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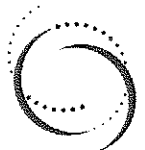
NOTICE

Due to the size of this bid, it was impractical to scan every page for online viewing. We have made an attempt to scan and publish all pertinent bid information. However, it is important to note that some pages were necessarily omitted.

If you would like to review the bid in its entirety, please contact the buyer. Thank you.

CONTRACT NO. COR61431 * RESPONSE TO REQUEST FOR PROPOSAL

WEST VIRGINIA DIVISION OF CORRECTIONS CHARLESTON, WEST VIRGINIA ENERGY SAVINGS PERFORMANCE CONTRACT RESPONSE TO REQUEST FOR PROPOSAL



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SAMPLE PERFORMANCE CONTRACTING AGREEMENT

VOLUME 1 · OCTOBER 18, 2011

PROPOSAL RESPONSE DUE · JANUARY 25, 2011



Submitted By:

NORESCO

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PROCUREMENT DIVISION
STATE OF WV

GUARANTEED ENERGY SERVICES AGREEMENT

This Guaranteed Energy Services Agreement (the "Agreement") is made and entered into as of this day of 29th of September, 2010 at Harrisburg, PA, in the County of Dauphin, Commonwealth of Pennsylvania, by and between NORESKO ("ESCO"), having its principal offices at One Research Drive, Suite 400C, Westborough, MA 01581, and Pennsylvania Department of Corrections ("Agency") with its principal offices at 2520 Lisburn Road, Camp Hill, PA 17001, for the purpose of installing certain energy saving equipment, described in Schedule A, and providing other services designed to save energy for the Agency's property and buildings, known as SCI Huntingdon and SCI Smithfield, located at Huntingdon, PA (the "Premises").

RECITALS

WHEREAS, Agency owns and operates the Premises, and is in need of energy saving equipment and service designed to save energy and associated energy costs at said Premises; and

WHEREAS, Agency solicited proposals from qualified firms through the issuance of a request for proposal ("RFP") set forth in Appendix A; and

WHEREAS, ESCO submitted a proposal dated April 24, 2009 (the "Proposal") in response to the RFP. The ESCO proposal is set forth in Appendix B; and

WHEREAS, ESCO has made an assessment of the energy consumption characteristics of the Premises and existing Equipment described in Schedule B, which Agency has approved.

WHEREAS, Agency desires to retain ESCO to purchase, install and service certain energy efficiency equipment of the type or class described in Schedule A, attached hereto and made part hereof and to provide other services for the purpose of achieving energy cost reductions within Premises, as more fully set forth herein; and

WHEREAS, Agency desires to compensate ESCO for its services based upon the value of energy and operations savings that are obtained; and

WHEREAS, Agency is authorized under the Constitution and the laws of the Commonwealth of Pennsylvania to enter into this contract for the purposes set forth herein,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Agency and ESCO hereto covenant and agree as follows:

SECTION 1. ENERGY MANAGEMENT PLAN

Section 1.1 Plan Details. ESCO has prepared the complete Technical Energy Audit and Analysis of the Premises set forth in Appendix C and dated September 27, 2010 which has been approved and accepted by Agency as set forth in Exhibit II (i). The audit includes all energy conservation measures agreed upon by the parties.

Section 1.2 Schedules, Exhibits and Appendices. ESCO has prepared and Agency has approved and accepted the Schedules as set forth below, copies of which are attached hereto (or will be as provided for in the contract), set forth in their entirety as Attachment I and made a part of this contract by reference.

Schedules

Schedule A	Equipment to be Installed by ESCO
Schedule B	Description of Premises; Pre-Existing Equipment Inventory
Schedule C	Energy Saving Guarantee
Schedule D	Compensation to ESCO
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement & Calculation Formulae; Methodology to Adjust Baseline
Schedule G	Construction and Installation Schedule
Schedule H	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment

Schedule I	Standards of Comfort
Schedule J	ESCO's Maintenance Responsibilities
Schedule K	Agency's Maintenance Responsibilities
Schedule L	Facility Maintenance Checklist
Schedule M	ESCO's Training Responsibilities
Schedule N	Installment Purchase and Payment Schedule
Schedule O	Final Project Costs and Final Project Cash Flow Analysis; ACT 129 Incentive Payment Form
Schedule P	DGS Annual Reporting Requirements
Schedule Q	[Set forth each parties' specific responsibilities in regard to the removal, remediation and disposal of all hazardous waste materials responsibilities, but ESCO shall bear the cost and assumes full responsibility for scheduling and coordination]
Schedule R	Agency Approved Subcontractor List

Exhibits

Exhibit I	Performance Bond/Construction Bond
Exhibit II (i)	Certificate of Acceptance—Technical Audit
Exhibit II (ii)	Certificate of Acceptance—Installed Equipment
Exhibit II (iii)	Certificate of Acceptance – Negotiated Hazardous Material Removal
Exhibit III	Equipment Warranties

Appendices

Appendix A	RFP for ESCO Solicitation
Appendix B	ESCO Proposal
Appendix C	Technical Audit

Section 1.3 Other Documents. This Agreement incorporates herein and makes a part hereof the entire RFP and ESCO Proposal for this Project labeled Appendix A and B respectively. Acceptance by the Agency of the Technical Energy Audit and Analysis Report is reflected in Exhibit II (i). Notwithstanding, the provisions of this Agreement and the attached Schedules shall govern in the event of any inconsistencies between the Technical Energy Audit and Analysis and the provisions of this Agreement.

SECTION 2. ENERGY USAGE RECORDS AND DATA

Agency has furnished or shall furnish (or cause its energy suppliers to furnish) to ESCO, upon its request, all of its records and complete data concerning energy usage and energy-related maintenance for the Premises described in Schedule B, including the following data for the most current thirty-six (36) month period; utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Premises; bills and records relating to maintenance of energy-related equipment, and a description of energy management procedures presently utilized. If requested, Agency shall also provide any prior energy audits of the Premises, and copies of Agency's financial statements and records related to energy usage and operations for said thirty-six (36) month period at said Premises, and shall make agents and employees familiar with such records available for consultations and discussions with ESCO.

SECTION 3. COMMENCEMENT DATE AND TERMS; INTERIM PERIOD

Section 3.1 Commencement Date. The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by Agency, ESCO has delivered a Notice to Agency that it has installed and commenced operating all of the Equipment specified in Schedule A and in accordance with the provisions of Section 6 and Schedule H; and Agency has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance as set forth in Exhibit II (ii). Compensation payments due to ESCO for service and maintenance under this Agreement as set forth in Schedule D shall begin no earlier than 6 from the Commencement Date as defined herein.

Section 3.2 Term of Agreement: Interim Period. Subject to the following sentence, the term of this Agreement shall be fifteen (15) years measured beginning with the Commencement Date. Nonetheless, the Agreement shall be effective and binding upon the parties immediately upon the "Effective Date." The Effective Date is the date this Agreement is sent to ESCO after it has been fully executed by Agency and ESCO and all approvals required by Commonwealth contracting procedures have been obtained. The period from Agreement execution until the Commencement Date shall be known as the "Interim Period". All energy savings achieved during the Interim Period will be fully credited to Agency.

SECTION 4. PAYMENTS TO ESCO

Section 4.1 Energy Savings Guarantee. ESCO has formulated and, subject to the adjustments provided for in Section 16, has guaranteed the annual level of energy and operations savings to be achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Agreement as specified in Schedule J and in accordance with the Savings Calculation Formula as set for in Schedule F. The Energy Savings Guarantee is set forth in annual increments for the term of the Agreement as specified in Schedule C and has been structured by the ESCO so as to be sufficient to cover any and all annual payments required to be made by the Agency as set forth in Schedule D and Schedule N.

Section 4.2 Annual Review and Reimbursement/Reconciliation. If at the end of any year during the guarantee period as specified in Schedule C, the ESCO has failed to achieve the annual Energy Savings Guarantee specified in Schedule C, upon written request by the Agency, which shall be given no earlier than the end of such year and no later than one hundred and sixty-five (165) days thereafter, the ESCO will pay the Agency the difference between the annual amount guaranteed and the amount of actual energy and operations savings achieved at the Premises in accordance with the provisions of Schedule C. The ESCO shall remit such payments to the Agency within thirty (30) days of written notice by the Agency of such monies due. When the total energy savings in any one year during the guarantee period exceed the Energy Savings Guarantee as set forth in Schedule C and are in addition to those monies due the ESCO for compensation for services as set forth in Schedule D, such excess savings shall first be applied to reimburse ESCO for any payment ESCO made to Agency to meet ESCO's guarantee for previous years in which the energy savings fell short of ESCO's Energy Savings Guarantee under the terms as set forth in Schedule C. In no event shall credit for excess savings be used to satisfy performance guarantees in future years of the contract.

Section 4.3 ESCO Compensation and Fees. ESCO has structured the Energy Savings Guarantee referred to in Section 4.1 above, so as to be sufficient to include any and all annual payments required to be made by the Agency in connection with financing/purchasing the Equipment to be installed by ESCO under this Agreement as set forth in Schedule N. Actual energy and operations savings achieved by ESCO through the operation of Equipment and performance of services by ESCO shall be sufficient to cover any and all annual fees to be paid by Agency to ESCO for the provision of services as set forth and in accordance with the provisions of Schedules D and J.

Section 4.4 Billing Information Procedure. Payments due to ESCO under Schedules D and J shall be calculated each month in the following manner:

(i) By the thirtieth (30th) day after receipt, Agency shall provide ESCO with copies of all information required as per Schedule F for the Premises which it shall have received for the preceding month;

(ii) Upon receipt of the required information, ESCO shall calculate the savings in accordance with the agreed-upon calculation formulae in Schedule F.

(iii) Based upon paragraphs (i) and (ii) above, ESCO shall prepare and send to Agency a SERVICE invoice which shall set forth for each YEAR the amounts of the energy and operations dollar savings calculated in accordance with Schedule F. The invoice will set forth the total SERVICE payment due from Agency.

(iv) Agency shall pay ESCO within thirty (30) days of receipt of ESCO's invoice.

Section 4.5 Installment Payments. Agency agrees to make installment payments to ESCO, or its assignee, for the Equipment in accordance with the terms and conditions of this Agreement and Schedule N. Agency's obligation to make the Installment Payments in Schedule N shall be absolute and unconditional in all events except as expressly set forth in Sections 5 and 19. After acceptance of the Equipment, Agency covenants that it will not assert any right to setoff, counterclaim, abatement, or recoupment of the Installment Payments.

Section 4.6 Effective Date of Payment Obligation. Notwithstanding the above provisions in Section 4, Agency shall not be required to begin any payments to ESCO under Schedules D and J unless and until all Equipment installation is completed by ESCO in accordance with the provisions of Section 6 and Schedule H, and accepted by Agency as evidenced by the signed Certificate of Acceptance as set forth in Exhibit II (ii), and unless and until said Equipment is fully and properly functioning.

Section 4.7 Offset Provision. Except as provided in Section 4.5, ESCO agrees that Agency may set off the amount of any state tax liability or other obligation of ESCO or its subsidiaries to the Commonwealth of Pennsylvania against any payments due ESCO under any contract with the Commonwealth of Pennsylvania.

SECTION 5. NONAPPROPRIATION OF FUNDS

In the event no Agency funds or insufficient Agency funds are appropriated and budgeted in any Commonwealth of Pennsylvania Fiscal Year for payments due under this Agreement, then Agency will immediately notify ESCO or its assignee of such occurrence and this Agreement shall terminate on the last day of Commonwealth's Fiscal Year for which appropriations were received without penalty or expense to Agency of any kind whatsoever. In the event of such termination, Agency agrees to peaceably surrender possession of all the Equipment in good operating condition, subject to normal wear and tear to ESCO or its assignee on the date of such termination. ESCO or its assignee will have all legal and equitable rights and remedies to take possession of the Equipment. Upon such termination, title to the Equipment will revert to ESCO or its assignee.

If, on the thirtieth (30th) day after the commencement of any Fiscal Year, sufficient funds have not been appropriated for the purpose of making all of the payments scheduled to be paid in such Fiscal Year, Agency shall cause to be delivered written notice thereof (a "notice of nonappropriation") to ESCO within ten (10) calendar days after such thirtieth (30th) day. Upon ESCO's receipt of a notice of nonappropriation, this Agreement shall terminate, as of the end of the Fiscal Year just ended; provided, however, such termination shall not become effective as of the end of such Fiscal Year just ended if, within ten (10) calendar days of the thirtieth (30th) day after the end of such Fiscal Year just completed, Agency shall cause to be delivered to ESCO a written statement to the effect that it reasonably expects sufficient funds for the then-current Fiscal Year to be appropriated therefore, and in such event the term shall continue into the then-current Fiscal year so long, but only so long, as an appropriation becomes available from which to make the payments.

Notwithstanding the foregoing, Agency agrees that (i) it will not cancel this Agreement under the provisions of this paragraph if any funds are appropriated to it, or by it, for the acquisition, retention or operation of the Equipment or other equipment performing functions similar to the Equipment for the Fiscal Year in which such termination occurs and (ii) it will not, during the term of the Agreement, give priority in the application of funds to any other functionally similar equipment or purchase of services such as outsourcing.

SECTION 6. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

Section 6.1 ESCO shall be responsible for the professional and technical accuracy, of all construction and services performed, whether by ESCO or its subcontractors or others on its behalf, throughout the term of this Agreement.

Section 6.2 ESCO shall provide overall coordination, management, and responsibility, and shall assure that all work is completed in a good and workmanlike manner. ESCO's services shall include the following:

- a. Engineering Design: A survey of the Premises for purposes of designing the Program.

- b. Procurement, Installation, Start-Up: Subject to other provisions of this Agreement, ESCO will act as a turn-key general contractor assuming total responsibility for the procurement of labor and material for installation and start-up of the Equipment, including: selecting subcontractors in concert with Agency; awarding subcontracts as approved by the Agency and set forth in Schedule R and notifying the Agency in writing of any changes in subcontractors prior to their selection and subcontract awards; receiving and evaluating submitted drawings on the Equipment; progress inspections during installation; developing and presenting subcontractor punch lists after each inspection; receiving and evaluating record drawings; and operation and maintenance manuals from subcontractors; providing for training of Agency personnel on proper operation of the newly installed Equipment; and final inspection and recommendation for approval to the Agency for acceptance of the Equipment.

Section 6.3 Construction and Equipment installation shall proceed in accordance with the construction schedule approved by Agency and attached hereto as Schedule G.

Section 6.4 Systems Startup and Equipment Commissioning: The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in Schedule H and prior to acceptance of the project by Agency. The ESCO shall provide notice to the Agency of the scheduled test(s) and the Agency and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures.

Section 6.5 In order for ESCO to receive payments during the design/build stages of the Agreement, the Agency shall authorize disbursement in accordance with the Schedule of ESCO Payments established by and between ESCO and any third party financing company. An initial disbursement can be made to cover: 1) Those services and deliverables accepted by the Agency associated with project mobilization 2) The cost associated with preparation of the Energy Audit. The Agency shall authorize subsequent disbursements on the Schedule of ESCO Payments only for portions of the Equipment or services that are functionally complete, operationally independent, and accepted by the Agency.

Section 6.6 Statutory Requirements. In the installation of the Equipment, ESCO shall be required, and shall require its contractors and subcontractors to comply with the statutory requirements of Chapter 39 of Act 57 of May 5, 1998, as amended, 62 Pa. C.S. §3901 et seq.; the Prevailing Wage Act (43 P.S. §165-1 et seq.); the Steel Products Procurement Act (73 P.S. §1881 et seq.) the Trade Practices Act of July 23, 1968 (71 P.S. §686 et seq.); Uniform Construction Code; Act 28 of April 9, 1990 (71 P.S. §2420). as found in Part I of the RFP. ESCO must submit the technical scope of work to the Department of Labor and Industry for plans review and inspections subject to the requirements of the Department and provisions of the Uniform Construction Code to the extent they are applicable to the scope of work on the project.

SECTION 7. WARRANTIES

Section 7.1 General. Should any item of Equipment be found to be defective within one (1) year from the date of installation, ESCO agrees to repair such item or, if necessary, furnish and install, without charge, similar items to replace it; provided, however, that the original item is returned to ESCO and inspection by the manufacturer establishes the claim. All shipping and transportation costs involved in the repair or replacement of the defective Equipment shall be paid by ESCO.

On all systems installed pursuant to this Agreement, ESCO shall provide, at no charge during the warranty period, any labor required to repair or replace defective Equipment or parts. Such labor shall include adjustment of controls, air balancing, and correction of mechanical difficulties if such adjustments are due to defective Equipment or improper installation.

If the Equipment fails to fulfill the performance guarantees, ESCO shall have the opportunity to make such changes as it deems necessary to fulfill such guarantees. If a demonstration is required, ESCO shall be given the opportunity to test the Equipment under requisite conditions.

The warranty provisions under this Section 7.1 are in addition to and not in lieu of any warranties made by equipment or component manufacturers. After installation of all ECMs, Contractor shall deliver to the Agency all manufacturer warranty certificates, documents, operation and maintenance instructions and manuals, and similar documents.

Section 7.2 Equipment Warranties. ESCO covenants and agrees that all Equipment installed as part of this Agreement is new, in good and proper working condition and protected by appropriate written warranties covering all parts and Equipment performance. ESCO further agrees to deliver to the Agency for inspection and approval, all such written warranties and which shall be attached and set forth as Exhibit III, to pursue rights and remedies against manufacturer of the Equipment under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance, to notify the Agency whenever defects in Equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by ESCO. The cost of any risk of damage or damage to the Equipment and its performance, including damage to property and Equipment of the Agency or the Premises, due to ESCO's failure to exercise its warranty rights shall be borne solely by ESCO.

All warranties shall be transferable and extend to the Agency. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessitated by malfunction.

All warranties required hereunder shall be in force for a minimum of one year from the Commencement Date as defined in Section 3.1 hereof.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the ESCO from complying with its obligations to perform under all terms and conditions of this Agreement and as set forth in all attached Schedules.

SECTION 8. TRAINING BY ESCO

The ESCO shall conduct the training program described in Schedule M hereto. The training specified in Schedule M must be completed prior to acceptance of the Equipment installation; such acceptance shall not be unreasonably delayed by the Commonwealth. The ESCO shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at no additional charge to the Agency.

SECTION 9. PERMITS AND APPROVALS; COORDINATION

Section 9.1 Permits and Approvals. ESCO shall be responsible for obtaining all necessary permits and approvals for installation of the Equipment and shall pay any and all permit fees. Agency shall use its best efforts to assist ESCO in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Agency, however, be directly responsible for payment of any permit fees. The Equipment and the operation of the Equipment by ESCO shall at all times conform to all federal, state and local code requirements in effect at the time of installation. ESCO shall furnish copies of each permit or license which is required to perform the work to the Agency before the ESCO commences the portion of the work requiring such permit or license.

Section 9.2 Coordination During Installation. The Agency and ESCO shall coordinate the activities of ESCO's equipment installers with those of the Agency, its employees, and agents. ESCO shall not commit or permit any act which will interfere with the performance of business activities conducted by the Agency or its employees without prior written approval of the Agency.

SECTION 10. PERFORMANCE BY ESCO

Section 10.1 ESCO shall perform all tasks/phases under the Agreement, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in Schedule I and the construction schedule specified in Schedule G. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Agreement. The Agency reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of the Agency, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by ESCO's performance of the work shall be borne by ESCO.

Section 10.2 ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether by the ESCO or its subcontractors or others on its behalf, throughout the term of this Agreement.

Section 10.3 ESCO is responsible for general broom cleaning at its cost. At least once a week, ESCO shall remove from the Premises all discarded material and rubbish resulting from the work and assure that the Premises are clean and free of such materials and rubbish.

Section 10.4 DGS Annual Reporting Requirements; Annual ENERGY STAR Rating. At the end of each year during the guarantee period as specified in Schedule C and no later than ninety (90) days thereafter, the ESCO shall complete and submit the data required in Schedule P.

SECTION 11. OWNERSHIP

Section 11.1 Ownership of Certain Proprietary Property Rights. Agency shall not, by virtue of this Agreement, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The ESCO shall grant to the Agency a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Agency to continue to operate, maintain, and repair the Equipment in a manner that will yield maximal energy consumption reductions.

Section 11.2 Ownership of Existing Equipment. Ownership of the Equipment and materials presently existing at the Premises at the time of execution of this Agreement shall remain the property of the Agency even if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Agreement. If applicable, ESCO shall advise the Agency in writing of all equipment and materials to be replaced at the Premises and the Agency shall within 15 days designate in writing to the ESCO which equipment and materials that should not be disposed of off-site by the ESCO. It is understood and agreed to by both Parties that the Agency shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. Any equipment and materials, including any hazardous waste materials, such as asbestos, designated by the Agency as disposable off-site, must be done so in accordance with all applicable laws and regulations regarding such disposal.

Section 11.3 Ownership of New Equipment. Upon installation of the Equipment by ESCO and acceptance by Agency, the Agency shall own the Equipment. Agency shall execute the documents necessary for ESCO or the third party financing company to secure and maintain a security interest in the Equipment.

Section 11.4 Non-Equipment, Project Related Hazardous Materials. The ESCO shall be responsible for the cost of proper removal, remediation and disposal of all hazardous waste materials (including but not limited to asbestos) as required to complete the scope of work defined in this agreement. The agency and ESCO may negotiate the methodology for these hazardous waste materials responsibilities, but ESCO shall bear the cost and assumes full responsibility for scheduling and coordination. Each party's specific responsibilities will be set forth in SCHEDULE Q and accepted in EXHIBIT II (iii).

Section 11.5 Project Contingency Fund Project funds that are set aside in a contingency fund are specific allocations associated with energy conservation measures (ECMs) covered in this Agreement. These funds can only be used to pay for unforeseen expenses that occur during construction that are related to the ECMs. ESCO must obtain the written approval of the Agency in order to use these funds for payment of an expense. ESCO must

show the intended use of the contingency fund on the payment request which it submits to the agency for approval. Contingency funds are paid to the ESCO only if they are used and only if approved by the Agency. Any funds not used at the end of the contract shall be available for use by the Agency.

SECTION 12. LOCATION AND ACCESS

Agency shall provide sufficient rent-free space on the Premises for the installation and operation of the Equipment and shall take reasonable steps to protect such Equipment from harm, theft and misuse. Agency shall provide access to the Premises for ESCO to perform any function related to this Agreement during regular business hours, or such other reasonable hours as may be requested by ESCO and acceptable to the Agency. The ESCO's access to Premises to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the Agency.

SECTION 13. EQUIPMENT SERVICE

Section 13.1 Actions by ESCO. ESCO shall provide all service, repairs, and adjustments to the Equipment installed under terms of this Agreement pursuant to Schedule J. Agency shall incur no cost for Equipment service, repairs, and adjustments, except as set forth in Schedules D, J and K where applicable, provided, however, that when the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Agency or any employee or other agent of Agency, and ESCO can so demonstrate such causal connection, ESCO may charge Agency for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

Section 13.2 Malfunctions and Emergencies. Agency shall use its best efforts to notify the ESCO or its designee(s) within 24 hours after the Agency's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Premises, or (iii) any alteration or modification in any energy-related equipment or its operation.

Where Agency exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Agency shall notify ESCO within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. ESCO shall respond or cause its designee(s) to respond within 24 hours and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by Agency shall be followed within three business days by written notice to ESCO from Agency. If Agency unreasonably delays in so notifying ESCO of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, such conditions will be treated as a Material Change and the applicable provisions of Section 16 shall be applied.

Section 13.3 Actions by Agency. Agency shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of ESCO except as set forth in Schedule K. Notwithstanding the foregoing, Agency may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify ESCO before taking any such actions. In the event of such an emergency, Agency shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by ESCO. Agency agrees to maintain the Premises in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

SECTION 14. UPGRADING OR ALTERING THE EQUIPMENT

ESCO shall at all times have the right, subject to Agency's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that:

- (i) the ESCO complies with the standards of comfort and services set forth in Schedule I herein;
- (ii) 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 energy savings at the Premises and;
- (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Agency for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall be new and have equal or better potential to reduce energy consumption at the Premises than the Equipment being replaced. The ESCO shall update any and all software to be used in connection with the Equipment in accordance with the provisions of Section 11.1. All replacements of and alterations or additions to the Equipment shall become part of the Equipment described in Schedule A and shall be covered by the provisions and terms of Section 6.

SECTION 15. STANDARDS OF COMFORT

ESCO will maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, hot water, and lighting as described in Schedule I.

SECTION 16. MATERIAL CHANGES

Section 16.1 Material Change Defined: A Material Change shall include any change in or to the Premises, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Agency or as identified by the ESCO, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in Schedule E and Schedule F by at least 10% after adjustments for climatic variations. Actions by the Agency which may result in a Material Change include but are not limited to the following:

- (i) manner of use of the Premises by the Agency; or
- (ii) hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or
- (iii) permanent changes in the comfort and service parameters set forth in Schedule I; or
- (iv) occupancy of the Premises; or
- (v) structure of the Premises; or
- (vi) types and quantities of equipment used at the Premises or
- (vii) modification, renovation or construction at the Premises; or
- (viii) the Agency's failure to provide maintenance of and repairs to the Equipment in accordance with Schedule K; or
- (ix) any other conditions other than climate affecting energy use at the Premises.

Section 16.2 Reported Material Changes; Notice by Agency: The Agency shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Material Changes in the Premises or in the

operations of the Premises at least thirty (30) days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the ESCO of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Agency within (24) hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Agency to have occurred.

Section 16.3 Unreported Material Change. In the absence of any Material Changes in the Premises or in their operations, the baseline energy consumption as set forth in Schedule E should not change more than 10% during any month from the projected energy usage for that month, after adjustments for changes in climatic conditions. Therefore, if energy consumption for any month as set forth in Schedule E deviates by more than ten percent (10%) from the energy consumption for the same month of the preceding contract year after adjustments for changes to climatic conditions, then such deviation shall be timely reviewed by the ESCO to ascertain the cause of deviation. The ESCO shall report its findings to the Agency in a timely manner and the ESCO and Agency shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in Schedule F.

SECTION 17. PROPERTY/CASUALTY/INSURANCE; INDEMNIFICATION

Section 17.1 At all times during the term of this Agreement, ESCO shall maintain in full force and effect, at its expense: (1) Workers' compensation insurance sufficient to cover all of the employees of ESCO and those of any subcontractor working to fulfill this Agreement, (2) casualty and liability insurance on the Equipment and public liability insurance for its employees and the possession, operation, and service of the Equipment and (3) property damage insurance. The limits of such insurance shall be not less than \$500,000 each person and \$2,000,000 each occurrence personal injury and property damage combined. Such policies shall be occurrence rather than claims-made and shall name Commonwealth of Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth of Pennsylvania, as an additional insured, against the insurance coverage in regard to the work performed for Agency and otherwise consistent with this Agreement as offered by the ESCO. Prior to commencement of work under this Agreement, ESCO will be required to provide Agency with current certificates of insurance specified above. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed until at least thirty (30) days' prior written notice has been given to Agency.

Section 17.2 ESCO shall be responsible for (i) any damage to the Equipment or other property on the Premises and (ii) any personal injury where such damage or injury occurs as a result of ESCO's performance under this Agreement.

Section 17.3 ESCO shall defend, indemnify and hold harmless Agency and its officers, agents and employees or any of them from any and all claims, demands, actions, damages, losses, expenses or liability of any nature based upon or arising out of any work performed by ESCO, its agents or employees under this Agreement.

SECTION 18. RISK OF LOSS

Upon acceptance of the Equipment, the Agency assumes all risk of loss of or damage to the Equipment from any cause whatsoever (except as provided in Section 7, 13 and 17), and no such loss of or damage to the Equipment shall relieve the Agency of the obligation to make payments or to perform any other obligation under this Agreement. In the event of damage to any item of Equipment, the Agency will immediately notify ESCO or its assignee and place the same in good repair except as provided in Sections 7, 13 and 17. If Agency determines that any of the Equipment is lost, stolen, destroyed, or damaged beyond repair and ESCO is not responsible for repair or replacement under Sections 7, 13 and 17, then the savings guarantee will be adjusted by mutual agreement to account for the losses associated with the Equipment and Agency will: either (a) replace the same with like Equipment in good repair, or (b) on the next payment date following occurrence of loss, pay ESCO (i) all amounts for said lost, stolen, destroyed, or damaged beyond repair Equipment then owed by the Agency to ESCO under this Agreement, including the payment for such item(s) due on such date and (ii) the proportionate amount of applicable Concluding Payment set forth in Schedule N. In the event that Agency is obligated to make such payment with respect to less than all of the Equipment, ESCO will provide Agency with the pro rata amount of the payment and

the Concluding Payment to be made by Agency with respect to the Equipment which has been lost, stolen, destroyed or irreparably damaged.

SECTION 19. CASUALTY OR CONDEMNATION OF PREMISES

Any construction or restoration of the Premises following or necessitated by fire, flood, or other casualty, or any condemnation affecting any portion of the Premises, shall be deemed a Material Change, and the provisions of Section 16 shall be applicable. If the casualty or condemnation renders fifty percent (50%) or more of the Premises uninhabitable or unusable and, in the case of a casualty, the affected portion is not reconstructed or restored within one hundred and twenty (120) days from the date of such casualty, Agency shall have the option to terminate this Agreement by a notice to ESCO. In the event of condemnation, Agency agrees that ESCO shall be entitled to that portion of the condemnation award equal to the purchase option value applicable at that time with appropriate adjustments for applicable portions of the Premises which are condemned versus portions of the Premises which are unaffected. Upon such termination, ESCO may remove the Equipment from the condemned portion of the Premises.

SECTION 20. CONDITIONS BEYOND CONTROL OF THE PARTIES

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Agreement due to acts of God, insurrections or riots, or similar events, this Agreement shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days notice to the performing party, in which event neither party shall have any further liability to the other.

SECTION 21. TERMINATION FOR CONVENIENCE

This Agreement may be terminated, in whole or in part, by Agency upon thirty (30) days' written notice whenever Agency shall determine that such termination is in the best interest of the Commonwealth. Any such termination shall be effected by delivery to ESCO of a notice of termination specifying the extent to which performance under this Agreement is terminated either in whole or in part and the date on which termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination and the Agreement modified accordingly. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Section 24 of this Agreement. In no event, however, shall ESCO be paid for loss of anticipated profits if ESCO's performance is terminated by the Commonwealth.

SECTION 22. EVENTS OF DEFAULT

Section 22.1. Events of Default by Agency. Each of the following events or conditions shall constitute an "Event of Default" by Agency:

- (i) Any failure by Agency to pay ESCO any sum due for a service and maintenance period of more than sixty (60) days after written notification by ESCO that Agency is delinquent in making payment and provided that ESCO is not in default in its performance under the terms of this Agreement; or
- (ii) Any other material failure by Agency to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, provided that such failure continues for sixty (60) days after notice to Agency demanding that such failures to perform be cured or if such cure cannot be effected in sixty (60) days, Agency shall be deemed to have cured default upon the commencement of a cure within sixty (60) days and diligent subsequent completion thereof; or
- (iii) Any representation or warranty furnished by Agency in this Agreement which was false or misleading in any material respect when made.

Section 22.2 Events of Default by ESCO. Each of the following events or conditions shall constitute an "Event of Default" by ESCO:

- (i) The standards of comfort and service set forth in Schedule I are not provided due to failure of ESCO to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within thirty (30) days after written notice by Agency to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Agreement;
- (ii) Any representation or warranty furnished by ESCO in this Agreement is false or misleading in any material respect when made;
- (iii) Failure to furnish and install the Equipment and make it ready for use within the time specified by this Agreement as set forth in Schedules A and G;
- (iv) Any other material failure by ESCO to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to ESCO demanding that such failure to perform be cured, if corrected or cured within thirty (30) days after ESCO's receipt of such written notice shall be deemed cured for the purpose of this Agreement.
- (v) Any lien or encumbrance upon the Equipment by any subcontractor, laborer or materialman of ESCO;
- (vi) The filing of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within thirty (30) days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO;
- (vii) Any change in majority ownership or control of the ESCO without the prior approval of the Agency, which shall not be unreasonably withheld;
- (viii) Failure by the ESCO to pay any amount due the Agency or perform any obligation under the terms of this contract or the Energy Savings Guarantee as set forth in Schedule C; or
- (ix) Repossession or removal of the Equipment by ESCO or a third party without good cause.

SECTION 23. REMEDIES UPON DEFAULT

Section 23.1 Remedies upon Default by Agency. If an Event of Default by Agency occurs, ESCO may, without a waiver of other remedies which exist in law or equity, elect one or both of the following remedies:

- (i) Exercise any and all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Agency, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy;
- (ii) Without recourse to legal process, terminate this Agreement by delivery of a notice declaring termination, enter the Premises, and dismantle and/or remove its Equipment from the Premises, without liability to Agency.

Section 23.2 Remedies Upon Default by ESCO. In the Event of Default by ESCO, Agency shall have the choice of one or more of the following remedies without waiving any other rights or remedies in law or equity:

- (i) Exercise and any all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance,

and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred;

- (ii) If the payments under this Agreement have been assigned, and the Equipment has been accepted by Agency, the Agency shall declare ESCO to be in default, but continue to make the payments under Schedule N for the Equipment which has been so accepted. If no Equipment has been so accepted, Agency may terminate this Agreement without liability to make any payments;
- (iii) If the payments under this Agreement have not been assigned, Agency may set off or counterclaim against its obligation to make any of the payments provided in default; or
- (iv) ESCO (but not the assignee) will be liable to Agency for damages incurred by Agency as a result of any default by ESCO. Such damages may include, but are not limited to: (a) payments made to ESCO or its assignee which represents payment towards a unit of Equipment for which acceptance was revoked because of a latent defect (b) the difference in price between the market price of the Equipment which was not delivered or which was rejected (or the actual purchase price if Agency purchases replacements (like Equipment) for any undelivered or rejected unit of Equipment) and the purchase price indicated in the Agreement for such units of Equipment) (c) damages as a result of breach of warranty, failure to meet specifications, or damages incurred by Agency resulting from the delivery of Equipment which is defective or fails to meet specifications, or resulting from ESCO's failure to comply with any other requirements of this Agreement, and (d) any other damages recoverable by law.

SECTION 24. CONTROVERSIES

a. In the event of a controversy or claim arising under this Agreement, ESCO must, within six months after the cause of action accrues, file a written claim with the agency contracting officer for a determination. The claim shall state all grounds upon which ESCO asserts a controversy exists. If ESCO fails to file a claim or files an untimely claim, ESCO is deemed to have waived its right to assert a claim in any forum.

b. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and ESCO. The contracting officer shall send his/her written determination to ESCO. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the Agency.

c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, ESCO may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, ESCO shall proceed diligently with the performance of the Agreement in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate ESCO pursuant to the terms of the Contract.

SECTION 25. ASSIGNMENT

ESCO acknowledges that Agency is induced to enter into this Agreement by, among other things, the professional qualifications of ESCO. ESCO agrees that neither this Agreement nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of Agency.

Section 25.1 Assignment by ESCO. ESCO may, with prior written approval of Agency, delegate its duties and performance under this Agreement, and/or utilize contractors, provided that any assignee(s), delegee(s), or contractor(s) shall fully comply with the terms of this Agreement. Notwithstanding the provisions of this

paragraph, ESCO shall remain jointly and severally liable with its assignee(s) or transferee(s) to Agency for all of its obligations under this Agreement.

Section 25.2 Assignment by Agency. Agency may transfer or assign this Agreement and its rights and obligations herein to a successor or purchaser of the Buildings or an interest therein. The Agency shall remain jointly and severally liable with its assignees or transferees to the ESCO for all of its obligations under this Agreement.

SECTION 26. REPRESENTATIONS AND WARRANTIES

Each party warrants and represents to the other that:

- (i) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (ii) Its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, its organic instruments, and this Agreement has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) Its execution, delivery, and performance of this Agreement will not breach or violate, or constitute a default under any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- (iv) It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

SECTION 27. ADDITIONAL REPRESENTATIONS OF THE PARTIES.

Section 27.1 Agency hereby warrants, represents and promises that:

- (i) It has provided or shall provide timely to ESCO, all records relating to energy usage and energy-related maintenance of Premises requested by ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement will be true and accurate in all material respects; and
- (ii) It has not entered into any leases, contracts or contracts with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Premises or with regard to servicing any of the energy related equipment located in the Premises. Agency shall provide ESCO with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Premises which may be executed from time to time hereafter within thirty (30) days after execution thereof.

Section 27.2 ESCO hereby warrants, represents and promises that:

- (i) Before commencing performance of this Agreement:
 - (a) It is or shall become licensed or otherwise permitted to do business in the Commonwealth of Pennsylvania
 - (b) It shall have provided proof and documentation of required insurance pursuant to Section 17 it shall make available, upon reasonable request, all documents relating to its performance under this Agreement, including all contracts and

subcontracts entered into;

- (ii) It shall use qualified subcontractors and delegees, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;
- (iii) That it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Agreement.

SECTION 28. WAIVER OF LIENS

ESCO will obtain and furnish to Agency a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of each piece of Equipment.

SECTION 29. COMPLIANCE WITH LAW AND STANDARD PRACTICES

ESCO shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of Agency relative to the Premises.

SECTION 30. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties hereto agree that ESCO, and any agents and employees of ESCO, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the Agency.

SECTION 31. NO WAIVER

The failure of ESCO or Agency to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of ESCO or Agency.

SECTION 32. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

- a. ESCO shall hold the Agency harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by ESCO, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Agency agrees to give ESCO prompt notice of any such claim of which it learns. Pursuant to the Agency Attorneys Act 71 P.S. § 732-101, et, seq., the Office of Attorney General (OAG) has the sole authority to represent the Agency in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If OAG delegates the defense to ESCO, the Agency will cooperate with all reasonable requests of contractor made in the defense of such suits. No settlement which prevents the Agency from continuing to use the items provided by ESCO shall be made without the Agency's prior written consent. In all events, the Agency shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by ESCO that, in the event it requests that the Agency to provide support to ESCO in defending any such claim, ESCO shall reimburse the Agency for all expenses (including attorneys' fees, if such are made necessary by ESCO's request) incurred by the Agency for such support. If OAG does not delegate the defense of the matter, ESCO's obligation to indemnify ceases. ESCO will, at its expense, provide whatever cooperation OAG requests in the defense of the suit.
- b. ESCO agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. ESCO certifies that, in all respects applicable to this Contract, it has exercised and

will continue to exercise due diligence to ensure that all works produced under this Contract do not infringe on the patents, copyrights, trademarks, trade secrets, or other proprietary interests of any kind which may be held by third parties. ESCO also agrees to certify that work produced for the Agency under this contract shall be free and clear from all claims of any nature.

- c. If the defense of the suit is delegated to ESCO, ESCO shall pay all damages and costs awarded therein against the Agency. If information and assistance are furnished by the Agency at ESCO's written request, it shall be at ESCO's expense, but the responsibility for such expense shall be only that within ESCO's written authorization.
- d. If, in ESCO's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation trade secret, then without diminishing ESCO's obligation to satisfy any final award, ESCO may, at its option and expense, substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs or, at ESCO's option and expense, obtain the right for the Agency to continue the use of such products, materials, reports, studies, or computer programs.
- e. If any of the products, materials, reports, studies, or computer programs provided by ESCO are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, ESCO shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with the non-infringing items, or modify them so that they are no longer infringing.
- f. If ESCO is unable to do any of the preceding, ESCO agrees to pay the Agency:
 - (1). any amounts paid by the Agency less a reasonable amount based on the acceptance and use of the deliverable;
 - (2). any license fee less an amount for the period of usage of any software; and
 - (3). the prorated portion of any service fees representing the time remaining in any period of service for which payment was made
- g. The obligations of ESCO under this section continue without time limit and survive the termination of this contract.
- h. Notwithstanding the above, ESCO shall have no obligation for:
 - (1). modification of any product, service, or deliverable provided by the Agency;
 - (2). any material provided by the Agency to ESCO and incorporated into, or used to prepare, a product, service, or deliverable;
 - (3). use of the product, service, or deliverable in other than its specified operating environment;
 - (4). the combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by ESCO as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that ESCO did not provide;
 - (5). infringement of a non-ESCO product alone.
 - (6). the Agency's distribution, marketing or use beyond the scope contemplated by the Contract;

- (7). the Agency's failure to use corrections or enhancements made available to the Agency by ESCO at no charge.
- i. The obligation to indemnify the Agency, under the terms of this Section, shall be ESCO's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

SECTION 33. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

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

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any subcontract, ESCO, subcontractor, or any person acting or behalf of ESCO or subcontractor shall not by reason of gender, race, religious creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither ESCO nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Agreement on account of gender, race, religious creed, or color.
- c. ESCO and subcontractors shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. ESCO and each subcontractor shall not discriminate by reason of genera, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.
- e. ESCO and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO) for purpose of ascertaining compliance with provisions of the Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the ESCO shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the ESCO shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
- f. ESCO shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions applicable to subcontractors will be binding upon each subcontractor.
- g. Agency may cancel or terminate the Agreement, and all money due or to become due under the Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

34. CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe the high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process.

In furtherance of this policy, ESCO agrees to the following:

1. ESCO shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to ESCO or that govern contracting with the Commonwealth.
2. ESCO shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to ESCO employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all ESCO employees.
3. ESCO, its affiliates, agents and employees shall not influence, or attempt to influence any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.
4. ESCO, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee to any other person at the direction or request of any Commonwealth official or employee.
5. ESCO, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. ESCO, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. ESCO, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. ESCO shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. ESCO shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than ESCO's submission of the contract signed by ESCO.
9. ESCO, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, ESCO under this contract without the prior written approval of the Commonwealth except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§67.101-3104*, or other applicable law or as otherwise provided in this

contract. Any information, documents, reports, data, or records secured by ESCO from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:

- a. Approved in writing by the Commonwealth prior to its disclosure; or
 - b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
 - c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
 - d. Necessary for purposes of ESCO's internal assessment and review; or
 - e. Deemed necessary by ESCO in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
 - f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
 - g. Otherwise required by law.
10. ESCO certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charges with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
 - b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by ESCO or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
 - (1) obtaining;
 - (2) attempting to obtain; or
 - (3) performing a public contract or subcontract.ESCO's acceptance of the benefits derived from the contact shall be deemed evidence of such knowledge, approval or acquiescence.
 - c. Violation of federal or state antitrust statutes.
 - d. Violation of any federal or state law regulating campaign contributions.
 - e. Violation of any federal or state environmental law.
 - f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.

- g. Violation of the *Act of June 2, 1915 (P.L. 736, No. 338)* known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

ESCO acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that ESCO has been officially notified, charged, or convicted.

11. If this contract was awarded to ESCO on a non-bid basis, ESCO must, (as required by *Section 1641 of the Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to ESCO by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
 - a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
 - b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, ESCO shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

12. ESCO shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. §13A01 et seq.*, and the regulations promulgated pursuant to that law. ESCO employee activities prior to or outside of formal Commonwealth procurements communication protocol are considered lobbying and subjects the ESCO employees to the registration and reporting requirements of the law. Actions by outside lobbyists on ESCO's behalf, no matter the procurement stage, are not exempt and must be reported.
13. When ESCO has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, ESCO shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.
14. ESCO, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or request for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.
15. ESCO shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged ESCO non-compliance with these provisions. ESCO agrees to make identified ESCO employees available for interviews at reasonable times and places. ESCO, upon the inquiry or request of the Office of Inspector

General, shall provide or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to ESCO's integrity and compliance with these provisions. Such information may include, but shall not be limited to ESCO's business or financial records, documents or files of any type or form that refers to or concern this contract.

16. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with ESCO, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend ESCO from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.
17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.
 - a. "Confidential Information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to ESCO from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of ESCO; or e) has not been independently developed by ESCO without the use of confidential information of the Commonwealth.
 - b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
 - c. "Contractor" or "ESCO" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in ESCO.
 - d. "Financial Interest" means:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - e. "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
 - f. "Immediate family" means a spouse and any unemancipated child.
 - g. "Non-bid basis" means a contract awarded or executed by the Commonwealth with ESCO without seeking bids or proposals from any other potential bidder or offeror.
 - h. "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any

election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

35. CONTRACTOR RESPONSIBILITY PROVISIONS

- 35.1 ESCO certifies that it is not currently under suspension or debarment by the Commonwealth of Pennsylvania, any other state, or the federal government.
- 35.2 If ESCO enters into any subcontracts under this Agreement with subcontractors who are currently suspended or debarred by Commonwealth or federal government or who become suspended or debarred by Commonwealth or federal government during the term of this Agreement or any extensions or renewals thereof, Agency shall have the right to require ESCO to terminate such subcontracts.
- 35.3 ESCO agrees that it shall be responsible for reimbursing Agency for all necessary and reasonable costs and expenses incurred by the Office of the Inspector General relating to an investigation of ESCO's compliance with the terms of this or any other agreement between ESCO and Agency which results in the suspension or debarment of the ESCO.

SECTION 36. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

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

- 36.1 Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 CFR §35.101 et seq., ESCO understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, ESCO agrees to comply with all regulations promulgated under Title H of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by Commonwealth of Pennsylvania through contracts with outside contractors.
- 36.2 ESCO shall be responsible for and agrees to indemnify and hold harmless Agency from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against Commonwealth as a result of ESCO's failure to comply with the provisions of Paragraph 36.1 above.

SECTION 37. SEVERABILITY

In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or unconscionable.

SECTION 38. COMPLETE CONTRACT

This Agreement, when executed, together with all Appendices and all Schedules attached hereto or to be attached hereto, as provided for by this Agreement shall constitute the entire contract between both parties and this Agreement may not be amended, modified, or terminated except by a written contract signed by the parties hereto. The Audit Agreement previously executed between the parties, dated January 12th, 2010, shall become null and void upon execution of this Agreement and Agency shall not be required to make any payments to ESCO under the Audit Agreement.

SECTION 39. ORDER OF PRECEDENCE

If any conflicts or discrepancies should arise in the terms and conditions of this Agreement or the interpretation thereof, the language of the Agreement shall be the first point of reference, ESCO's proposal, the second point of reference, and the Request for Proposals, the third point of reference.

SECTION 40. PRESERVATION OF RECORDS

ESCO shall maintain and preserve for a period extending until three (3) years after date of final payment to ESCO and during that period shall produce, upon request of Agency, all data, records, and other evidence pertaining to costs incurred by ESCO in connection with this Agreement for the purpose of an audit or other examination.

SECTION 41. FURTHER DOCUMENTS

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

SECTION 42. APPLICABLE LAW

This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the Commonwealth of Pennsylvania.

SECTION 43. ENVIRONMENTAL PROVISIONS

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

The Contractor shall comply with all statutes and regulations of the Commonwealth of Pennsylvania concerning environmental quality control administered by DEP. These include but are not limited to, the Clean Streams Law, the Clean Water Act, Pennsylvania Sewage Facilities Act, Air Pollution Control Act, Surface Mining Conservation and Reclamation Act, Bituminous Coal Open Pit Mining Conservation Act, Dams and Encroachments Act, Water Well Drillers Act, Water Works Act and Atomic Energy Act, all as amended to date. The Contractor is responsible for any violations and shall secure all required permits. Erosion control measures are shown on drawings and specifications and/or specified in the General Requirements. An erosion control permit, if required, will be obtained by the Professional.

SECTION 44. NOTICE

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ESCO: *Corporate Counsel
NORESKO, LLC
One research Drive, Suite 400C
Westborough, MA 01581*

TO AGENCY: *Pennsylvania Department of Corrections
Attention: Harry Joshi
2520 Lisburn Road
PO Box 598
Camp Hill, PA 17001*

SECTION 45. AGENCY'S COMPLIANCE WITH FACILITIES MAINTENANCE CHECKLIST

Section 45.1 The parties acknowledge and agree that ESCO has entered into this Agreement in reliance upon the prospect of earning compensation based on guaranteed energy savings in energy used at Premises, as set forth on Schedules C and D, attached hereto and made a part hereof.

Section 45.2 The parties further acknowledge and agree that the said guaranteed energy savings would not likely be obtained unless certain procedures and methods of operation designed for energy conservation shall be implemented, and followed by Agency on a regular and continuous basis.

Section 45.3 Agency agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on Schedule K, to be attached hereto and made a part hereof after Agency's approval.

Section 45.4 Agency agrees that ESCO shall have the right once a month, with prior notice, to inspect Premises to determine if Agency is complying, and shall have complied with its obligations as set forth above in Section 34.3. For the purpose of determining Agency's said compliance, the checklist to be set forth at Schedule L as completed and recorded by ESCO during its monthly inspections, shall be used to measure and record Agency's said compliance. Agency shall make the Premises available to ESCO for and during each monthly inspection, and shall have the right to witness each inspection and the recordations on the checklist.

SECTION 46. HEADINGS

Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

SECTION 47. RIGHT TO KNOW LAW**Contract Provisions - Right to Know Law 8-K-1532, Rev. 2/1/2010**

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
 - 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other

information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Agreement by their duly authorized officers on the date first above written.

WITNESS:

COMMONWEALTH OF PENNSYLVANIA
(AGENCY)

Signature

Timothy S Ringler
[Name]

Signature

WITNESS:

NORESCO, LLC (ESCO)

Signature of Secretary, Assistant Secretary
Treasurer or Assistant Treasurer

Theresa MacKinnon, Corporate Secretary
Title

RANDALL R CLARK
[Name]

Signature of President or Vice President

VICE PRESIDENT & GENERAL MANAGER
Title

(Corporate Seal)

Federal Identification No. 90-0453168

APPROVED AS TO FORM AND LEGALITY:

Office of Chief Counsel - Agency

N/A
Office of General Counsel

N/A
Office of Attorney General

APPROVED:

Christina E. Long 9/29/10
Comptroller

CONTRACT ATTACHMENT I: Schedules, Exhibits, Appendices

- SCHEDULE A. EQUIPMENT TO BE INSTALLED BY ESCO
- SCHEDULE B. DESCRIPTION OF PREMISES; PRE-EXISTING EQUIPMENT INVENTORY
- SCHEDULE C: ENERGY SAVING GUARANTEE
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- SCHEDULE L. FACILITY MAINTENANCE CHECKLIST
- SCHEDULE M ESCO'S TRAINING RESPONSIBILITIES
- SCHEDULE N INSTALLMENT PURCHASE AND PAYMENT SCHEDULE
- SCHEDULE O FINAL PROJECT COSTS AND FINAL PROJECT CASH FLOW ANALYSIS; ACT 129 INCENTIVE PAYMENT FORM
- SCHEDULE P DGS ANNUAL REPORTING REQUIREMENTS
- SCHEDULE Q [Set forth parties' specific responsibilities in regard to the removal, remediation and disposal of hazardous waste materials responsibilities, but ESCO shall bear the cost and assumes full responsibility for scheduling and coordination]
- SCHEDULE R AGENCY APPROVED SUBCONTRACTOR LIST

EXHIBITS

- EXHIBIT I PERFORMANCE BOND/CONSTRUCTION BOND
- EXHIBIT II (i) CERTIFICATE OF ACCEPTANCE—TECHNICAL AUDIT
- EXHIBIT II (ii) CERTIFICATE OF ACCEPTANCE—INSTALLED EQUIPMENT
- EXHIBIT II (iii) CERTIFICATE OF ACCEPTANCE – Negotiated Hazardous Material Removal
- EXHIBIT III EQUIPMENT WARRANTIES

APPENDICES***OPTIONAL***

- APPENDIX A RFP FOR ESCO SOLICITATION
- APPENDIX B ESCO PROPOSAL
- APPENDIX C TECHNICAL AUDIT

NOTE: THE FOLLOWING SCHEDULES ARE OPTIONAL AND MAY BE INCLUDED OR COMBINED WITH OTHERS AS DESIRED.

PRE-EXISTING SERVICE CONTRACTS
ENERGY SAVINGS PROJECTIONS
PROJECTED FINANCIAL PERFORMANCE
FACILITY CHANGES CHECKLIST
CURRENT AND KNOWN CAPITAL PROJECTS AT FACILITY

Schedule P- DGS Annual Reporting Requirements

Agency Name/Agency Contact (Include Email and Phone Number)	
Facility Name/Facility Contact (Include Email and Phone Number)	
ESCO Name/ESCO Contact (Include Email and Phone Number)	
Total Square Footage of Project Site/Contract Start Date/Contract End Date	
Current Repayment Year (ex. Yr. 3/ 2005)	
Reporting Timeframe (ex. Jan 1-Dec. 31)	
Installed Project Cost (no financing costs)	
Total Contract Value of Guaranteed Savings	
Annual Value of Guaranteed Savings	
Measured Energy Savings	
Operational Savings	
Avoided Capital Cost (if applicable)	
Annual Dollar Value of Achieved Savings	
Total Annual Achieved Energy Savings (MMBTU)	
Electric	
Natural Gas	
Oil	
Coal	
Steam	
Other	
Annual Water Savings (kgal)	
Annual Avoided NOx Emissions (Tons)	
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