Study through the completion of construction of the corresponding Measure shall be accumulated in the Total Project Costs. ESCo staff will bill their time at the rates given in Schedule 2;
- (c) External Resources. The costs of equipment and material purchases for each Measure, vendor fees, shipping costs, freight insurance, subcontractor and consulting fees, travel expenses, non-refundable taxes, duties and legal fees related to preparation and implementation of each Measure shall be included in Total Project Costs;
- (d) ESCo management fees and profit. A charge of (-----) percent (-- %) shall be assessed by ESCo on External Resources as defined in 2.01(c) except for taxes and duties in order to cover management fees which are not directly billed to Owner such as communications with Owner, administrative costs, rental charges, security, EPC contract negotiations and ESCo profit;
- (e) Interest During Construction and Finance Fees. All interest payments made to the Lender during construction of the Project, any fees paid to the Lender for committing this capital, and any fees paid to third-party entities to broker financing shall be accrued during Project construction and included in the Total Project Costs;

2.02 Tracking of Project Costs. Project Costs will be tracked on an ongoing basis as they are accrued, starting with the costs of the Feasibility Study. ESCo will send Owner monthly invoices to assist Owner in tracking Total Project Costs. These invoices will be payable from loan proceeds only after Project financing is arranged and implementation begins except as otherwise covered in Article 1. In the event that Owner has questions or concerns about an invoice, Owner should notify ESCo in writing within thirty (30) days of receiving the invoice.

2.03 Refundable Taxes. It will be Owner's responsibility to pay all refundable taxes on project assets (e.g., Value Added Tax) directly to the tax authorities, customs authorities or equipment supplier at the time the project goods or services are procured. The refunds from such tax payments will be solely the property of Owner. The costs of refundable taxes will not be included in the Total Project Costs as defined in Article 2.01 above. At its discretion, ESCo may assist Owner in obtaining short-term financing to pay refundable taxes if such assistance is requested by Owner.

ARTICLE 3 ESCO GUARANTEE AND ALLOCATION OF SAVINGS

3.01 ESCo Guarantee. ESCo provides a Guarantee to Owner that the value of savings from a Project will be sufficient to cover the annual debt service costs (interest and principal) from financing that Project within a maximum period of (period in months or years) or ESCo will pay Owner the

shortfall. Details of how savings will be measured and valued will be included in each Implementation Agreement. It is Owner's responsibility to ensure that the operating, maintenance and optimization specifications of the new equipment are applied. If damage or destruction arises due to negligence, willful misconduct, or other default under the terms of the contract by Owner or any employee or agent of Owner, ESCo guarantee will not apply until the equipment is repaired or replaced by Owner.

3.02 Allocation of Savings. The value of savings from the project will first be allocated to cover debt service costs during each period [month or year] of debt repayment. The value of savings above debt service costs will be split evenly (50%-50%) between Owner and ESCo.

(a) Savings During the Construction Period. In some cases, components of a Measure will begin to realize savings before construction is complete and before debt repayments begin (for example, some but not all variable speed drives might be installed before construction completion). The Implementation Agreement will detail how any savings will be measured during the construction period, and these savings will be applied toward the first year's debt service requirements;

(b) Savings After Debt is Retired. Following the last payment of principal and interest to Lender, all savings (100%) will be retained by Owner.

3.03 Maintenance and Monitoring of Measures. Following completion of construction for a particular Measure, ESCo will carry out reasonable tests of the equipment and then initiate normal operations of the Measure. ESCo and Owner will carry out their respective responsibilities in maintaining the equipment and measuring and monitoring the energy savings according to the schedule and terms defined in each Implementation Agreement. Owner will not be required to pay any additional fees beyond the shared savings and any agreed monitoring costs unless specifically agreed in an Implementation Agreement.

3.04 Comfort Standard and Production Level. ESCo guarantees that the existing comfort standard and the existing production level of Owner as defined in the Letter of Agreement authorizing the Feasibility Study will not be affected by the measures recommended by ESCo and accepted by Owner unless otherwise agreed by both parties.

3.05 Minimum Production Level. By accepting to implement the energy conservation measures, Owner agrees that a minimum level of production will be assumed for calculating savings. Each Implementation Agreement will specify the minimum production or output expected for the relevant part of Owner's industrial process. Savings will be calculated on actual production levels unless production falls below the minimum specified in the Implementation Agreement, at which point the minimum production level will be used for savings calculation purposes.

ARTICLE 4 PAYMENTS BETWEEN ESCO AND OWNER

4.01 Completion of Implementation. Upon Completion of Improvement(s), ESCo shall deliver a written notification thereof to Owner. Within ____ () working days from the date of delivery of the notification, Owner shall deliver written notice of any objection thereto. Upon completion of the Improvements, any unspent advance payments as stipulated in Article 4.05 will be reimbursed to Owner and the Total Project Costs shall be adjusted accordingly.

4.02 Payment Period. Unless otherwise specified in this Energy Performance Contract or agreed in an Implementation Agreement, all payments from Owner to ESCo will be made within thirty (30) days of an invoice being received from ESCo. ESCo will pay Owner any Guarantees which are called within thirty (30) days of the relevant end-of-period measurement of Savings as detailed in each Implementation Agreement. For simplicity, ESCo may submit invoices which calculate both

the payment of Guarantees and the receipt of shared Savings together, requesting a net amount to be collected from Owner (or paid by ESCo to Owner). Any unpaid balance shall bear interest from the end of said period of thirty (30) days at an annual rate equal to the greater of the following rates :

- Prime rate of the [name of the referring bank] plus () %
- () % per month

- 4.03** In the event that Owner cannot or neglects to provide information required under the monitoring clauses of the implementation agreement, or that ESCo cannot have access to this information within fifteen (15) days of the end of the month to which the invoice applies, ESCo will continue to invoice for the periods in question using the theoretical baselines set out in each Implementation Agreement plus () % additional savings.
- 4.04** **Payments from Lender.** The financing arranged by ESCo will be controlled by Owner, who will remain the legal borrower. During the construction period, ESCo will submit invoices to Owner who will pay ESCo directly from loan disbursements. ESCo will, in turn, pay any subcontractors, equipment suppliers, vendors, and other agents providing goods or services to the Project. ESCo will submit its first invoice for work carried out on the Feasibility Study at any time after financing from Lender has been committed.
- 4.05** **Advance Payments.** ESCo will invoice for its own labor based on actual hours worked, but ESCo may request advances from the loan to pay for equipment or outside subcontractors if this is required once implementation has begun. ESCo will be fully liable to Owner once advance payments have been made to ensure that the corresponding equipment is installed and work is carried out. ESCo will always request an advance payment of up to 20% of total project costs at the beginning of Project construction as discussed in Article 1.05.

ARTICLE 5 OWNERSHIP OF MEASURES

Owner will become the sole proprietor of the Measures installed subject to any conditions which may be required by Lender in the financing agreement. Owner shall not acquire any interest in the proprietary rights of the property installed for Measures, except for software improvements according to the conditions of the manufacturer. Owner shall retain ownership and possession of all equipment and systems that were onsite prior to the signing of the EPC. All drawings, specifications, computer software and documents, prepared by ESCo, or its subcontractors, will remain the property of ESCo and are bound by the confidentiality agreement in Article 7. Upon construction completion, the ownership of drawings and specifications is transferred to Owner.

ARTICLE 6 INSURANCE

ESCo is responsible for insuring the supply and delivery of all new equipment and materials necessary to implement Measures. The costs of the insurance are considered part of the Total Project Costs as defined in Article 2.01. Owner is responsible for providing on-going insurance for equipment and materials from the time they have been delivered to Owner's premises until the end of the corresponding Implementation Agreement.

ARTICLE 7 CONFIDENTIALITY

- 7.01** **Confidential Information.** Confidential Information refers to all knowledge, information, and material in any form whatsoever which ESCo may receive or gain relating to the business of Owner and which is not available in the public domain. Such information is considered the property of Owner. Confidential Information also includes any information, data, plans, and knowledge which Owner may receive or gain from ESCo or its subcontractors which is not available in the public domain. Such information is considered the property of ESCo unless it is transferred to Owner as stipulated in an Implementation Agreement.

7.02 Rules Governing Confidential Information. Neither side may disclose any Confidential Information to a third party not participating in the Project and not covered by this EPC unless permitted to in writing by the party which owns this information. Confidential information may only be used for the purposes of realizing energy savings in the facilities of Owner as detailed in this EPC.

7.03 Access of ESCo to Owner Facilities and Information. Owner will provide ESCo with all available information necessary to conduct the energy audit, the Feasibility Studies, and the design, specification, and installation of the Measures as requested by ESCo. Such information is bound by the confidentiality clauses in Articles 7.01 and 7.02 above.

ARTICLE 8 USE OF SUBCONTRACTORS

ESCo may use qualified subcontractors to perform work as necessary and as specified in each Implementation Agreement. Any subcontractors working under this EPC will be bound by the same conditions regarding access to Owner's facilities and Confidentiality of Information as those which apply to ESCo in Article 7. Owner agrees to accord ESCo's subcontractors the same access to information and facilities as accorded to ESCo.

ARTICLE 9 SETTLEMENT OF DISPUTES

Any dispute under this EPC will be referred to a third-party arbitrator to resolve. An arbitrator will be selected by mutual agreement from _____ or such other organization as is mutually agreed by the parties at the time of the dispute. Either party may request that an arbitrator be appointed. The arbitrator may seek technical advice from a third-party expert if needed. The decision of the arbitrator will be binding and both parties will adhere to the decision. The cost of the arbitrator will be split between ESCo and Owner.

ARTICLE 10 DEFAULT

10.01 Default. Either party shall be deemed to have defaulted on the EPC if it fails to perform or comply with the terms and conditions of this agreement, and fails to correct its actions within thirty (30) days after written notice from the other party.

10.02 Default by Owner. In the event of default by Owner, Owner will be held financially responsible for paying all outstanding payments to ESCo for approved feasibility work and for paying the termination fee of each Implementation Agreement.

10.03 Default by ESCo. In the event of default by ESCo, ESCo must pay Owner all outstanding Guarantees on installed Measures. In such an event, Owner receives proprietary rights to the design and specifications of any uninstalled Measures and may complete the work if it desires. ESCo must pay any future Guarantees on Measures which were completed by Owner due to default by ESCo.

ARTICLE 11 TERMINATION OF EPC

11.01 By Owner. If ESCo does not complete any feasibility studies within one year of the EPC execution, Owner may terminate this EPC by a written notice to ESCo without any further obligations of either party. Owner may terminate this EPC at any time by paying ESCo any outstanding costs, including costs of incomplete Feasibility Studies, as covered in Article 2.01 as well as all termination fees as set out in the specific Implementation Agreements.

11.02 By ESCo. Prior to beginning construction of a measure, ESCo may terminate a specific Implementation Agreement with no further obligations as a result of ESCo's determination that the savings cannot be guaranteed, subject to ESCo's notifying Owner in writing. In such an

event, Owner will not owe ESCo any payments for the specified Implementation Agreement and ESCo must reimburse Owner for any payments made for Feasibility Work. If ESCo terminates the EPC or a specific Implementation Agreement after construction of the corresponding Measure has begun, ESCo must comply with the default conditions set forth in Article 10.03 of this EPC.

11.03 Changes to Owner's Facilities. Owner agrees to notify ESCo of changes it plans to make to its facility or equipment which could affect the results of any Measures covered by an Implementation Agreement. In the event that such changes will adversely affect the realized energy savings, as defined in the Implementation Agreement, Owner and ESCo may renegotiate the terms of the affected Implementation Agreement. If Owner and ESCo cannot agree on the new terms of the affected Implementation Agreement, then Owner would be required to pay all applicable Termination Fees as set out in the Implementation Agreement if Owner elects to proceed with the proposed changes to the facilities.

ARTICLE 12 FORCE MAJEURE

If either Owner or ESCo shall be unable to carry out its obligations under this EPC as a result of circumstances beyond its control, such as fire, flood, shortage of materials, or labor disputes, the obligations of both parties under this EPC will be suspended until the uncontrollable circumstances come to an end or (if this is a shorter period) for 60 days. If, at the end of the period of suspension, the uncontrollable circumstances continue, then either Owner or ESCo may terminate the EPC. In such a case, neither party shall be liable to the other for its failure to perform any of its obligations under this EPC, except to honor payment obligations incurred prior to the events beyond the control of both parties.

ARTICLE 13 IDEMNIFICATION

ESCo and Owner shall indemnify, defend, and hold each other harmless from any and all claims, actions, costs, expenses, damages, and liabilities (including attorneys' fees) resulting from the sole negligence or willful misconduct of the other party's employees or agents. However, neither party shall indemnify the other against claims, damages, expenses, or liabilities resulting from the negligence or misconduct of the other party. If one party is harmed by the negligence or misconduct of the other party, the harmed party shall notify the harming party of its claim and the harming party shall pay the expenses of the harmed party relating to the claim.

ARTICLE 14 TERM OF CONTRACT

The EPC shall be in full force and effect beginning upon its signing and ending when the term of the last Implementation Agreement expires or upon termination as set out in Article 11.

ARTICLE 15 APPLICABLE LAW

This Energy Performance Contract shall be governed by and construed in accordance with the laws of Poland.

ARTICLE 16 NOTIFICATION

All notices will be delivered to the following addresses by registered or certified mail, with a return receipt requested.

[Address of Owner]

[Address of ESCo]

All communications have to be done by writing and transit by the following representatives :

[Owner representative]

[ESCo representative]

ARTICLE 17 DEFINITIONS

When used in this Agreement, the following terms shall have the meaning specified:

- (a) **Agreement:** This Agreement between Owner and ESCo.
- (b) **Baseline Consumption or baseline energy consumption:** The total annual energy consumption and costs of the premises before the improvements have been made for the

past twelve months corrected in regard to the last 3 years energy consumption, by reference to which any savings will be measured.

- (c) **Energy efficiency measures or measures** : All of ESCo's implemented equipment, services and improvements owned, maintained, and operated by Owner , which are necessary to save energy and as described in Exhibit A of the implementation agreement
- (d) **Energy** : means electricity, water, or any hydrocarbon
- (e) **ESCo or Energy Services Company** : a firm which provides energy management services including the feasibility study, the engineering, the installation of energy saving equipment and maintenance procedure; arranges financing and provides an agreed for a fee guaranteed not to be exceed Owner's avoided energy costs
- (f) **Initial Operation**: The day each measure first operates.
- (g) **Completion of measure** : means the completion of 93 % or more of the measure
- (h) **Interconnection Facilities**: All means required, and apparatus installed, to interconnect the new measures to Owner's premises, including, but not limited to, connection, switching, metering, communications, control, and safety equipment.
- (i) **Prudent Energy Practices**: Those practices, methods, and equipment, as changed from time to time, that are commonly used in prudent engineering and operations to design and operate energy consuming equipment and energy production equipment, lawfully and with safety, dependability, efficiency, and economy.
- (j) **Party**: Owner or ESCo. **Parties** means Owner and ESCo.
- (k) **Premises**: The buildings, facilities and equipment used by Owner, as identified in Section I and as more fully described in the attached Appendix A, where ESCo shall implement the Project under this Agreement.
- (l) **Project**: The complete range of services provided by ESCo pursuant to this Agreement, including evaluation, engineering, design, procurement, construction, installation, monitoring, operation and maintenance of energy efficiency measures at the Premises for save energy consumption.

ARTICLE 18 SEVERABILITY

In the event that any clause or provision of this EPC or any part of this EPC shall be declared invalid or unenforceable by a court having jurisdiction, such invalidity shall not affect the validity or enforceability of remaining portions of this EPC.

As Witness, the parties have entered into this Agreement the day and year first written above.

ESCo

Owner

By: _____

By: _____

Attached:

Schedule 1 Sample Implementation Agreement

Schedule 2 ESCo Labor Rates

IMPLEMENTATION AGREEMENT

This Implementation Agreement is made this day [date] between the "ESCO" [ESCO company], [address], and the "Owner", [client company], [address].

ARTICLE 1 ENERGY PERFORMANCE CONTRACT

- 1.01 This Implementation Agreement supplements the Energy Performance Contract (EPC) between Owner and the ESCo signed on [date]. If the terms of the two agreements are in conflict, the terms of the EPC shall prevail unless otherwise specifically indicated in the present agreement.
- 1.02 The implementation of the measures, delineated below, will follow the terms set in the Energy Performance Contract, Section 1.04.

ARTICLE 2 TECHNICAL SPECIFICATIONS

The following exhibits specify the technical and detailed terms of this Implementation Agreement.

- 2.01 *Exhibit A.* Measures to be Installed. [Describes in detail specific equipment to be installed and where they will be installed.]
- 2.02 *Exhibit B.* Construction Terms and Conditions. [Schedule of construction, allowed disruption to Owner's facilities, fees if disruptions are longer or more frequent, penalties for delays in schedule or running overschedule; In the event that during the construction period Owner's equipment prove to be in poor working order, except where reported as such by Owner, or that the information provided by Owner proves inaccurate:
 - 1) all costs occasioned by necessary changes to the plans and specifications and other documents and by the corrective work to which they give rise;
 - 2) any financing costs arising from a delay in the implementation of any measure;shall be paid separately by Owner or included in the total cost of implementation of the Project.
- 2.03 *Exhibit C.* Payment Schedule. [Schedule shared savings payments from installation through life of the loan, when guarantees take effect, conditions if delay in construction causes delay in start date]
- 2.04 *Exhibit D.* Baseline Methodology. [How baseline was set, what it is in terms of cost and/or quantity of energy, what are the variables which can influence the savings and how shall they be considered for the adjustment of the baseline references: rate of production, outside climate conditions, etc]
- 2.05 *Exhibit E.* Savings Calculation Methodology. [Delineates how savings over baseline, minus debt payment will be calculated, how savings will be shared, provides examples]
- 2.06 *Exhibit F.* ESCo Maintenance and Monitoring Responsibilities. [Schedule for maintenance and monitoring visits, responsibilities of ESCo, conditions for responsibility in the case of equipment problems, guarantee of the equipment suppliers.]
- 2.07 *Exhibit G.* Owner Maintenance and Operating Responsibilities. [Specifies responsibilities of Owner.]
- 2.08 *Exhibit H.* Schedule of Project Costs. [Budget for construction/installation, what happens if project costs exceed budget; in the event that Owner requires an alternative manner of

installation to that which was proposed, Owner shall pay all costs of installation in excess of the ESCo's proposed installation costs of the energy conservation measures]

2.09 *Exhibit I.* Measure Completion Criteria.

2.10 *Exhibit J.* List of Approved Subcontractors and Vendors.

ARTICLE 3 TERMINATION FEE

If Owner terminates this Implementation Agreement, it will have to pay a penalty to the ESCo equal to the cost of all outstanding feasibility and construction work, materials, and subcontracts, and other items incurred as part of Total Project Costs, as defined in Article 2 of the EPC, plus a fee according to the following schedule [fee will be calculated based on present value of future share of savings]:

- 1) Year 1 x
- 2) Year 2 y

ARTICLE 4 SUBCONTRACTORS

The ESCo may use the approved subcontractors listed in Exhibit J and in accordance with Article 7 of the EPC. All subcontractors are subject to Owner approval. The ESCo alone is responsible for the work performed by any subcontractors and no direct contractual relationship shall exist between Owner and the subcontractors.

ARTICLE 5 TERM OF CONTRACT

This Implementation Agreement shall be in effect beginning on the date it is signed and ending on the date that the last payment is made under Exhibit C (until the last loan repayment).

ARTICLE 6 SEVERABILITY

In the event that any clause or provision of this agreement or any part of it shall be declared invalid or unenforceable by a court having jurisdiction, such invalidity shall not affect the validity or enforceability of remaining portions of this agreement.

As Witness, the parties have entered into this Agreement the day and year first written above.

ESCo

Owner

By: _____

By: _____

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