# 

**CONTRACT**

**Between**

**Customer X**

**And**

**ESCO Y**

**For the Performance of Works to**

**Implement Energy Conservation Measures at**

**Customer Facilities**

**Guaranteed Energy Savings Contract # n, 20XX**

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**THIS CONTRACT** (the “Contract”, with Contract Number XXX) is made on the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20XX (herein after called the “Effective Date”).

**Between:**

Customer X, Customer Address, Ras Al Khaimah, United Arab Emirates, Tel # Customer Contact, (hereinafter called the “Customer”);

**And**

ESCO Y, ESCO Address, Ras Al Khaimah, United Arab Emirates, Tel # ESCO Contact (hereinafter called the “ESCO”).

(Together the Customer and the ESCO are referred to as the Parties and individually as a Party).

In executing this Contract the Parties acknowledge and agree that they have no claims or actions arising out of dealings prior to the Effective Date of the Contract in any way connected with the Project, other than under the terms of the Contract.

The ESCO hereby agrees with the Customer to carry out and bring the Works to completion for the retrofit of Customer Facilities in Ras Al Khaimah (hereinafter called the “”Premises”), in accordance with this Contract’s terms and conditions at a Contract Price of **AED xx,xxx,xxx**.

**RECITALS**

1. The Customer wishes to take steps to improve energy efficiency within its Premises and reduce energy usage.
2. The ESCO is a company with expertise in energy efficiency and generating energy savings through equipment installed and services provided.
3. The Customer wishes to engage the ESCO into an agreement where the ESCO will implement energy efficiency measures based on a Guaranteed Energy Savings approach. The Customer has provided the ESCO with certain information in respect of the Premises and energy consumption at the Premises, which has been included in Schedule 2 *(Information Provided by the Customer).*
4. After undertaking inspections and investigations at the Premises, the ESCO has prepared an ESCO’s Proposal (as included in Schedule 14), which has been agreed by the Parties and identifies the cost savings and benefits that can be derived by the Customer from the provision by the ESCO of the energy conservation measures and services defined in the ESCO’s Proposal (as included in Schedule 14).
5. The Customer and the ESCO wish to enter into this Contract to record the basis on which the ESCO will provide these measures and savings, as more particularly defined in this Contract.

**IT IS AGREED** as follows:

1. DEFINITIONS and Acronyms
   1. In this Contract, the following words and expressions shall have the meaning set out below:

|  |  |
| --- | --- |
| **“Adjusted Baseline Cost”** | means Adjusted Baseline Energy multiplied by following unit rates set forth in Schedule 6 *(Baseline Energy Consumption and Baseline Unit Rates).* |
| **“Adjusted Baseline Energy”** | means the Baseline Energy, adjusted to a different set of operating conditions in accordance with Schedule 7 (*Energy Savings Measurement and Verification Plan)*. |
| **“Adjustments”** | means calculations in the savings equation to account for changes in selected independent variables within the measurement boundary since the baseline period (so called “routine” adjustments) or to account for changes in static factors within the measurement boundary since the baseline period (so called “non-routine” adjustments). |
| "**Affiliate**" | means, in relation to any company or corporation, a Subsidiary of that company or corporation or a parent company of that company or corporation or any other Subsidiary of that Holding Company. |
| "**Baseline Energy** " | means the annual energy consumption levels at the Existing Equipmentprior to the implementation of the energy conservation measures by the ESCO in accordance with Schedule 6 (*Baseline Energy Consumption and Baseline Unit Rates*). |
| "**Baseline Energy Cost**" | means the Baseline Energy multiplied by the applicable unit rates as set forth in Schedule 6 *(Baseline Energy Consumption and Baseline Unit Rates).* |
| "**Bill of Quantities (BOQ)**" | means the priced and completed bill of quantities submitted by ESCO, representing the Construction Works to be performed by ESCO, as set out in the Schedule 4 (*Contract Price and Payment Schedule*). |
| "**Business Day**" | means a day (other than a Friday or a Saturday or a public holiday) on which banks are open for general banking business in the Emirate of Ras Al Khaimah, UAE. |
| "**Business Hours**" | means the hours between 8.00 am and 6.00 pm on a Business Day, or such as hours as may be notified from time to time in writing to the ESCO by the Customer. |
| "**Confidential Information**" | means confidential and/or proprietary information including but not limited to systems, services or planned services, suppliers, data, measurements, financial information, computer software, processes, methods, knowledge, ideas, marketing, promotions, current or planned activities, research, development and other information which should reasonably be considered to be confidential or commercially sensitive with respect to the information holder's business or operations. |
| **Contract Period** | means the period of time which includes the Construction Period and the Operations Period as specified in clause 3.1. |
| "**Construction Completion Certificate**" | means the certificate issued (or deemed under clause 18 to be issued) by the Customer to the ESCO upon fulfilment of requirements by the ESCO as specified in clause 18. |
| "**Construction Completion Date**" | means the date at which the Construction Completion Certificate is issued. |
| "**Construction Period**" | means the period of time for the performance of the Construction Works, such period shall commence immediately following the Effective Date and shall continue for a duration of time as specified in clause 3.1 (1). |
| **"Construction** **Works**" | means the management, procurement, construction and installation works to be performed by the ESCO during the Construction Period as more particularly described in Schedule 14 *(ESCO’s proposal)* and Schedule 16 *(ESCO’s Scope of Services During Construction Phase).* |
| **“Contract”** | means the contract entered into between the Customer and the ESCO, consisting of several documents as specified in clause 4 and are to be taken as mutually explanatory of one another, with order of priority of the documents as specified in clause 4.2. |
| "**Contract Period**" | means the term of this Contract specified in clause ‎3.1. |
| "**Contract Price**" | means the price as set forth in Schedule 4 (*Contract Price and* *Payment Schedule*) to be paid by the Customer to the ESCO for the realisation of its obligations set out in this Contract. |
| "**Cost of Completion**" | has the meaning given to it in clause 31.6. |
| "**Cost Proposal**" | has the meaning given to it in clause 17.3. |
| "**Created Intellectual Property Rights**" | means any Intellectual Property Rights created by the ESCO during the performance of the Works or services under this Contract. |
| "**Customer Representative**" | means the representative nominated by the Customer to act on its behalf in the administration of this Contract as more particularly described in Schedule 12 (*Parties' Representatives*). |
| "**Day**" | means the twenty four (24) hour period beginning and ending on 00:00 hours. |
| "**Delay Damages**" | has the meaning given to it in clause 15. |
| "**Effective Date**" | means the date this Contract is signed, or if counterparts of this Contract are signed, the date the last counterpart is signed. |
| "**ECM** " | means the energy conservation measures that will be implemented by ESCO during the Contract Period, as set out in Schedule 14 *(ESCO’s Proposal)*. |
| **“Energy”** | means electricity and water, except if defined otherwise in the text. |
| **"Energy Cost"** | in respect of a Guarantee Year, means the Energy Usage for that Guarantee Year multiplied by the applicable unit rates set forth in Schedule 6 (*Baseline Energy Consumption and Baseline Unit Rates*). |
| "**Energy Savings**" | in respect of a Guarantee Year, means the Baseline Energy Cost or Adjusted Baseline Energy Cost less the Energy Cost for that Guarantee Year. |
| "**Energy Savings Audit**" | means the energy savings audit done by the ESCO, as set out in Schedule 14 (*ESCO’s Proposal*). |
| "**Energy Usage**" | means the volumes of energy consumed by the Equipment verified and/or measured in accordance with Schedule 7 *(Energy Savings Measurement and Verification Plan)*. |
| "**Equipment**" | means the goods, materials and equipment to be installed by the ESCO at the Premises as more particularly described in Schedule 14 (*ESCO’s Proposal*), including any additions and modifications made to such goods, materials or equipment or existing equipment during the Contract Period. |
| "**ESCO'S Proposal**" | means the ESCO's proposal set out in Schedule 14 (*ESCO's Proposal*). |
| "**Exceptionally Adverse Climatic Conditions**" | means climatic conditions (rainfall, high temperature and low temperature) shall be considered as “Exceptionally Adverse” during any calendar month (s) throughout the Contract Period only if a weather measurement value from Dubai Metrological Department during the specific calendar month (s) is recorded and the value of which, by comparison with the historical weather data obtained from Dubai Metrological Department, is shown to occur only once during the same period in the past ten (10) years. |
| "**ESCO Representative**" | means the representative nominated by the ESCO to act on its behalf in the administration of this Contract as more particularly described in Schedule 12 (*Parties' Representatives*). |
| "**Existing Equipment**" | means the energy related equipment owned by the Customer and already installed in the Premises, that is to be retrofitted by the ESCO as described in Schedule 5 *(Existing Equipment).* |
| "**Facility Management Checklist**" | means the checklist in the form set out in Schedule 7 (*Energy Savings Measurement and Verification Plan*) to be completed by the ESCO in accordance with clause ‎16.1. |
| "**Force Majeure Event**" | means an exceptional event or circumstance which:  (a) is beyond a Party’s control;  (b) could not reasonably have been provided against by such Party as at the Effective Date; and  (c) having arisen, could not be reasonably avoided or overcome by such Party;  and includes (without limitation) events such as:  (i) wars, hostilities (whether declared or not), invasion or acts of foreign enemies;  (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;  (iii) riot, commotion, disorder, strikes, lock-outs, labour or industrial disputes, all by people not employed by a Party or a Sub-Contractor;  (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the acts of the affected Party; and  (v) natural catastrophes such as earthquakes, hurricanes, typhoons, fire, floods, tsunami, volcanic activity or epidemics. |
| "**Good Industry Practice**" | means standards, practices, methods and procedures conforming to Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of business carrying out the same duties under the same or similar circumstances. |
| "**Government Instrumentality**" | means the federal government of the UAE, the local government of the Emirate of Ras Al Khaimah or any ministry, department or political subdivision thereof, and any person under the direct or indirect control of any such government, exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any other governmental entity, instrumentality, agency, authority, corporation, committee or commission, or any independent regulatory authority, in each case within the Emirate of Ras Al Khaimah or the UAE, and any successor to or any assignee of any of the foregoing. |
| **“Guarantee Period”** | means the period of time defined under clause 3.1 - 2 (ii). |
| "**Guaranteed Energy Savings**" | in respect of a Guarantee Year, means the guaranteed Energy Savings for that Guarantee Year as specified in Schedule 15 (Guaranteed Energy Savings). |
| "**Guarantee Year**" | means the period of twelve (12) consecutive months beginning on the Operations Date and each period of twelve (12) consecutive months thereafter until the end of the Contract Period. |
| "**Hazardous Materials**" | means:  (a) any fungus (any type of form of fungi, including mould, or mildew, and myotoxins, spores, scents or by-products produced or released by fungi);  (b) incomplete or damaged work or systems or code violations that may be discovered during or prior to the Effective Date; or  (c) pollutants, hazardous wastes, hazardous materials, contaminants or such substance known as hazardous or deleterious to health and safety in accordance with applicable Laws. |
| "**Indirect Loss**" | means any indirect or consequential or any loss of profits, loss of business, loss of business opportunity, goodwill or reputation, or loss of revenue or any other pure economic losses (other than lost Energy Savings) whatsoever and whether arising in Contract or otherwise. |
| "**Information**" | means information, reports, documents, designs, drawings, records, data concerning energy use and consumption and other information (excluding any financial, commercially sensitive or Confidential Information). |
| "**Insolvency Event**" | means:  (a) a Party becomes unable or admits inability to pay its debts as they fall due or suspends making payments on any of its debts generally;  (b) the value of the assets of the Party is less than its liabilities (taking into account contingent and prospective liabilities);  (c) a moratorium is declared in respect of any indebtedness of the Party;  (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:  (i) the suspension of payments, a moratorium of any indebtedness, the entry into a protective composition, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Party other than a solvent liquidation or reorganisation;  (ii) a composition, compromise, assignment or arrangement with any creditor of the Party;  (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Party or any of its assets; or  (iv) enforcement of any security over any assets of the Party,  or any analogous procedure or step is taken in any jurisdiction, and in any such case has not been set aside, dismissed or stayed within sixty (60) Days; or  (e) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Party having an aggregate value of not less than one million Dirhams (AED 1,000,000) and is not discharged within fourteen (14) Days. |
| "**Intellectual Property**" | means all patents, trade marks and service marks, registered designs, design rights and copyright (including rental and lending rights), moral rights, rights in computer software, rights in databases and other protectable lists of information, rights in Confidential Information, trade secrets, inventions and know-how, trade and business names, domain names, getups, logos and trade dress (including all extensions, revivals and renewals, where relevant) in each case whether registered or unregistered and applications for any of them and the goodwill attaching to any of them and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world. |
| "**Intellectual Property Rights**" | means the right to exploit any Intellectual Property or any right which is similar or analogous to Intellectual Property, any moral right, any licence, right or interest of any kind arising out of or granted or created in respect of any of the foregoing, any right to bring an action for passing off or any similar or analogous proceeding. |
| "**Laws**" | means any decree, resolution, law, statute, act, ordinance, rule, directive (to the extent having the force of law), order, treaty, code or regulation or any interpretation of the foregoing, as enacted, issued or promulgated by any Governmental Instrumentality that is applicable in the Emirate of Ras Al Khaimah. |
| **“M&V”** | means the measurement and verification works. |
| **“ Maintenance”** | means the maintenance works to be performed by the ESCO as specified in Schedule 10 *(ESCO’s Maintenance Obligations).* |
| "**Maintenance Price**" | means the price in AED associated with the Maintenance. |
| "**Milestone Dates**" | means the dates identified as such in Schedule 14 *(ESCO’s Proposal).* |
| **“Obsolete Equipment”** | means Equipment that needs to be replaced and removed from the Premises. |
| "**Operations Date**" | means the Day after the Construction Completion Date. |
| "**Operations Period**" | means the period of time for performance of the Operations Period Works, such period shall commence on the Operations Date and shall continue for a duration of time as specified in clause 3.1 – 2. |
| **"Operations Period Works**" | means the management, procurement, Maintenance, servicing and M&V to be performed by ESCO during the Operations Period as more particularly described in Schedule 14 (*ESCO’s proposal*), Schedule 10 *(ESCO's Maintenance Obligations)* andSchedule 7 *(Energy Saving Measurement and Verification Plan).* |
| "**Parameter Change**" | means a change, event or circumstance in relation to:   1. Manner of use of the Premises by the Customer; 2. Hours of operation for the Premises or for any Existing Equipment, Equipment or energy using systems operating at the Premises set out in Schedule 7 (*Energy Savings Measurement and Verification Plan)* and Schedule 14 *(ESCO’s Proposal)*; 3. Permanent changes in the Standards of Comfort set out in Schedule 8 *(Standards & Specifications)*; 4. Occupancy of the Premises set out in Schedule 7 (*Energy Savings Measurement and Verification Plan)*; 5. Structure of the Premises; 6. Types, ratings and quantities of equipment used at the Premises as specified in Schedule 5 *(Existing Equipment)*; 7. Modification, renovation, demolition or construction at the Premises. |
| "**Payment Application**" | means an invoice prepared by the ESCO for payment by the Customer of the Contract Price or a portion thereof, or the Maintenance Fee, in accordance with Schedule 4 (*Contract Price and* *Payment Schedule*). |
| "**Payment Certificate**" | means a certificate issued by the Customer against ESCO’s Payment Application ratifying ESCO’s claim for payment. |
| "**Premises**" | means the Customer’s premises in which the Works are to be performed as more particularly described in Schedule 1 (*Premises*). |
| "**Programme**" | has the meaning given to it in clause ‎9.2. |
| "**Project**" | means the project for which the Customer has employed the ESCO to conduct the Works. |
| "**Request For Proposal (RFP)**" | means the document issued by the Customer to obtain proposal from ESCOs to implement the targeted services. |
| "**Schedule**" | means a Schedule to this Contract. |
| "**Standards of Comfort**" | means the standards set out in Schedule 8 (*Standards & Specifications*). |
| "**Sub-Contractors**" | means any sub-contractor or sub-sub-contractor appointed by the ESCO to perform any part of the Works, including the supply, installation and/or delivery of any Equipment. |
| "**Subsidiary**" | means in relation to any company or corporation, a company or corporation:  (a) which is Controlled, directly or indirectly, by the first-mentioned company or corporation;  (b) where more than half the issued share capital is beneficially owned, directly or indirectly, by the first-mentioned company or corporation; or  (c) which is a Subsidiary of another Subsidiary of the first-mentioned company or corporation,  and for this purpose, a company or corporation shall be treated as being Controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body. |
| "**Tenant**" | means a person with whom the Customer has entered into a lease, licence, tenancy, any staff of the Customer, or any person who has right to occupy all or any part of the Premises. |
| "**Total Guaranteed Energy Savings**" | means the total Energy Savings guaranteed by ESCO for all the Guarantee Years during the Operations Period, as set out in Schedule 15 *(Guaranteed Energy Savings)*. |
| "**UAE**" | means United Arab Emirates. |
| "**UAE Dirhams**", "**AED**" or "**Dirhams**" | means the lawful currency of the UAE. |
| "**Variation Request**" | has the meaning given to it in clause ‎17.2. |
| “**VAT**” | means value added tax. |
| "**Works**" | means the Construction Works and the Operations Period Works to be performed by ESCO under the Contract as defined above. |

1. INTERPRETATION

In this Contract:

1. the headings to the clauses, Schedules and paragraphs of the Schedules are for reference only and shall not affect the interpretation or construction of this Contract;
2. use of the singular includes the plural and vice versa;
3. any reference to time or date shall be in accordance with the Gregorian calendar;
4. the words "include" and "including" shall be construed without limitation;
5. words of any gender include each other gender;
6. the Schedules form a binding part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract shall include the recitals and the Schedules;
7. references to any laws includes a reference to that law as amended, re-enacted, consolidated or replaced from time to time (whether before or after the date of this Contract) and includes any subordinate legislation made under the relevant law and in force at the relevant time;
8. references to clauses and Schedules are references to clauses and schedules of this Contract, unless expressly stated otherwise;
9. references to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated (other than in breach of the provisions of this Contract) at any time;
10. a "person" includes a reference to an individual, partnership, body corporate, government, local or municipal authority or government body or any joint venture wherever incorporated or situated (in each case whether or not having separate legal personality) and includes a reference to that person's legal personal representatives and successors;
11. references to a Party to this Contract or to any other document or agreement includes a successor-in-title, permitted substitute or a permitted assign of that Party; and
12. the terms "hereof", "herein", "hereunder" and similar words and phrases refer to this entire Contract and not to any particular clause, Schedule, section or any other subdivision of this Contract.
13. CONTRACT PERIOD
    1. This Contract shall commence on the Effective Date and, unless terminated earlier in accordance with its terms or extended in accordance with clause ‎3.2 (below), shall continue to be binding on the Parties.

Contract Period includes:

|  |  |  |
| --- | --- | --- |
| 1 | Construction Period | i) Mobilization time : forty five (45) Days from the Effective Date.  (ii) Implementation time : three hundred and sixty-five (365) Days from the completion of the mobilization time; or sooner if ESCO’s performance obligation during the Construction Phase have been met and Construction Completion Certificate is issued to ESCO in accordance with the Contract clauses 10 and 18. |
| 2 | Operations Period | (i) Equipment Maintenance Period: five (5) years after the Operations Date.  (ii) Guaranteed Period: five (5) years after the Operations Date Or the moment when the Total Guaranteed Energy Savings (set out in Schedule 15) will have been reached during the Guarantee Period. |

* 1. The Contract Period may be extended by the written agreement of both Parties signed by their respective authorised representatives.

1. CONTRACT DOCUMENTS

Clauses 1 to 47 inclusive and the Schedules shall form and comprise this Contract.

1. ESCO’s PROPOSAL
   1. The ESCO has prepared and completed an ESCO’s Proposal in relation to the Premises as included in Schedule 14 (*ESCO’s Proposal*) and such Proposal is hereby approved and accepted by the Customer.
   2. The ESCO shall, wherever possible, apply for, or reasonably assist the Customer to apply for, and shall obtain, wherever possible and applicable any incentives, grants, refunds, rebates and trade discounts for which the Improvements are eligible and shall reduce the Total Project Costs but for the avoidance of doubt not the Contract Price, accordingly.
   3. Any payments to be made by the Customer to the ESCO in respect of the preparation of the ESCO’s Proposal shall be as separately itemised in Schedule 4 (*Contract Price and Payment Schedule*). If Schedule 4 (*Contract Price and Payment Schedule*) is silent on the payments to be made in respect of the ESCO’s Proposal, the cost of such works shall be deemed to have been included within the Contract Price.
   4. The work undertaken by the ESCO in respect of the preparation of the ESCO’s Proposal has been undertaken prior to the Effective Date. The Parties agree that the ESCO shall be bound by the terms and conditions of this Contract with respect to the preparation of the ESCO’s Proposal and the Parties shall be entitled to enforce rights against each other in respect of the ESCO’s Proposal.
   5. The Customer represents and warrants that, as far as it is reasonably aware, the Information provided to the ESCO for the purpose of the ESCO’s Proposal, to the best of its knowledge, is complete and accurate and is not misleading in any material respect. If at any time the Customer becomes aware of any material omission or inaccuracy in any such Information, the Customer shall promptly notify the ESCO in writing and provide the ESCO with such missing or accurate information that may be in its possession. Notwithstanding the above, the ESCO acknowledges and accepts that it shall not rely on the Information provided by the Customer and confirms that it has carried out a thorough inspection of the Premises for the purposes of establishing the Baseline Energy Cost and Guaranteed Energy Savings and shall exclusively rely on all Information gathered during such inspection of the Premises when executing its obligations under this Agreement.
2. ENERGY SAVINGS MEASUREMENT AND VERIFICATION PLAN

The ESCO has provided to the Customer Schedule 7 *(Energy Saving Measurement and Verification Plan)*. This plan is done in accordance to the IPMVP issued by Efficiency Valuation Organization, and is approved and accepted by the Customer as part of this Contract.

1. COORDINATION AND ACCESS
   1. Each Party shall use reasonable efforts to cooperate with and assist the other Party, its advisors, consultants, contractors, employees, agents and representatives at all times during the Contract Period.
   2. The Customer shall and shall procure that its personnel, agents, representatives or other contractors shall make reasonable efforts to coordinate with the ESCO to grant the ESCO sufficient access to the Premises as may be required by the ESCO to perform Works on the Premises at any time at the Customer’s discretion.
   3. The ESCO shall perform its obligations under this Contract so as not to interfere with the use or occupation of the Premises and/or the Customer or any of the Customer’s Tenants.
   4. The ESCO has inspected the Premises and acknowledges and accepts that there is sufficient space and access to and within the Premises for the installation and operation of the Equipment.
   5. For the Construction Period the Customer shall give the ESCO, its employees, Sub-Contractors, agents and representatives a right of access to the Premises for the performance of the Construction Works during Business Hours or during such hours as may be agreed by the Parties in writing, at no additional cost to the Customer.
   6. The Parties acknowledge that ESCO may need to access the Premises to undertake emergency repairs or corrections. In such circumstances, ESCO shall immediately notify the Customer, which notification shall be confirmed in writing no later than three (3) Days after written notice is provided and the Customer shall not unreasonably restrict or prevent ESCO from accessing the Premises to undertake such Works.
2. PERMITS AND APPROVALS
   1. The Customer may support the ESCO in procuring and maintaining the licences, permits and approvals set out in Schedule 3 (*Permits, Licences and Approvals to be Supported by the Customer*).
   2. The ESCO shall be responsible for procuring and maintaining all licences, permits and approvals required under Law and making all arrangements necessary to perform the Works in accordance with this Contract’s terms and conditions and applicable statutory codes at its own cost.
   3. The ESCO shall during the performance of the Works comply with all licences, permits and approvals granted in respect of the Works.
3. PROGRAMME
   1. The Programme shall be based on the preliminary programme set out in Schedule 14 (*ESCO’s Proposal*), which shows, in general terms, the ESCO's plan for scheduling and coordinating the performance of the Construction Works, having due regard to the Construction Completion Date.
   2. The ESCO shall within eighteen (18) Business Days of the Effective Date submit the general plan for the Customer’s review, subsequently fifteen (15) Business Days prior to cluster mobilization for documents specific to cluster work, submit to the Customer a programme detailing how and when the ESCO proposes to carry out each stage of the Construction Works (this initial programme and any subsequent revision in accordance with this Contract, the "Programme"). The Programme shall include following documents at a minimum:
      1. Project Schedule fully resourced with all Manpower & Material Quantities, and loaded with costs for Engineering, Procurement, Site Installation, Testing & Commissioning etc.;
      2. Programme Narrative (providing a general description of the methods which the ESCO intends to adopt for the execution of each major stage of the Construction Works); and
      3. Project Critical Path (based on critical path method).
   3. The Programme shall be based on the critical path method and should address the following at a minimum:
      1. the order in which the ESCO intends to complete the Construction Works including all milestone dates;
      2. the major events and activities in the procurement and installation of Equipment at the Premises;
      3. the sequence and timing of the performance of the Construction Works;
      4. the sequence and timing of testing and commissioning; and
      5. all other principal activities to be undertaken by the ESCO.
   4. The Customer shall verify the draft Programme and shall either accept or reject (with comments) the Programme submitted by the ESCO within twenty (20) Business Days of receipt of the Programme. If the Programme is rejected by the Customer, the ESCO shall incorporate any comments made by the Customer and re-submit the Programme for the Customer’s approval and this process shall continue until the Customer approves the ESCO's Programme. If the Customer does not accept or reject (with comments) ESCO’s Programme within twenty (20) Business Days, ESCO shall issue a reminder notice to the Customer, requesting such acceptance or rejection. If the Customer does not accept or reject (with comments) the ESCO's Programme within ten (10) Business Days of receipt of the reminder notice, the Programme shall be deemed to have been accepted by the Customer.
   5. The Customer’s approval of the ESCO’s programme of works shall not, by any means, relieve the ESCO from any of his responsibilities and/or obligations under the contract.
   6. The ESCO shall submit a revised Programme to the Customer if the Programme becomes inconsistent with:
4. actual progress; or
5. the ESCO's obligations under this Contract.

The Customer shall verify the revised Programme and shall either accept or reject (with comments) a Programme submitted by ESCO in accordance with the same process described in clause 9.4.

1. ESCO'S GENERAL PERFORMANCE OBLIGATIONS

***Construction Phase***

* 1. The ESCO shall carry out or procure the carrying out of the Construction Works set out in Schedule 14 (*ESCO’s Proposal*) and Schedule 16 *(ESCO’s Scope of Services during Construction Phase)* in accordance with the terms of this Contract.
  2. The ESCO shall perform the Construction Works with all the skill, care and diligence reasonably expected from a competent and appropriately qualified company experienced in providing works of a similar scope, complexity, purpose and size to the Construction Works.
  3. Within fifteen (15) Business Days of Effective Date, ESCO shall submit the documents listed in Schedule 17 *(List of Required Documents)* tothe Customer*.*
  4. The ESCO shall ensure that all key personnel nominated in Schedule 14 *(ESCO’s Proposal)* are directly engaged in the performance of the works in the nominated roles. The ESCO must obtain written approval from the Customer in case key personnel in nominated roles are to be changed. Such approval will not to be unreasonably withheld, provided the Customer is satisfied that the qualifications, experience and other relevant attributes of the proposed alternative personnel are at least equivalent to the nominated key personnel.
  5. The ESCO shall submit shop drawings for the relevant part of the Premises where Equipment will be installed and obtain approval from the Customer prior to proceeding with implementation. The Customer shall provide feedback on drawing submittals within fourteen (14) Business Days after receipt of drawings on each occasion. If the Customer does not accept ESCO’s shop drawings submittals within fourteen (14) Business Days, ESCO shall issue a reminder notice to the Customer, requesting such acceptance or feedback. If the Customer does not accept ESCO's shop drawings submittals within seven (7) Business Days of receipt of the reminder notice, the shop drawings submittal shall be deemed to have been rejected by the Customer. Approval by the Customer shall not relieve the ESCO of any of his duties and/or obligations and responsibility. If the shop drawings are rejected by the Customer within aforesaid timeline, the ESCO shall incorporate all comments made by the Customer and re-submit the revised shop drawings for the Customer’s review and this process shall continue until the Customer approves the shop drawings.
  6. The ESCO shall submit material submittals for the Equipment to the Customer for review and approval and shall not proceed with actual implementation before having received written approval by the Customer in accordance with the process described in clause 10.5.
  7. If requested by the Customer, the ESCO shall provide the following information for materials procured by the ESCO: proof of placement of order, quantities, estimated completion date of production, certificate of function test, shipment date, details of shipment vessel and expected arrival date.
  8. The ESCO shall make all arrangement to facilitate access to ESCO stores and workshop for the Customer.
  9. Prior to delivery of any materials, equipment or parts to the Premises, the ESCO shall submit to the Customer a detailed list including all the specifications of the consignment being shipped for review. The Customer shall provide its feedback on the provided list within ten (10) Business Days, for ESCO to proceed with the delivery accordingly.
  10. All ESCO material shall be properly stored and protected by the ESCO at its own expense in accordance with the original equipment manufacturer recommendations and to the satisfaction of the Customer. Any material or piece of equipment which is found to be defective, and / or not complying with the specifications shall be removed at the ESCO’s expense.
  11. During the performance of the Works the ESCO shall ensure that:

1. it complies with Good Industry Practices;
2. it completes the Works in accordance with the requirements of this Contract;
3. the Works are performed by competent and appropriately qualified personnel;
4. it will promptly remove any debris or rubbish at the Premises arising from the performance of the Works;
5. it complies with any health and safety policies and procedures imposed by the Customer at the Premises; and
6. it complies with all applicable Laws and applicable statutory codes, guidelines and regulations.
   1. The ESCO shall be responsible for performing or procuring to perform the Works to be executed under this Contract. The ESCO shall be responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Works under this Contract.
   2. The ESCO shall pay for all labour, materials, equipment, tools, construction equipment and machinery, fuel, consumables, transportation and other facilities and services necessary for the proper execution and completion of the Works.
   3. The ESCO shall schedule its onsite works to conform with hours of operations acceptable to the Customer and / or Tenant. If the Customer instructs the ESCO to carry out construction activities outside the Business Hours, ESCO shall use its reasonable endeavours to abide by the same, at no additional cost to the Customer.
   4. The ESCO shall perform the Works in such a manner so as not to harm the structural integrity of the Premises or its operating systems and to conform to the standards set out in Schedule 8 (*Standards & Specifications*). The ESCO shall repair or the Customer for repairs (at the Customer’s discretion), and restore to its original condition any damage to the Premises caused by the ESCO (or its Sub-Contractors, agents, representatives or other parties it has permitted on the Premises), at the ESCO's cost and expense.
   5. The ESCO may, without additional compensation and upon the Customer’s approval, work overtime as required or as directed by the Customer to recover any delays in the schedule of works caused by the ESCO. The ESCO shall compensate the Customer for any expenses incurred by the Customer to facilitate approved overtime works.
   6. Any work forming part of the Works performed by the ESCO prior to the date of this Contract shall be treated as having been performed under the terms and conditions of this Contract and the Parties shall be bound accordingly.
   7. Bonds and securities
7. Performance Bond

The ESCO shall, within ten (10) Business Days of the Effective Date furnish to the Customer, an irrevocable and unconditional bank guarantee from a first class bank satisfactory to the Customer in accordance with performance bond (the “Performance Bond”) form set out in Schedule 18 *(Forms of Project Bonds)* for an amount equal to 10% of Total Construction Price (set out in Schedule 4 (*Contract Price and Payment Schedule*)). The Performance Bond shall remain valid throughout the whole Contract duration.

***Operations Phase***

* 1. Upon receipt of the Construction Completion Certificate (partial or full) pursuant to clause 18, the ESCO shall service and maintain the Equipment in accordance provisions set out in the Schedule 10 *(ESCO's Maintenance Obligations)*. The consideration payable to ESCO for such work shall be included in the in Schedule 4 (*Contract Price and Payment Schedule*). For the avoidance of doubt, partial Construction Completion Certificates shall only be applicable in relation to Premises where all the Works have been completed, as opposed to parts of Premises or ECMs across several Premises being completed.
  2. ESCO shall have no liability to the Customer for any interruption to the energy supply to the Premises where such interruption of supply is due to any event outside of ESCO's control.
  3. ESCO shall carry out or procure the carrying out of the measurement and verification works set out in Schedule 14 *(ESCO’s Proposal)* and Schedule 7 *(Energy Saving Measurement and Verification Plan)* in accordance with the terms of the Contract. The consideration payable to ESCO for such work shall be included in the in Schedule 4 (*Contract Price and Payment Schedule*).
  4. ESCO shall comply with its Energy Savings obligations specified in clause 22 of this Contract.
  5. In the event that the Customer becomes aware of any defect in the performance of the ESCO's Work, the Customer shall notify the ESCO in writing of such defective performance. Upon receiving such notice, the ESCO shall rectify such defective Work as soon as is reasonably possible, and in any event within three (3) Business Days or such time as specified in Schedule 10 *(ESCO's Maintenance Obligations)*, and shall notify the Customer in writing of the remedial action it has undertaken. If the ESCO fails to complete rectification works within three (3) Business Days of receiving written notice from the Customer, the Customer may itself, or engage another third party to, perform such rectification work at the ESCO's expense, which shall be a debt due and payable by the ESCO upon written demand from the Customer.
  6. The ESCO shall be fully responsible for replacing and installing any Equipment at its own cost for the duration of the Contract in accordance with clause 3.
  7. If any dispute arises between the Parties in respect of the issue of the replacement of Equipment according to clause 10.24, the matter shall be referred for resolution in accordance with clause 33.
  8. The ESCO represents and warrants to the Customer that all items of Equipment not meeting the required performance levels as specified in Schedule 8 *(Standards & Specifications)* shall be replaced with new Equipment without any additional cost to the Customer.

1. EQUIPMENT

***Risk and Title***

* 1. The ESCO shall maintain ownership of all Equipment supplied under this Contract and other property brought onto the Premises by the ESCO for the purposes of this Contract and title in the Equipment shall only pass in accordance with clause 11.2 and 11.3.
  2. Title to the Equipment shall be passed to the Customer upon their installation at the Premises.
  3. Upon transmission of the Title of the Equipment, the ESCO shall provide the Customer with all warranties, drawings, plans, instruction manuals, manuals and other documents procured under or in connection with the Works as may be required by the Customer to use the Equipment.
  4. Until title passes to the Customer in accordance with clause 11.2, the Customer shall not remove the Equipment from the Premises and shall ensure the Equipment is not damaged and no serial numbers, name plates or other means of identification are removed or obscured. The Customer shall be liable for any such removal or damage to the Equipment during this period and any remedial or repair costs incurred by the ESCO arising from a breach by the Customer of this clause shall be charged on a cost reimbursable basis to the Customer. Such payments shall be due within forty-five (45) Business Days of the ESCO sending the Customer a written demand for payment.
  5. Notwithstanding that any Equipment may have been affixed to the Premises, until title in the Equipment passes to the Customer in accordance with clause 11.2, the ESCO shall be entitled to remove any Equipment from the Premises at any time, provided that the ESCO shall only exercise such right where the Customer is in default of its obligations to pay the ESCO in accordance with this Contract and after giving the Customer at least forty-five (45) Business Days written notice of its failure to make payment and the ESCO's intention to remove the Equipment from the Premises.
  6. Risk in the Equipment shall pass to the Customer upon issuance of Construction Completion Certificate to the ESCO in accordance with clause 18.
  7. The ESCO shall assign to the Customer any and all manufacturer warranties relating to the Equipment (including warranties relating to spare parts used and installed when repair is necessitated by malfunction) as soon as is reasonably practicable upon title in the Equipment passing to the Customer in accordance with clause 11.2.
  8. If any defect or fault occurs in the Equipment during the Contract Period, the Customer hereby grants the ESCO authority to make all necessary manufacturer warranty claims in relation to the Equipment on behalf of the Customer in order to rectify or replace the defective Equipment.

***Equipment Warranties***

* 1. The ESCO warrants to the Customer that all Equipment and materials provided under this Contract (including any replacement Equipment under clause 11.15) shall be:

1. new, unless otherwise specified in or permitted by this Contract;
2. of good and merchantable quality;
3. free from defects;
4. installed properly in a good and workmanlike manner; and
5. in compliance with the requirements of this Contract.
   1. The supplied products and their accessories shall carry a warranty for the entire contract duration:
6. The warranty will take effect from the date of issuance of the commissioning report.
7. Any replacement of product or their accessories required during the warranty period will be free of cost to the Customer.
8. When a defect is noticed during the period of warranty, by official notification by the Customer or observation by the ESCO, the ESCO must rectify the defect with no claims or compensation and this cost shall be part of the service and maintenance proposal.
   1. The warranties provided by the ESCO in clause 11.10 shall not apply to the extent that the Equipment is damaged or becomes defective in circumstances where:
9. The Customer, their employees, contractors (other than ESCO), agents, representatives, Tenants or third parties damage the Equipment;
10. modifications are made to the Equipment by the Customer, their employees, contractors (other than ESCO), agents, representatives or Tenants, which have not been authorised by the ESCO in writing; or
11. The Customer fails to operate or maintain the Equipment in accordance with Schedule 9 (*The Customer’s Operation and (if applicable) Maintenance Obligations*).
    1. The ESCO shall be fully responsible for replacing and installing any replacement Equipment at its own cost in circumstances where it has failed to discharge the warranties set out in clause 11.10.

***Availability of Equipment***

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

***Modification, Upgrade or Alteration of Equipment***

* 1. During the Contract Period, the Customer shall not, without the ESCO's prior written approval which shall not be unreasonably withheld or delayed, affix or install any accessory, equipment or device on any of the Equipment if such addition or change will impact or impair the originally intended functions, value or use of the Equipment, or make it non performing in any way. Notwithstanding the foregoing, the Customer may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify the ESCO before taking any such actions. In the event of such an emergency, the Customer shall take all reasonable steps to protect the Equipment from damage.
  2. The ESCO shall at all times have the right, subject to obtaining the Customer’s prior written approval which shall not be unreasonably withheld or delayed, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that:

1. the ESCO complies with the standards of comfort and specifications set out in Schedule 8 (*Standards & Specifications*);
2. such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the Guaranteed Energy Savings; and
3. any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be solely for the account of the ESCO.
   1. The ESCO shall have the right to update any and all software to be used in connection with the Equipment in accordance with the intellectual property obligations set out in clause 26.
   2. All replacements of and alterations or additions to the Equipment shall become part of the Equipment set out in Schedule 14 (*ESCO’s Proposal*) and the terms of this Contract shall apply with respect to the quality, installation and operation of such replacement, alteration or additions to the Equipment.

***Emergencies***

* 1. The Customer shall use its best efforts to notify the ESCO within three (3) Business Days upon becoming aware of the occurrence of:

1. any malfunction in the operation of the Equipment or any Existing Equipment that might materially impact upon the Guaranteed Energy Savings;
2. any interruption or alteration to the energy supply to the System; or
3. any alteration or modification in any energy related equipment or its operation.
   1. Any notice provided by the Customer to the ESCO in accordance with clause 11.18 which is not in writing shall be confirmed by the Customer in writing within three (3) Business Days of the notice provided under clause 11.18.
   2. The ESCO shall respond to any emergency notification provided by the Customer in accordance with clause 11.18 within a reasonable time and thereafter shall promptly proceed with corrective measures.
   3. If the Customer fails to notify the ESCO of the emergency or malfunction event within a reasonable time in accordance with clause 11.18 due to which the ESCO was not able to remedy the malfunction, the ESCO will have no liability under this Contract for any resulting reduction in Guaranteed Energy Savings for the period of delay in notification pursuant to clause 11.18.
   4. The ESCO shall maintain a written record of all service and maintenance Works it has performed at the Premises. This record shall indicate the reasons for the service and maintenance, description of the problem and corrective action taken. The ESCO shall ensure that this record is available for inspection by the Customer at all reasonable times and shall provide the Customer with a copy of the record upon receiving a written request from the Customer.

***Handover on Contract Expiry***

* 1. Within ninety (90) Days of the expiry of the Contract Period, and provided that the Contract Price has been paid in full, the ESCO shall:

1. demobilise from the Premises and leave the Premises in a clean and tidy manner;
2. hand over the Equipment in a condition which can be regarded as secure and operative taking account of normal wear and tear. The condition of the Equipment shall be comparable to the condition which is generally to be expected in the case of comparable services, comparative service lives and proper maintenance in accordance with Schedule 10 *(ESCO's Maintenance Obligations)*; and
3. upon completion of installation and all Construction Works, provide the Customer with all warranties, drawings, plans, instruction manuals, and other documents procured under or in connection with the Works as may be reasonably requested in writing by the Customer for the purpose of use of the Equipment.

***Obsolete Equipment***

* 1. All Obsolete Equipment installed at the Premises, which shall be replaced by new equipment by the ESCO, shall remain property of the Customer.
  2. The ESCO shall be responsible to place the Obsolete Equipment in a storage area in Ras Al Khaimah (UAE) provided and specified by the Customer*.*
  3. The ESCO shall ensure that care is exercised during removal and handling of Obsolete Equipment. Any damages to the Obsolete Equipment, caused by ESCO’s negligence, shall be reimbursed to the Customer by the ESCO.
  4. The ESCO shall advise the Customer in writing and with supporting particulars if any of the Customer’s Obsolete Equipment needs to be replaced or removed from the Premises at any time.
  5. The ESCO shall maintain a register of all Obsolete Equipment removed and placed at the Customer provided storage area, and submit the same to the Customer.
  6. Within ten (10) Business Days of receiving the Construction Completion Certificate from the Customer, the ESCO shall provide the Customer with a final register of Obsolete Equipment removed or replaced at the Premises.
  7. The Customer shall within thirty (30) Business Days of receiving the register of such Obsolete Equipment instruct the ESCO in writing to return the Obsolete Equipment to the Customer if so directed by the Customer in writing.
  8. If the Customer fails to provide an instruction in accordance with clause 11.30, the ESCO shall provide the Customer with a notice reminding the Customer of its failure to do so. If within ten (10) Business Days of this reminder notice the Customer still has not provided the ESCO with an instruction to return the Obsolete Equipment, the ESCO shall store the Obsolete Equipment for a period not exceeding one calendar year. Reasonable storage expenses shall be on account of the Customer and ESCO shall notify the Customer of its estimation of such expenses not later than ten (10) Business Days after placing the Obsolete Equipment in storage. At the expiration of the one year period, the Customer shall be deemed to have instructed the ESCO to return the Obsolete Equipment.
  9. The ESCO shall store Obsolete Equipment removed from the Premises at the Customer’s cost until it receives, or is deemed to have received, instructions from the Customer to return the Obsolete Equipment.

1. TRAINING
   1. The ESCO shall conduct the training programme as set out in Schedule 14 (*ESCO’s Proposal*).
2. THE CUSTOMER’S GENERAL PERFORMANCE OBLIGATIONS
   1. The Customer shall continue throughout the Contract Period to provide the ESCO with all Information reasonably required by the ESCO to discharge its obligations under this Contract and shall provide timely feedback on the ESCO’s submittals and approval requests. Notwithstanding any approval given by the Customer under this Contract, for any reason, the ESCO acknowledges and accepts that such approval shall not be deemed (a) an acceptance of risk based on a technical review of the submitted request for approval; or (b) as a release of the ESCO from its duties, obligations and/or liabilities under this Contract, but rather such approval shall be construed as a consent to the ESCO to proceed with its proposed course of action, in reliance on the ESCO’s superior technical knowledge of the subject matter.
   2. The Customer acknowledges that a failure to provide complete, accurate and true Information to the ESCO could affect the ESCO's ability to discharge its obligations or exercise its rights under this Contract and the Customer warrants that, as far as it is reasonably aware, the Information provided from time to time to the ESCO under this Contract is true, correct, accurate and complete.
   3. The Customer agrees to maintain the Premises in good repair and to protect and preserve all portions thereof which may in any way affect the Operations Period Works.
   4. The Customer shall, upon receiving a written request from the ESCO, within reasonable times arrange for the temporary shut down of facilities at the Premises as may be reasonably required by the ESCO for the performance of the Works.
   5. The Customer shall comply with the methods and procedures for operation designed for energy conservation by the ESCO as identified in Schedule 14 (*ESCO’s Proposal*) and all methods and procedures shall be implemented and followed by the Customer on a regular and continuous basis.
   6. If applicable, the Customer shall perform the maintenance and service obligations in respect of the Equipment set forth in Schedule 9 (*The Customer’s Operation and (if applicable) Maintenance Obligations*).

1. EXTENSIONS OF TIME
   1. Subject to clause ‎14.2 and 14.3, the ESCO shall be entitled to an extension of time to the proposed Construction Completion Date and any relevant Milestone Dates if and to the extent that it is critically delayed (based on a time impact analysis based on the critical path method) in carrying out and completing its obligations resulting in a delay to the Construction Completion date under this Contract in the following circumstances:
      1. a variation has been agreed in accordance with clause ‎17;
      2. a cause of delay giving an express entitlement to an extension of time pursuant to:
         1. clause ‎19.4 (Hazardous Materials);
         2. clause 18.10 (Testing and Commissioning and Construction Completion Certificate);
         3. clause 29.2 (Force Majeure);
         4. clause 30.4 (Suspension);
         5. exceptionally adverse climatic conditions; or
         6. any delay, impediment or prevention caused by or attributable to the Customer, their agents, representatives or other contractors employed by the Customer.

In the circumstances described above, the Construction Completion Date and any applicable Milestone Dates shall be adjusted equitably by the Parties to take into account the ability of the ESCO to reschedule its activities to minimise the delay and the effect of such delay on the ability of the ESCO to achieve the relevant Milestone Date or Construction Completion Date by the schedule date therefor.

* 1. The ESCO's extension of time entitlement set out in clause ‎14.1 shall be subject to the ESCO providing the Customer with notice of the delay event immediately upon becoming aware of the delay event and in any event not later than five (5) Business Days after becoming aware of the delay event. The ESCO's notice shall at a minimum specify:
     1. the delay event;
     2. the reason for the delay or likely delay to the performance of the Construction Works; and
     3. an estimate of the likely effect of the delay on the Construction Works.
  2. Upon issuance of delay notice, the ESCO shall keep such contemporary records as may be necessary to substantiate claim for extension of time. The ESCO shall submit a fully detailed extension of time claim which includes full supporting particulars of the basis of claim not later than twenty-one (21) business days after delay notice issuance to the Customer with following information at a minimum:
     1. the material circumstances or causes of the delay event which gave rise to the delay;
     2. the corrective action undertaken by the ESCO to minimize the delay;
     3. the effect of the delay on its Programme and the extension of time requested; and
     4. supporting documentation to substantiate the ESCO's claim and such further information as may reasonably be requested by the Customer.
  3. The ESCO shall take all reasonable steps to mitigate the consequences of any delay which is the subject of a notice pursuant to clause ‎14.2, provided however that any mitigation measures the ESCO takes shall not in any way relieve the ESCO of its obligations to continue with the performance of the Construction Works which are unaffected by the delay event or which could reasonably have been performed.
  4. The Parties agree that the ESCO shall have no right to claim an extension of time in the event that it does not comply with its notice and detailed substantiation submission obligations set out in clause ‎14.2 and clause 14.3.
  5. The ESCO shall not be entitled to claim an extension of time in respect of any event or period of delay:
     1. which does not cause a critical delay to the Construction Completion Date or any relevant Milestone Dates;
     2. caused or materially contributed to by any negligent act or omission, breach of Contract or other default on the part of the ESCO, its Sub-Contractors or any of their respective employees, agents or representatives; or
     3. which the ESCO has not taken all reasonable steps to avoid or mitigate without diverging from the requirements of this Contract.
  6. If the ESCO disputes the Customer’s determination to its extension of time request, the dispute shall be resolved in accordance with the dispute resolution regime set out in clause 33.

1. DELAY DAMAGES
   1. If the ESCO fails to obtain a Construction Completion Certificate by the Construction Completion Date, the ESCO shall be liable to pay the Customer the sum specified in Schedule 13 (*Delay Damages*) for each Day of delay. The Parties agree that the delay damages identified in Schedule 13 (*Delay Damages*) are not a penalty but are a fair and reasonable amount of actual damages and loss the Customer would suffer as a result of the ESCO failing to obtain the Construction Completion Certificate by the Construction Completion Date.
   2. The total amount of delay damages payable by the ESCO to the Customer under this Contract shall not exceed ten per cent (10%) of the Contract Price.
   3. The delay damages payable by the ESCO pursuant to this clause ‎15 shall be the only damages due from the ESCO for such delay, other than in the event of termination of this Contract by the Customer in accordance with the terms of this Contract.
   4. The Customer may either:
      1. deduct any delay damages payable by the ESCO to the Customer under this Contract from any payments due or to become due to the ESCO under this Contract; or
      2. issue a demand in writing requesting payment of the delay damages payable within twenty (20) calendar days of the date of such demand.
   5. If the ESCO disputes any delay damages levied by the Customer under this clause ‎15, the dispute shall be resolved in accordance with the dispute resolution regime set out in clause 33. Any delay damages levied by the Customer on the ESCO shall not relieve the ESCO from the continued performance of its obligations under this Contract.
2. REPORTING
   1. The Customer shall grant the ESCO a right once a month (at a minimum), upon receiving reasonable prior written notice, to inspect the Premises to determine if the Customer is complying with its obligations as set out in this Contract. The Customer’s compliance shall be measured in accordance with the checklist provided in Schedule 7 (*Energy Saving Measurement and Verification Plan*) as completed and recorded by the ESCO during its inspections. The Customer shall have the right to witness such inspections carried out by the ESCO and shall be provided with a copy of the completed Facility Management Checklist upon completion by the ESCO.
   2. The ESCO shall at all times seek to minimize interference with the Customer’s operations or Tenant's use of the Premises during any monthly inspections carried out by the ESCO in accordance with clause ‎16.1.
   3. The ESCO shall notify the Customer within two (2) Business Days of inspection of any non-compliance of the Customer to its Contract obligations according to clause ‎16.1 and provide to the Customer the expected impact on the Guaranteed Energy Savings.
   4. The Customer shall respond to any non-compliance notification provided by the ESCO in accordance with clause ‎16.3 within a reasonable time and thereafter shall promptly proceed with corrective measures.
   5. If the Customer fails to proceed with corrective measures in accordance with clause 16.4 within seven (7) Business Days of receipt of ESCO’s notification pursuant to clause 16.3, the ESCO will have no liability under this Contract for any resulting reduction in Guaranteed Energy Savings.

1. VARIATIONS
   1. Any variation to this Contract shall only be valid if it is agreed in writing and signed by the authorised representatives of the Parties. A variation to this Contract may include the addition or omission of the Works, with any omission of the Works limited to a maximum of ten per cent (10%) of the Contract Price.
   2. The Customer may issue a written request to the ESCO, during the Construction Period only, for a variation to this Contract in accordance with the terms of this clause ("Variation Request").
   3. The ESCO shall provide the Customer with a Cost Proposal within ten (10) Business Days of receiving the Variation Request or such longer time as may be agreed by the Parties in writing. The ESCO's Cost Proposal shall include the following information at a minimum:
2. any delays to the Construction Completion Date;
3. a detailed breakdown of the cost implications (being either cost increases or decreases);
4. the impact on this Contract, including the effect on the Total Guaranteed Energy Savings;
5. Validity date of Cost Proposal; and
6. any other information reasonably requested by the Customer.
   1. Within twenty-five (25) Business Days of receiving the Cost Proposal the Customer shall assess whether to instruct the ESCO to perform the Variation Request (in whole or in part) or to withdraw the Variation Request. The ESCO shall ensure that it is available to meet with the Customer at all reasonable times to discuss the Variation Request and its Cost Proposal. The ESCO shall also ensure that it continues to perform all its obligations under this Contract irrespective of any Variation Request, unless so instructed by the Customer in writing.
   2. If, following the receipt of the ESCO Cost Proposal, the Customer instructs the ESCO to proceed with the Variation Request, the Parties shall record the variation in writing pursuant to a change order. The ESCO shall commence implementing any variation that has been agreed by the Parties and recorded in a change order in accordance with the terms of this clause without delay.
7. TESTING AND COMMISSIONING AND CONSTRUCTION COMPLETION CERTIFICATE
   1. Within the Construction Period, the ESCO shall conduct a thorough and systematic performance test of each ECM (“Test on Completion”) in accordance with the procedures set out in Schedule 14 (*ESCO’s Proposal*) or as otherwise agreed by the Parties in writing. The testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if the Equipment is functioning properly.
   2. The ESCO shall make all requisite arrangements and provide all apparatus, assistance, documents and other information, equipment, instruments, labour, materials, and suitably qualified and experienced staff, etc. as are necessary to carry out the testing and commissioning in accordance with the approved method statement.
   3. The Customer (and/or appointed third-parties) will attend the testing and commissioning to ensure they are carried out as per the approved method statement.
   4. The ESCO shall give to the Customer not less than ten (10) Business Days notice of the date after which the ESCO shall be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within fifteen (15) Business Days after this date, on such day or days as the Customer shall instruct.
   5. If the works fail to pass the tests on completion, the ESCO shall remedy the defects, and shall repeat the testing under the same terms and conditions of this clause 18. If the rejection and retesting causes the Customer to incur additional costs, the ESCO shall be obligated to compensate the Customer for such reasonable costs.
   6. Upon successfully passing the testing and commissioning requirements in Schedule 14 (*ESCO’s Proposal*) and approved method statement, the ESCO shall provide the Customer with:
8. a written report on the testing and commissioning of the Equipment and all testing documentation (including testing and commissioning certificates signed off by the authorized Customer’s representatives);
9. reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in Schedule 14 *(ESCO’s Proposal);*
10. the operations manuals for the Equipment installed; and
11. the register of all Obsolete Equipment removed and placed at the Customer provided storage space.
    1. Upon submission of all the required documents under clause 18.6, the ESCO may request the Customer to issue a Construction Completion Certificate in respect of the Construction Works. The Customer, within fourteen (14) Business Days of delivery of such request, shall either;
12. issue to the ESCO, a Construction Completion Certificate stating the date on which, the Construction Works were substantially completed in accordance with the Contract; or
13. give instructions in writing to the ESCO specifying all defects which are required to be rectified by the ESCO before the Construction Completion Certificate can be issued.
    1. Similarly, in accordance with the procedure set out in clause 18.7, the ESCO may request the Customer to issue a partial Construction Completion Certificate in respect of:
14. Any section in respect of which a separate completion time is specified in the approved Programme; or
15. Any part of the Construction Works which has been both completed to the satisfaction of the Customer and is occupied or used by the Customer or the Tenants.
    1. If any dispute arises between the Parties in respect of the issue of the Construction Completion Certificate, the matter shall be resolved in accordance with clause 33.
    2. If the testing and commissioning to be performed by the ESCO under this clause 18 is delayed by the Customer or Tenants, the ESCO shall be entitled to an extension of time in accordance with clause ‎14.
16. HAZARDOUS MATERIALS
    1. In the event that either the ESCO or the Customer discovers Hazardous Material at the Premises that is affecting or will affect the Works, it shall immediately notify the other Party in writing and the ESCO may suspend the relevant portion of the Works that is affected by the Hazardous Material and demobilise from that part of the Premises.
    2. The Customer shall be responsible and liable for the storage, handling, use, transportation, treatment, disposal, discharge, leakage, detection, removal or containment of any Hazardous Materials existing onsite or brought onsite by the Customer at its expense and the ESCO shall not be obliged to undertake any further Works on the Premises until notified by the Customer in writing that the Hazardous Materials have been removed from the Premises and it is safe for the ESCO to proceed with the Works.
    3. The ESCO shall be liable for any response, removal, cleanup, or other remedial action required under this Contract or by any applicable Law in respect of any Hazardous Material brought onto the Premises by the ESCO, its employees, Sub-Contractors, agents, representatives or any party for whom they may be liable.
    4. During the Construction Period, in the event that the Construction Works are suspended due to the discovery of Hazardous Materials at the Premises in accordance with this clause ‎19, the ESCO shall be entitled to an extension of time in accordance with clause ‎14, unless ESCO is responsible for bringing the Hazardous Material as mentioned in clause 19.3.
17. notice of parameter CHANGES

The Customer shall use its best endeavours to provide the ESCO with written notice identifying all actual or proposed Parameter Changes at least seven (7) Business Days before any actual or proposed Parameter Change is implemented or occurs. Notice to the ESCO of Parameter Changes which result because of a bona fide emergency or other situation which prevents advanced notification shall be deemed to be sufficient if the Customer provides such notice within twenty four (24) hours after having actual knowledge that the event constituting the Parameter Change occurred or was discovered by the Customer to have occurred.

1. STANDARDS OF COMFORT

During the Contract Period, the ESCO shall maintain according to Schedule 10 (*ESCO's Maintenance Obligations*) the Equipment in a manner that shall provide the standards of comfort and levels of operation described in Schedule 8 (*Standards & Specifications*).

The Guaranteed Energy Savings provided in Schedule 15 *(Guaranteed Energy Savings)* have been established based on Standards of Comfort set out in Schedule 8 *(Standards & Specifications).* In circumstances where Standards of Comfort have to be changed (based on the Customer’s request), the Guaranteed Energy Savings shall be adjusted in accordance with Schedule 7 *(Energy Savings Measurement and Verification Plan)*.

1. ENERGY SAVINGS
   1. The Parties agree that the ESCO shall not in any circumstances be at risk for any increased costs incurred by the Customer, (or its Tenants) as a result of any changes to the tariff or charges payable for energy consumption, as may be imposed by the Federal Electricity and Water Authority (FEWA) or the relevant utility company or supplier from time to time. For the avoidance of doubt, the Energy Savings will be calculated based on the fixed tariff rates for energy consumption specified in Schedule 6 (*Baseline Energy Consumption and Baseline Unit Rates*), notwithstanding any subsequent increase in those rates during the Contract Period.
   2. The Energy Savings Guarantee is set out in Schedule 15 *(Guaranteed Energy Savings)* in annual increments during the Operations Period (each year during the Operations Period, a Guarantee Year).
   3. The ESCO hereby agrees and guarantees that it shall deliver the Guaranteed Energy Savings set out in Schedule 15 *(Guaranteed Energy Savings)* for each Guarantee Year.
   4. Within twenty (20) Business Days after the end of each quarter of the Guarantee Year, or as specified in the Schedule 7 *(Energy Savings Measurement and Verification Plan)*, the ESCO shall send an M&V report to the Customer detailing the Energy Savings for that period of the Guarantee Year and if applicable, at the end of the fourth quarter of each relevant Guarantee Year, a statement of the amount due to the Customer by the ESCO in accordance with clause ‎22.6. M&V reports and statements are subject to validation by the Customer.
   5. If the Energy Savings for a Guarantee Year exceeds the Guaranteed Energy Savings for that Guarantee Year, the excess will be rolled forward to meet all or part of any shortfall in Energy Savings in the next or in any subsequent Guarantee Year.
   6. If, based on the M&V report prepared pursuant to clause 22.4, Energy Savings for a Guarantee Year (including any excess Energy Savings for an earlier Guarantee Year applied in accordance with clause ‎22.5) are less than the Guaranteed Energy Savings for that Guarantee Year as set forth in clause ‎22.3, the ESCO shall pay to the Customer an amount that is equivalent to the amount by which the Energy Saving have fallen short of the Guaranteed Energy Savings for the Guarantee Year.
   7. No other claims, promises or other indications of savings as communicated by the ESCO to the Customer or its employees, agents or representatives, either verbally or in writing, at any time shall be guaranteed or binding in any way on the ESCO, unless this guarantee is the subject to a written agreement between the authorised representatives of the Parties.
   8. Any dispute arising in relation to this clause shall be resolved in accordance with the dispute resolution regime provided for in clause 33 of this Contract.
   9. For the avoidance of doubt, all Energy Savings should be for the account of the Customer and the ESCO shall have no entitlement to or interest in any Energy Savings.
2. PAYMENTS
   1. In consideration of the ESCO carrying out the Works, the Customer shall pay the ESCO, in the manner and at the times specified in this Contract, the Contract Price.
   2. The Contract Price may be adjusted only in accordance with the terms of this Contract.
   3. The services performed during the Contract Period shall be paid according to the progress of the work as presented by the ESCO and approved by the Customer.
   4. Following receipt of the progress report described in clause 23.3, the Customer shall pay the ESCO the Contract Price in accordance with Schedule 4 (*Contract Price and Payment Schedule*).
   5. For all payments under this Contract, the Customer shall issue a Payment Certificate to the ESCO within fifteen (15) Business Days of receipt of a Payment Application from the ESCO certifying the amounts claimed, after which the ESCO can issue the invoice.
   6. The Customer shall pay the ESCO the certified amount (referred to in the Payment Certificate) within forty-five (45) Business Days of Payment Certificate issuance subject to clause 23.13.
   7. The ESCO shall provide monthly-completed lien waivers and affidavits, in forms satisfactory to the Customer. ESCO’s monthly payment processing shall be conditional upon receipt by the Customer, by the 22nd day of each month, of the ESCO’s Payment Application that shall include lien, waiver, affidavits, warranties, guarantees, delivery notes, inspection approvals or other documents reasonably requested by the Customer. In the event the ESCO fails to submit to the Customer its Payment Application by the aforesaid date, the Customer may, at its sole discretion, decline to process any Payment Application by the ESCO during that month and the delayed Payment Application will be processed in the following month.
   8. In any case, the ESCO shall not invoice the Customer more than once a month.
   9. Subject to clause 23.11, the ESCO shall be liable to pay any applicable taxes, duties and fees arising from or in connection with the performance of this Contract and the Contract Price shall not be adjusted for any of these costs, except as may be provided for in this Contract
   10. During the Construction Period, the Customer will retain 10% of the value of each payment made by the Customer in accordance with this clause 23. Such amounts retained during the Construction Period will be released after the first Guarantee Year as part of the contract, provided that any and all defects to the Construction Works have been remedied by the ESCO in a timely manner to the satisfaction of the Customer, and provided that Guaranteed Energy Savings of the respective Guarantee Year have been met. If these conditions have not been met, the Customer will have the right to use the retained amount to correct any defects that will not have been dealt with by the ESCO to its satisfaction, and to compensate the Customer for any shortfalls of the ESCO with regard to its Guarantee Energy Savings obligations during the Contract period.
   11. All payments to be made by a Party to the other Party under this Contract shall be:
3. paid by 4.00 pm (Emirate of Ras Al Khaimah time) on the date the payment is due;
4. in immediately available funds and (except as permitted under the express terms of this Contract) without set-off, abatement, counterclaims, conditions or, unless so required by Law, deductions or withholdings;
5. by way of electronic funds transfer to the bank account nominated by that Party in writing; and
6. in UAE Dirhams.
   1. If there is any dispute about any amount invoiced by the ESCO pursuant to a Payment Application, the undisputed amount of the Payment Application shall be paid in accordance with this clause 23 and the Customer shall promptly notify the ESCO of the disputed amount and the reasons for the dispute. The dispute shall be resolved in accordance with clause 33.
   2. Notwithstanding any other provision of this Contract, no amount shall be due and payable to the ESCO until:
7. the ESCO furnishes valid and enforceable Performance Guarantee Bond in accordance with clause 10.18; and
8. the ESCO provides copies of valid policies of insurance in accordance with clause 27.

1. LIMITATION OF LIABILITIES
   1. Subject to clause 24.2 and clause 24.3, the aggregate liability of the ESCO to the Customer arising out of or in connection with this Contract shall not exceed and shall be limited to the Contract Price.
   2. The ESCO's limitation of liabilities referred to in clause 24.1 shall not apply to liabilities directly arising from:
2. the ESCO's fraudulent or wilful default or illegal acts;
3. personal injury or death arising out of a negligent act or omission or failure by the ESCO to comply with its obligations under this Contract; or
4. the ESCO's liability to indemnify the Customer in relation to claims resulting from any breach of Intellectual Property Rights by the ESCO.
   1. Any liability of the ESCO:
5. to the Customer for which the ESCO receives proceeds under an insurance policy in satisfaction of an insured event out of which such liability arose, or liability that would have been met by insurance proceeds but where insurance proceeds are not available due to the ESCO's failure to comply with its obligations under clause 27; and
6. the costs incurred by the ESCO in complying with its defect rectification obligations under this Contract;

shall not be considered as part of the ESCO's limitation of liabilities referred to in clause 24.1.

* 1. Except as provided for in clause 24.2, neither Party shall be liable to the other Party for any Indirect Losses arising under or in connection with this Contract, whether such liability arises in contract, for negligence, strict liability, for breach or otherwise.

1. INDEMNITIES
   1. The ESCOshall be responsible for and shall save, indemnify, defend and hold harmless the Customer from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities in respect of:
2. loss of or damage to the property of the Customer, Tenants or any third party, whether owned, leased or otherwise obtained under arrangement with financial institutions or provided by the Customer, to the extent that such loss or damage is caused by the ESCO's negligence or breach of this Contract or duty (whether legal or otherwise) or the ESCO's illegal or wilful misconduct;
3. personal injury including death, illness or disease to the extent that any such injury is caused by the ESCO's negligence or breach of this Contract or duty (whether legal or otherwise) or the ESCO's illegal or wilful misconduct;
4. any failure to effect or maintain the insurances required under clause 27 or any act or omission by the ESCO, which invalidates any such insurances or prevents a claim from being made under such insurance policy; and
5. any infringement or alleged infringement of Intellectual Property Rights arising out of or in connection with the performance of the obligations of the ESCO under this Contract as set out in clause 26.
   1. Except as otherwise expressly provided for in this Contract, all remedies available to either Party for a breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
   2. A Party may recover a payment under an indemnity in this Contract before it makes the payment in respect of which the indemnity is given.
6. INTELLECTUAL PROPERTY
   1. Each Party shall maintain ownership of their own Intellectual Property Rights that exist prior to the Effective Date of the Contract and neither Party shall acquire any interest in the Intellectual Property Rights of the other Party by virtue of this Contract.
   2. The Parties agree that any Created Intellectual Property Rights shall automatically vest in the ESCO upon production without the need for further formality or documentation being required, so far as possible.
   3. Any drawing, designs, technical documents, know-how and confidential information whether patented or not submitted or furnished to the Customer prior or subsequent to the Effective Date of the Contract shall remain the exclusive property of the ESCO. The ESCO grants the Customer the perpetual, irrevocable, non-exclusive and non-transferable right to use the drawing, designs, technical documents, know-how and confidential information supplied, on the relevant Premises only. The grant of this right does not transfer any property or license rights, which remains in any case the property of the ESCO or its suppliers. The Customer shall not make use of any such studies, drawings, documents, know-how and information otherwise than for the purposes of the Contract, that is, operating, maintaining, adjusting, and repairing the equipment supplied. The Customer may transmit, communicate or disclose them solely to its appointed third party maintenance contractors on need to know basis.
   4. The Customer grants to the ESCO for the Contract Period a non-assignable, non-exclusive, royalty free license to use its Intellectual Property in respect of any software, documents or materials provided by the Customer to the ESCO as may be reasonably required to allow the ESCO to discharge its obligations under this Contract only and not for any other purpose. The ESCO shall not make use of any such Intellectual Property otherwise than for the purposes of the Contract and shall comply with and procure that its Sub-Contractors comply with any acceptable usage policies and party terms and conditions as may apply to such Intellectual Property. The ESCO shall not, without the prior written consent of the Customer, transmit, communicate or disclose them to any third party, either in whole or in parts.
   5. The ESCO shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in connection with the performance of this Contract.
   6. Each Party warrants to the other that it owns or is licensed to use all Intellectual Property provided or granted under this Contract and that such Intellectual Property Rights do not infringe, contravene or violate the Intellectual Property Rights of any third party.
   7. Each Party agrees to indemnify the other Party from and against all and any claims, losses, damages or costs sustained by that Party arising out of any claim by any third party in respect of a breach of the third party's Intellectual Property Rights.
7. INSURANCE
   1. The ESCO shall effect and maintain at its own cost and expense for the Contract Period insurances set out in Schedule 11 (*Insurances*) from a reputable insurance company reasonably acceptable to the Customer.
   2. Any proceeds of insurance received or receivable under insurances relating to the loss or damage of the Equipment received by either the ESCO or the Customer shall be promptly applied in the repair and reinstatement of the Equipment.
8. CONFIDENTIALITY
   1. Except to the extent set out in this clause 28, or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
9. treat the other Party's Confidential Information as confidential; and
10. not disclose the other Party's Confidential Information to any other person without the other Party's prior written consent.
    1. Clause 28.1 shall not apply to the extent that:
11. such disclosure is a requirement of Law placed upon the Party making the disclosure;
12. such information was in the possession of the Party making the disclosure without an obligation of confidentiality prior to its disclosure by the other Party;
13. such information was obtained from a third party without an obligation of confidentiality;
14. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
15. it is independently developed without access to the other Party's Confidential Information.
    1. The ESCO may only disclose the Customer 's Confidential Information to its employees, Sub-Contractors, agents, representatives and advisers involved in the provision of the Works and who need to know the information, and will ensure that such persons are aware of and comply with these confidentiality obligations.
    2. The ESCO shall not, and will procure that its employees, Sub-Contractors, agents, representatives and advisers to whom it discloses such Confidential Information do not, use the Customer’s Confidential Information otherwise than for the purposes of this Contract.
    3. The Customer may only disclose the ESCO's Confidential Information to its employees, contractors, agents, representatives and advisers involved in the receipt of the Works and management of this Contract and who need to know such information, and will ensure at all times that such persons are aware of and comply with these confidentiality obligations.
    4. Nothing in this clause 28 will prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
    5. Save as otherwise set out in this Contract, no announcement, circular, advertisement or other publicity in connection with this Contract, its subject matter or any ancillary matter will be made or issued by or on behalf of either Party (save as required by Law) without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).
    6. The Parties agree that damages will not be an adequate remedy for any breach of this clause 28.
    7. Upon completion of the Contract Period or the early termination of this Contract or upon either Party's written request, each Party shall return to or destroy the other Party's Confidential Information in its possession or control and shall delete any of the other Party’s Confidential Information held electronically.

1. FORCE MAJEURE
   1. If either Party is prevented or delayed in the performance of any of its obligations under this Contract (save for any obligation to make payment) by a Force Majeure Event, then:
2. the affected Party's obligations under this Contract shall be suspended for so long as the Force Majeure Event continues and to the extent that the affected Party is so prevented, hindered or delayed;
3. within five (5) Business Days after commencement of the Force Majeure Event the affected Party shall notify the other Party in writing of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform its obligations under this Contract;
4. the affected Party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Contract; and
5. immediately after the cessation of the Force Majeure Event the affected Party shall notify the other Party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Contract.
   1. If the ESCO is prevented from performing all or substantially all of its obligations as a result of a Force Majeure Event, it shall be entitled to an extension of time in accordance with clause ‎14.
   2. If either Party is prevented from the performance of all or substantially all of its obligations for a period exceeding one hundred and eighty (180) consecutive Days, the other Party may terminate this Contract by giving not less than twenty (20) Business Days notice in writing to the other Party, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
   3. The Parties agree that if the ESCO fails to notify the Customer in accordance with clause 29.1 the ESCO shall have no right to claim an extension of time.
6. SUSPENSION
   1. If the Customer fails to pay a sum due and payable in accordance with the terms of this Contract for a period of forty-five (45) Business Days after the due date of a payment release to the ESCO in accordance with the terms of this Contract (save where that sum is being disputed in accordance with this Contract), the ESCO may provide the Customer with written notice of its intention to suspend or slow down the Works.
   2. If after receiving a notice of suspension in accordance with clause 30.1 the Customer fails to pay the outstanding sum demanded within twenty-one (21) Business Days, the ESCO shall be immediately entitled to suspend or slow down the provision of the Works. Such suspension shall not include the deactivation of any Equipment or measures.
   3. The ESCO shall immediately resume the Works upon receiving payment of the outstanding sums from the Customer or resolution of disputes as per clause 33.
   4. In the event that the Works are suspended in accordance with clause 30.2 the ESCO shall be entitled to:
7. where such suspension is during the Construction Period, an extension of time for the duration of such suspension; and
8. an adjustment to the Contract Price in respect of the reasonable costs the ESCO may incur during the suspension period, including (but not limited to) demobilisation and remobilisation costs and storage of Equipment and (if applicable) Existing Equipment costs.
9. TERMINATION
   1. In the event that either Party is in default of any of its obligations under this Contract (including if a representation or warranty given by a Party under this Contract (other than a representation by the Customer regarding the Information, in which case the remedy shall be an appropriate adjustment to the Baseline Energy Cost) proves to be untrue), the Party not in default may provide the defaulting Party with written notice of its default ("Notice of Default").
   2. The Customer shall be entitled to terminate this Contract immediately by written notice to the ESCO during the Contract Period:
      1. if the ESCO commits a material breach of any of the terms of this Contract and following receipt of a Notice of Default the ESCO fails to:
10. remedy or overcome to the satisfaction of the Customer the effects of such breach within twenty (20) calendar days of receipt of such Notice of Default;
11. in circumstances where the breach cannot be remedied, or the effects of such breach cannot be overcome, within twenty (20) calendar days, provide a detailed rectification plan acceptable to the Customer within twenty (20) calendar days of receipt of the Notice of Default;
12. diligently and continuously implement such rectification plan provided under paragraph (b) (above) in all material respects and within the timeframes indicated in the rectification plan;
    * 1. if the ESCO fails to pay to the Customer an outstanding undisputed sum within thirty (30) calendar days after receiving a letter of demand requesting payment of the outstanding undisputed sum;
      2. if the ESCO has reached the limit of its liability for delay damages pursuant to clause ‎15 or the overall cap on liability under clause 24.1;
      3. if the ESCO fails to obtain the Construction Completion Certificate by the Construction Completion Date (established as per clause 3);
      4. in accordance with clause 29.3 for a prolonged Force Majeure Event, in which case further written notice under this clause 31 shall not be required; or
      5. if an Insolvency Event occurs in respect of the ESCO.
    1. The Customer may terminate this Contract at its discretion and without cause by providing the ESCO with at least twenty (20) calendar days notice in writing.
    2. The right of the Customer to terminate this Contract for breach shall be without prejudice to any other rights or remedy either Party may have in respect of the breach concerned or any other breach.
    3. If this Contract is terminated by the Customer in accordance with any of clauses 31.2.1, 31.2.2, 31.2.3, 31.2.4 or 31.2.6, the Customer shall be entitled to complete the Works itself or employ another company to do so. The Customer shall thereafter promptly fix and determine:
13. all outstanding undisputed sums payable to the ESCO less any amounts payable by the ESCO to the Customer under this Contract (including any amounts arising out of a default that led to the termination of this Contract); and
14. the costs of any Equipment which is properly installed at the Premises or has been delivered to the Premises and has not been paid for by the Customer;

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

* 1. The Customer shall not be liable to make any further payments to the ESCO until the costs of completing or taking over the Works and all other expenses that will be incurred by the Customer in connection therewith have been ascertained (the "Cost of Completion"). The Cost of Completion shall include all costs and fees charged by a replacement energy services company for providing a financial guarantee to the Customer equivalent (in value and duration) to each undischarged Energy Savings Guarantee in respect of both:
     1. the Equipment installed by the ESCO prior to the termination date; and
     2. (if applicable) the Equipment that would have been installed by the ESCO during the Contract Period but for the termination of this Contract and which will now be provided to the Customer by the replacement energy services company.
  2. If the Cost of Completion when added to the amounts then already paid to the ESCO as at the date of termination exceeds the total amount which would have been payable to the ESCO for the execution of the Works assuming this Contract was not terminated, the Customer shall certify the excess and the ESCO shall pay the Customer the amount of such excess within thirty (30) Business Days of a written demand from the Customer. Any such excess shall be taken to be a debt due by the ESCO to the Customer and shall be recoverable accordingly. If there is no such excess the ESCO shall be entitled to be paid the Termination Value and the Customer shall pay the Termination Value to the ESCO not later than sixty (60) Business Days after determining the Cost of Completion.
  3. Notwithstanding anything else in this Contract, payment by the ESCO of the excess in accordance with clauses 31.5 and 31.6 shall be in full and final satisfaction of the Customer's claims and rights against the ESCO and is the Customer’s sole remedy for the termination or the events or circumstances which gave rise to the termination.
  4. If this Contract is terminated by the Customer in accordance with clauses 31.2.5 or 31.3, the Customer shall pay the ESCO (within sixty (60) Business Days of the termination date or if later within ninety (90) Business Days of the collection of such amounts by the ESCO with supporting particulars):

1. all outstanding undisputed sums due and payable to the ESCO less any amounts due and payable by the ESCO to the Customer under this Contract;
2. the cost of Equipment ordered for the Premises which has been delivered to the ESCO or for which the ESCO is liable to accept delivery, and in both instances the Equipment shall become the property of the Customer upon receipt of payment;
3. any costs or liabilities reasonably incurred by the ESCO in anticipation of completing the Works; and
4. ESCO shall not be entitled to claim for anticipated loss of profit.
   1. Following termination of this Contract under clause 31.2, 31.3 and, if applicable, payment to the ESCO of the Termination Value or aggregate termination amount under clause 31.9, the ESCO shall promptly:
5. demobilise from the Premises and leave the Premises in a clean and tidy condition;
6. provide the Customer with all warranties, drawings, plans, instruction manuals, manuals and other documents procured under or in connection with the Works as may be required by the Customer to use and maintain the Equipment in an efficient and cost effective manner;
7. use its reasonable endeavours to assign any Sub-Contracts to the Customer as may be requested by the Customer in writing;
8. provide the Customer with all Existing Equipment in its possession as may be requested by the Customer in writing; and
9. provide the Customer with all warranties, drawings, plans, instruction manuals, and other documents procured under or in connection with the Works as may be reasonably requested in writing by the Customer for the purpose of use of the Equipment.
   1. Payment in full by the Customer to the ESCO of the amounts set out in clause 31.9 (and disputed amounts upon the resolution of the dispute in accordance with clause 33) is in full and final satisfaction of the ESCO's claims and rights against the Customer for termination of this Contract and the circumstances or default which gave rise to such termination, whether under this Contract, at Law or otherwise.
10. GOVERNING LAW AND LANGUAGE

This Contract shall be governed by the laws of the Emirate of Ras Al Khaimah.

1. DISPUTE RESOLUTION
   1. If a dispute or difference arises under or in connection with this Contract (including a dispute relating to the existence, validity or termination of this Contract or any non-contractual obligation arising out of or in connection with this Contract), then either Party shall provide the other Party with a written notice of dispute ("Notice of Dispute").
   2. Upon receiving a Notice of Dispute in accordance with clause 33.1, such dispute shall be referred in writing to the senior members of each of the Customer and the ESCO who shall endeavour to resolve the dispute amicably, in good faith.
   3. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, which is not resolved pursuant to clause 33.2 above shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre (DIFC).
2. NOTICES
   1. Any notice or other communication pursuant to or in connection with this Contract shall be in writing in the English language and may be delivered personally or sent by:
3. registered mail ;
4. delivered by hand (against a receipt);
5. by express courier; or
6. by fax,

to the address for that Party set out in clause 34.2.

* 1. Each Parties' address for service is as follows:

1. Customer

Address:

Attention:

Fax:

1. ESCO

Address:

Attention:

Fax:

* 1. Subject to clause 34.4, any notice or other communication shall be deemed to have been served:

1. if delivered personally, when a signed and stamped receipt of the communication is provided by the receiver specifying date and time of receipt;
2. if sent by express courier or registered mail, the date of actual delivery (as evidenced by the courier company's delivery receipt); or
3. if sent by fax, when clearly received in full, provided that a copy of the notice or communication is also delivered personally or sent by mail on the same day as the date of transmission or the next Business Day following the despatch of the facsimile to the address referred to in clause 34.2.
   1. If a notice is sent or delivered on a day other than a Business Day or after 6.00 pm (Emirate of Ras Al Khaimah time) on a Business Day, it shall be deemed to have been given on the first Business Day thereafter.
   2. The Customer shall notify the ESCO from time to time of the contact information for the purpose of emergency repairs, as provided for in clauses 11.18.-11.22.
4. REPRESENTATIVES
   1. The Customer Representative and the ESCO Representative shall be the people identified in Schedule 12 (*Parties' Representatives*) and they shall be the primary point of contact on behalf of each Party during the Contract Period.
   2. The Parties agree that the Customer Representative and the ESCO Representative have the authority to send and receive notices under this Contract and are authorised to act on behalf of the Customer and the ESCO respectively during the course of this Contract and with respect to the discharge of each Party's contractual obligations.
   3. The Customer shall be entitled to replace the Customer Representative subject to providing the ESCO with prior written notice.
   4. The ESCO shall be entitled to replace the ESCO Representative with a person of equivalent experience and expertise with the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.
5. WAIVER
   1. The failure by any Party to exercise a right or remedy under this Contract or any delay in exercising a right or remedy under this Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies the Parties may otherwise have, unless such waiver is in writing and signed by the Party or Parties to be bound. Any waiver or consent given by a Party will only be effective if given or confirmed in writing.
   2. No single or partial exercise of any right or remedy under this Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
   3. Except as otherwise stated in this Contract, the Parties' rights and remedies contained in this Contract are in addition to, and not exclusive of, any other rights or remedies available at Law.
6. REPRESENTATIONS AND WARRANTIES
   1. Each Party represents and warrants to the other Party that:
7. it is validly existing under the laws of the relevant jurisdiction in which it was established;
8. it has the requisite power and authority to enter into and to perform its obligations under this Contract which when executed will constitute valid and binding obligations on it in accordance with its terms;
9. each approval, licence, authorisation, consent or permission (each an "Authorisation") which is required by it in connection with the entry into, performance, validity and enforceability of this Contract and the transactions contemplated under it has been obtained or effected from the date such Authorisation is required and is in full force and effect and it has complied with such Authorisation;
10. its obligations under this Contract are legal, valid and binding and are enforceable against it in accordance with their terms, except to the extent limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting creditor rights generally;
11. the entry into this Contract and the performance by it of its obligations under it do not conflict with:
    1. its constituent documents;
    2. any law or regulation to which it is subject; or
    3. any document which is binding on it or its property or assets;
12. it is not a Party to any litigation or arbitration, nor is it bound by any order, injunction, declaration, judgment or award of any court, arbitration or other forum which would adversely affect its ability to perform its obligations under this Contract; and
13. prior to the Effective Date, it has not paid or received any amounts or consideration of whatever nature including, without limitation, any commissions, discounts, gifts, presents, in-kind commissions or cash amounts to any third party in relation to this Contract.
    1. Each Party acknowledges that in entering into this Contract it has not relied on any representations or warranties about its subject matter except as expressly set out in the written terms of this Contract.
14. ASSIGNMENT AND SUB-CONTRACTING
    1. The Customer may assign or transfer its rights and obligations under this Contract to a purchaser of the Premises or its business, or a third party in connection with a solvent amalgamation, merger or reconstruction of its business
    2. Subject to clause 38.3, the ESCO shall not be entitled to assign or transfer its rights or obligations under this Contract to any Party without the prior written consent of the Customer.
    3. Notwithstanding clause 38.2, the ESCO may at any time assign the whole (but not part) of its rights and obligations under this Contract to an Affiliate of it subject to the condition that the assignee will have entered into a valid and effective covenant with the Customer (on terms acceptable to the Customer) to be bound by the terms of this Contract to the extent that they apply to the ESCO, and the ESCO shall also remain liable as primary obligor for the performance by the assignee of its obligations under this Contract.
    4. This Contract shall bind and enure to the benefit of the respective successors and assigns of the Parties.
    5. Save with the prior written consent of the Customer, the ESCO shall not be entitled to sub-contract all or substantially all of its obligations under this Contract. The ESCO shall be entitled to sub-contract some or part of its obligations under this Contract, subject to obtaining the Customer’s prior written consent, such consent not to be unreasonably withheld or delayed.
    6. The ESCO shall remain fully liable for any acts and omissions performed by its Sub-Contractors and shall not be relieved from any of its duties or obligations under or in connection with this Contract in respect of any Works that are performed by a Sub-Contractor.
15. SEVERABILITY

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

1. RELATIONSHIP OF THE PARTIES

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

1. AMENDMENT

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

1. LIABILITY FOR EXPENSES

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

1. EXCLUSION OF LEGISLATION

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

1. FURTHER ASSURANCES

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

1. SURVIVAL

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

* 1. this clause 45, clauses 24, 25, 26, 28, 31, 32, 33, 34 and any other clause expressed to survive its termination; and
  2. any provisions of this Contract necessary for or incidental to the operation of those provisions.

1. ENTIRE AGREEMENT

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

1. COUNTERPARTS

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

IN WITNESS WHEREOF, the parties hereto have executed this Contract in two original copies, one copy being received by each party, the day and year first above written, and warrant to each other that the said execution is legally binding and valid under the laws of the place of execution and in accordance with the constitution of the respective parties;

| Executed for and on behalf of  **CUSTOMER X**  By  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Executed for and on behalf of  **ESCO Y**  By  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| --- | --- | --- |
| Signature:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name  **Designation** |  | Signature:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name  **Designation** |

## SCHEDULE 1

1. PREMISES

## SCHEDULE 2

1. INFORMATION PROVIDED BY the customer

## SCHEDULE 3

1. PERMITS, LICENCES AND APPROVALS TO BE Supported BY the customer

## SCHEDULE 4

1. CONTRACT PRICE AND PAYMENT SCHEDULE

## SCHEDULE 5

1. EXISTING EQUIPMENT

## SCHEDULE 6

1. BASELINE ENERGY CONSUMPTIONAND baseline unit rates

## SCHEDULE 7

1. ENERGY SAVINGS MEASUREMENT AND VERIFICATION PLAN

## SCHEDULE 8

1. STANDARDS & Specifications

## SCHEDULE 9

1. the customer’s OPERATION AND (IF APPLICABLE) MAINTENANCE OBLIGATIONS

## SCHEDULE 10

1. ESCO'S MAINTENANCE OBLIGATIONS

## SCHEDULE 11

1. ESCO INSURANCES

## SCHEDULE 12

1. PARTIES' REPRESENTATIVES

## SCHEDULE 13

1. DELAY DAMAGES

## SCHEDULE 14

1. ESCO’S PROPOSAL

## SCHEDULE 15

1. GUARANTEED energy SAVINGS

## SCHEDULE 16

**ESCO’S SCOPE OF SERVICES DURING CONSTRUCTION PHASE**

## SCHEDULE 17

1. LIST OF REQUIRED DOCUMENTS

## SCHEDULE 18

1. forms of project bonds

## SCHEDULE 19

1. PREFERRED VENDOR LISt