

REQUEST FOR PROPOSAL
ENERGY SAVINGS PERFORMANCE
CONTRACTING SERVICES



RFP# 23-025

Issue Date: March 8, 2023

Issuing Office:
Purchasing & Asset Management
100 University Park
Troy, AL 36082

Proposals Due: April 18, 2023
10:00 am

**ENERGY PERFORMANCE CONTRACTING SERVICES
RFP# 23-025**

Issued by: *Troy University*

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ENERGY PERFORMANCE CONTRACTING SERVICES

RFP# 23-025

Issued by: *Troy University*

Troy University located in Pike County, Alabama (hereinafter referred to as Institution) is seeking specific proposals from interested Energy Services Companies (ESCOs) which are capable of providing comprehensive energy management and energy-related capital improvement services as described in this RFP.

PROJECT OVERVIEW

Institution is interested in contracting for a full range of energy services and energy-related capital improvements (hereinafter referred to as project) designed to reduce energy and/or water use and related costs at its facility(s). These services and improvements are to be delivered on a performance contracting basis which may allow the Institution to: a) incur no initial capital cost, b) achieve significant long term savings which are measured and verified, c) obtain an annual savings guarantee which will be equal to or greater than the total annual project costs, d) obtain consistent levels of occupant comfort and system functionality, e) capture environmental benefits such as hazardous material disposal, and f) finance the project through an installment payment or a lease-purchase arrangement over an extended contract term.

Institution seeks to maximize energy savings and related improvements within the framework of the allowable 20-year contract term and must comply with the statutory provisions for available financing as contained in the Code of Alabama 1975 as amended; therefore, ESCOs are encouraged to structure a project which provides the greatest possible energy, water, and operation and maintenance (O&M) savings and the most beneficial project scope for the Institution. Institution is interested in essential services and improvements that will reduce facility energy and/or water consumption, upgrade energy-related capital equipment, improve building O&M, save costs through fuel switching, improve demand management, and alternative utility tariffs or alternative commodity purchases, and aid in meeting Institution's environmental management responsibilities.

The contracting process will have three phases:

1. Investment Grade Audit and Project Proposal Phase: A contract for the investment grade audit will be developed with the selected ESCO. Prior to signing the contract, an advertisement in accordance with Section 41- 16-140 of the Code of Alabama 1975, must be advertised in a newspaper 10 days prior to signing the contract. This investment grade audit will identify and evaluate cost-saving measures and define the proposed project scope, cost, savings and cash-flow over the proposed financing term. A project proposal will present aggregated measures that can be financed through guaranteed savings or paid for outright by the university.
2. Construction/Implementation/Commissioning and Financing Phase: A guaranteed energy savings performance contract will be negotiated following the audits. This will establish the project scope and costs and provide for construction and follow- up services to be provided during the financing term. A separate financing agreement will be developed for each project if necessary.
3. Post-Construction Guarantee/Monitoring Phase: After construction, the ESCO will offer a variety of services to ensure savings are met, such as measurement & verification, a savings guarantee, staff training, follow-up monitoring, and contract maintenance services.

REQUIRED CAPABILITIES & MINIMUM QUALIFICATIONS

The ESCO must have the demonstrated technical and managerial capabilities to provide a comprehensive set of energy and/or water services including, but not limited to, an investment grade audit, design, acquisition, installation, training and commissioning of new and/or existing energy systems as well as project monitoring and savings measurement and verification. Additional services may include operation and maintenance for all improvements and/or training of Institution's staff on routine maintenance and operation of systems. Monitoring and verification services shall include appropriate measurement and timely reporting of the performance and savings from project.

To be considered under this Request for Proposals (RFP), responding ESCOs must be listed on the U.S. Department of Energy's Qualified List of Energy Services Companies. In addition, only NAESCO accredited firms carrying the ESP (Energy Service Provider) designation will be considered.

OVERVIEW OF TERMS AND MISC. CONDITIONS

Contract Term. No contract shall exceed 20 years in duration (for each separate project) and may be subject to annual appropriations. The duration of the contract will be mutually determined between the ESCO and the Institution based on authorizing legislation, final project scope and financial factors.

The University reserves the right to execute additional projects under this RFP, where the detailed scope of work and associated costs, savings and cash-flows for each additional project may be developed at any time during the term of the initial project. The term for any additional project(s) shall not exceed twenty (20) years and may or may not coincide with the term of the initial project.

Guarantee. The project must result in a guaranteed minimum **annual** energy, water and O&M savings, as well as defined levels of occupant comfort, maintenance, monitoring, training or other services. The goal of this project is to achieve savings sufficient to cover all project costs including lease or installment payments and fees for maintenance, monitoring, training and other services, on an annual basis for the duration of the contract term.

Financial Review. Detailed financial projections of project benefits are dependent upon the scope of technical measures finally selected and installed. It is premature to place a major emphasis on projected financial benefits prior to the completion of the investment grade energy audit and negotiation of the project structure.

Governing Law. This Agreement shall be governed by the laws of the State of Alabama both as to its interpretation and performance without regard to its choice of law requirements. Should either party be required to legally enforce this agreement then suit shall be filed in the Circuit Court of Pike County, Alabama as the exclusive venue to adjudicate the same and the non-prevailing party shall be responsible for the expenses of the prevailing party, including reasonable attorney's fees as a result of such litigation.

Rejection of Submittals and Waiver of Minor Irregularities. The University reserves the right to reject individual submittals for the following reasons:

- Failure to meet the minimum qualifications specified in this RFP
- Failure to follow the specifications and instructions of this RFP
- Unsatisfactory reference checks
- Any submittal determined by the University to be substantially, or materially, unresponsive to the requirements of this RFP

The University reserves the right to waive informalities and minor irregularities in the submittals received.

Right to Cancellation. This RFP does not commit the University to contract for any requirements detailed herein. The University reserves the right to reject all submittals and cancel this RFP at any time for any reason prior to the execution of the Investment Grade Audit and Project Proposal Contract (Attachment F). The University shall not be liable for any costs incurred by respondents in the preparation of submittals and proposals nor in costs related to any element of the selection and contract negotiation process.

Disclosure of Submittal Contents. Submittals will be kept confidential until the evaluation and selection process is complete by the University. At that time, all submittals and associated documents become open to the public, except for material that is clearly marked proprietary or confidential.

IMPORTANT: In order to maintain confidentiality of proprietary information, respondents must clearly mark each page that contains the proprietary information in the upper right-hand corner with the word "CONFIDENTIAL." This mark must only be applied to pages that actually contain proprietary information and may not be applied generally to every page of the submittal.

FAILURE TO CLEARLY IDENTIFY TRADE SECRETS OR CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION WILL RESULT IN THAT INFORMATION BEING SUBJECT TO RELEASE UNDER A PUBLIC RECORDS REQUEST.

Forms and Bonds Required of Awarded Vendors. By submitting a proposal in response to this RFP, you agree to provide the following forms and bonds, prior to any purchase order being issued for work to be performed. Failure to provide these items can result in your proposal being considered as non-responsive.

- (a) Performance and Payment bonds will be required for the amount of the contract as required by the Laws of the State of Alabama. The bonds will cover the installation of the Energy Cost Savings Measure and/or value of the guaranteed energy cost savings on the contract, whichever the University deems required. All jobs exceeding \$50,000 will require a payment and performance bond.
- (b) Most recent version (2018) W-9 form
State of Alabama Act 2001-955 requires that a notarized Vendor Disclosure statement be completed and filed with all proposals, bids, contracts or grant proposals to the State of Alabama in excess of \$5,000.00. A vendor disclosure statement is not required for contracts for gas, water, and electric services where no competition exists, or where rates are fixed by law or ordinance. The statement shall be required only from the person receiving the contract/award and shall be submitted within ten (10) days of the award. **A new vendor disclosure statement is required for each purchase in excess of \$5,000.00 regardless of prior purchases. A current vendor disclosure statement must be on file before invoices can be processed for payment. Vendor disclosure statement included with RFP response are acceptable.**
- (c) **Alabama Law (Section 31-13-9 (a) and (b), Code of Alabama, 1975)** - The State of Alabama passed new legislation effective January 1, 2012 known as the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535. This legislation requires anyone receiving state monies to verify that they are in compliance with the new immigration law. State Agencies, including Troy University are required to withhold payment until proper verification has been obtained. **Please enclose a copy of the approved federal E-Verify registration. For vendors with no Alabama employees, please indicate your federal E-Verify # and indicate "NO ALABAMA EMPLOYEES."**

HIPAA Business Partner Agreement. (if applicable) The contract will require that the ESCO sign a Business Partner Agreement under the **Health Insurance Portability and Accountability Act** of 1996. If the work will be on and in campuses of health-related entities, this agreement is required as a part of the patient and client information security.

Bonding Requirements. Performance and Payment bonds will be required for the amount of the contract as required by the Laws of the State of Alabama. The bonds will cover the installation of the Energy Cost Savings Measure and/or value of the guaranteed energy cost savings on the contract, whichever the University deems required. All projects exceeding \$50,000 will require a payment and performance bond.

Insurance Requirements. Prior to the commencement of work, the ESCO must provide evidence of insurance for both the construction and operations phases of the project.

- (a) Worker’s compensation insurance, with limits as required by law
- (b) Employer’s liability insurance, for employee bodily injuries and deaths, with a limit of \$1,000,000 per accident
- (c) Commercial general liability insurance, covering claims for bodily injury, death and property damage, including site and operations, independent contractors, products, services and completed operations, personal injury, contractual, and broad-form property damage liability coverage, with occurrence limits as follows: \$1,000,000 for bodily injury, death and property damage, \$1,000,000 for products and completed operations, and \$2,000,000 combined aggregate
- (d) Commercial automobile liability insurance with a minimum of \$1,000,000 combined single limit insuring all owned, non-owned, hired and leased vehicles.

***See additional terms in Part II.**

SUBMITTAL & SELECTION PROCESS

The evaluation and selection of an ESCO, and the negotiation and procurement of services will proceed as follows:

Important Dates/Overview. The following schedule has been established for this RFP. The scheduled dates for tasks #1 through #4 are firm and are subject to change only by written addendum to this RFP. The scheduled dates for items #5 through #10 are tentative and are subject to change at the discretion of the University. There is to be no contact from any interested party, or their representatives, to Troy University staff during the RFP date of issue through final selection (unless in accordance with questions submitted in section 2.1.6, page 4). Any party that has been found to have contact will be disqualified.

	TASK	DATE/TIME
1	RFP Issued	March 8, 2023
2	Written Inquiries & Statement of Interest	March 28, 2023
3	Responses to Inquiries	March 31, 2023
4	Proposals Due	April 18, 2023, 10:00 am CST
5	University Review Period	April 18- 21, 2023
6	Site Visits/Interview for Finalist (if requested by finalist)	April 25-27, 2023
8	Selection	May 1, 2023 or soon after
9	Investment Grade Audit Contract	TBD- following required approvals
10	Energy Savings Performance Contract	TBD- following required approvals

Interest Statement & Question/Answer Period. Statement of interest, questions and requests for clarification on this RFP must be submitted in writing by **10:00 am CST, Tuesday, March 28, 2023**. Statement of interest and/or questions should be emailed to bids@troy.edu with a subject line referencing RFP# 23-025. Any responses deemed necessary by the University will be issued as an addendum to this RFP. No verbal inquiries will be addressed. Communication with University officials, the selection committee, or others associated with this RFP is strictly prohibited. Any unauthorized contact by a

respondent may result in the disqualification of that respondent's submittal. Addendums will be emailed to the ESCO's who've submitted questions or a statement of interest. These are the only questions that will be addressed. Contact made after the dates listed above may or may not be acknowledged. Please no sales calls.

Submission of Written Proposals. Submittals must be received in the University's Purchasing Department by **April 18, 2023, 10:00 am CST**. Submittals must be delivered to the following address:

**Troy University
Purchasing Department
Attn: Jessica Hasson
100 University Park
Troy, AL 36082**

Submittals must be plainly marked on the outside of the package or container with the RFP number and project title, as follows: **Submission for RFP 23-025: Energy Savings and Performance Contracting Services.** This includes any packaging added later by a courier such as Federal Express, UPS, or the US Postal Service. Packages not clearly marked as indicated will not be opened and will not be considered for review.

- All submittals become the property of the University and will not be returned.
- Submit 6 copies of your proposal in addition to the original for review committee members.
- Late submittals will not be considered. Plan ahead for mail delays/issues.
- Submittals may be modified or withdrawn at any time prior to the established due date.
- No portion of your response is to be emailed, all electronic information should be put on a USB drive in a sealed envelope/package with the submittal. Submitting any part of your proposal via email prior to the bid opening date and time, may result in disqualification.

Proposal Review and Selection of Finalists. Institution will establish a Project Evaluation Team to review and evaluate the ESCOs written responses to this RFP in accordance with the evaluation criteria identified below. The Project Evaluation Team will check client references which will also be evaluated. Institution intends to select no more than three (3) ESCOs as finalists. The University will score each ESCO using the following evaluation criteria. The ESCO scoring the highest overall will be deemed the most qualified for this project.

Capabilities of Firm/Experience	20 pts
Project History/Reference Check	20 pts
Technical Approach	30 pts
Project Management Approach	20 pts
<u>Financial Approach</u>	<u>10 pts</u>
Maximum Points Available	100 pts

Site Visit/Interviews. If necessary, the University may invite one or more of the top-ranked ESCOs to participate in an on-site or video conference interview, which will provide an opportunity for the University to seek clarification on the ESCO's written submittal and/or to view the University's campus. ESCO representatives at the interview should include individuals who will be key points of contact and have major responsibility for contract negotiation, engineering and design, construction management, and follow-up monitoring. Each interview may be recorded. Scores for the written submittal may be modified based on the results of the interview.

Reference Checks. The University will conduct reference checks for the top-ranked ESCO prior to final selection. The University reserves the right, at any time during the selection process, to request information from any individual familiar with the ESCO, its employees, their work, or projects. If references for the top-ranked ESCO are determined to be unacceptable, the University will eliminate that ESCO from further consideration and will initiate reference checks for the second-ranked ESCO, and so on.

Final Selection. Final selection will be based on acceptable references and the criteria as set forth in this RFP. The University intends to negotiate fees and other contract terms and conditions for the investment grade audit with the top-ranked ESCO. If fair and reasonable fees and terms and conditions cannot be established with the top-ranked ESCO, the University reserves the right to terminate the negotiation and initiate negotiations with the second-ranked ESCO, and so on, until fair and reasonable fees and terms and conditions have been established with one of the acceptable ESCOs.

Development of Energy Audit Agreement. Institution intends to negotiate a contract for the investment grade audit. If an acceptable technical energy audit agreement cannot be negotiated, negotiations with the next-ranked ESCO may be initiated. See Scope of Work for more information.

Development of Energy Services Agreement. After completion and acceptance of the investment grade audit, Institution intends to negotiate an Energy Services Agreement (ESA). If an acceptable ESA cannot be negotiated, negotiations with the next-ranked ESCO may be initiated. See Scope of Work for more information.

SCOPE OF WORK

Investment Grade Audit and Project Proposal Contract. The investment grade audit will identify potential cost-saving measures, determine the cost and savings of each measure, and present a measurement and verification plan to validate future savings of each measure. The University will set scope of audits and reserve the right to add additional audits and requested through use of this RFP/project. A project proposal will present a bundle of measures that can be financed through guaranteed savings over the proposed financing term, including a cash-flow table (use percentages provided in table for evaluation purposes only). **A t t a c h m e n t B**

Energy Savings Performance Contract. Through the guaranteed energy savings performance contract, the ESCO proceeds to final design, construction, and commissioning of the improvement measures.

Following satisfactory completion of the investment grade audit, the University will negotiate and develop an **Energy Savings Performance Contract (Attachment A)** with the ESCO. The contract will define the final agreed upon list of measures, equipment and labor costs and guaranteed cost savings. It will document equipment specifications and warranties. It establishes the schedule and responsibilities of the ESCO and the University. It incorporates current state statutes and directives that directly relate to performance contracting.

Financing Agreement. Should the University choose to seek financing for all or any part of proposed work, the ESCO may at the University's direction solicit financing companies on behalf of the University using a Financing Solicitation method, although federal regulations restrict the ESCO's role in advising on financing. Alternatively, the University may arrange financing independently. A separate financing agreement will be developed including ESCO payment schedules and lender financing terms and schedules.

Measurement and Verification. In order to provide the performance guarantee, the ESCO will be under contract to provide annual measurement and verification (M&V) services. The guarantee is required to cover the cost of this service. This may or may not be financed.

ESCO Services. The ESCO must have the demonstrated capability in engineering and management to provide a broad range of services to meet the goals and objectives of the University. These services may include but are not limited to the following:

Investment Grade Audit and Project Proposal Phase

- technical audit to evaluate costs and savings of a variety of energy and water- saving measures
- project proposal including financial analysis
- benchmarking using Energy Star tools
- measurement and verification plan
- commissioning plan
- utility bill data services to capture credits from utility bill errors

- mapping of utility services distribution

Construction/Implementation/Commissioning and Financing Phase

- engineering design
- equipment procurement and purchasing
- construction management
- hazardous waste disposal or recycling
- education about financing
- commissioning

Guarantee/Monitoring Phase

- continuing operations and maintenance for all improvements
- staff training on routine maintenance and operation of systems
- training of occupants
- guarantee of performance and cost savings for the entire term of the contract
- monitoring and verification for measurement and reporting of the performance and savings
- provision for independent review of monitoring & verification (guaranteed savings pays for independent contractor)
- analysis and application for Energy Star Label and/or LEED-EB (Leadership in Energy and Environmental Design for Existing Buildings, by the US Green Building Council)
- monitoring and reporting of emissions reductions
- maintaining long-term, high-efficiency performance of buildings

ESCO must have the technical capability to address a broad range of systems including, but not limited to:

- Mechanical Systems: Heating, ventilating and air conditioning (HVAC) systems, energy management and control systems, domestic hot water systems, thermal energy production, storage, and distribution systems, etc.
- Plants: Distribution systems, cogeneration systems, etc.
- Lighting systems: Indoor and outdoor lighting systems, lighting controls, daylighting strategies.
- Renewable Energy Systems: Solar electric (PV), solar thermal, small wind
- Building envelope systems: Windows, insulation, weatherization, roofing, etc.
- Specialty Systems: Laundry equipment, kitchen equipment, pool systems, renewable energy systems.
- LEED-EB: LEED-EB strategies to improve operations and maintenance practices
- Water and Sewage Systems: Automatic controls, low-flow faucet aerators, low-flow toilets, cooling tower modifications, pool covers, and irrigation system controls or modifications.

Buildings, Facilities and Approach. All facilities owned, managed or operated by the University at any time during the term of the performance contract will be considered for this work including the main campus in Troy and any satellite campus location requested by the University. Specific facilities now served by the University are listed in the Technical Facility Profile. Additional facilities not yet identified that are under the jurisdiction of the University at any time during the term of the performance contract can be included in the scope of work in a contract amendment.

To aid companies in their response to this request the following items are attached:

- PART I: Proposed Project Schedule**
- PART II: Contract Terms and Conditions**
- PART III: ESCO Profile and Response Template**
- Attachment A: Sample Energy Services Agreement**
- Attachment B: Sample Energy Audit Agreement**
- Attachment C: Technical Facilities Profile**

PART I

PROPOSED PROJECT SCHEDULE

The following is the proposed project schedule and may be adjusted as necessary during the procurement of services.

ACTIVITY	DATE
Issue RFP	March 8, 2023
RFP Statement of Interest/Questions Due	March 28, 2023
Question Responses	March 31, 2023
Proposals Due	April 18, 2023 10 am
Proposal Review and Selection of Finalists	April 18-21, 2023
ESCO Interviews and Ranking	April 25-27
Development of Energy Audit Contract (includes negotiation and signing)	TBD
Technical Audit, Project Analysis	TBD
Audit Review and Development of ESA (includes negotiation, Agency approval if required, and signing)	TBD

PART II
CONTRACT TERMS AND CONDITIONS

The minimum contract terms and conditions Institution will accept from the selected ESCO include:

1. Technical Requirements

Investment Grade Energy Audit. The selected ESCO must perform and present the results from a detailed investment grade energy audit of acceptable quality to Institution. The proposed audit terms and conditions are specified in the Proposed Energy Audit Agreement located in Attachment B. If Institution decides not to enter into a contract after the audit has been accepted, Institution agrees to pay the cost of the audit as stated in the audit agreement, provided that the proposed contract terms offered by the ESCO meet all the conditions set forth in the audit agreement and this RFP.

Standards of Comfort and Service. The ESCO will be responsible for maintaining the levels of comfort and service for each building as specified in the ESA.

Professional Engineer Involvement. A registered professional engineer must, at a minimum, review and approve design work done under this contract. All projects done under this contract must comply with the currently accepted codes, standards and regulations of the Alabama Building Commission and must be submitted for review/approval by the Alabama Building Commission.

Guaranteed Savings. Institution requires a minimum **annual** guaranteed level of savings approach to the project. If the project does not generate the guaranteed level of savings in any given year, the ESCO will be responsible for reimbursing Institution the amount of any shortfall. Excess savings will not be used to reimburse the ESCO for any payments made due to shortfalls in other years.

Construction Management. The ESCO will be required to work with current building management and maintenance personnel in order to coordinate construction and provide appropriate training in operations and maintenance of all installed improvements. No equipment or other improvements will be installed that would require Institution to hire additional personnel unless contract negotiations produce an explicit exemption for a specific installation. Maintenance responsibilities shall be detailed in the ESA.

O & M Manuals. At least two operation and maintenance manuals for each site will be provided for all equipment replacements and/or upgrades. Manuals are subject to approval of Institution.

As-Built Drawings. Where applicable, ESCO must provide mylar, reproducible "as-built" and record drawings (or such electronic equivalents as may be agreed to with Institution) of all existing and modified conditions associated with the project, conforming to typical engineering standards. These should include architectural, mechanical, electrical, structural, and control drawings and operating manuals within 30 days of completed project installation.

Follow-up Maintenance, Monitoring and Training Services. The ESCO will be responsible for maintaining and monitoring the measures to ensure optimal performance as well as for ongoing training, however, Institution has the option to negotiate the scope of service needed.

Institution Energy Improvement Projects. Institution reserves the right to make energy and/or water improvements to the facility and to negotiate adjustments to the savings measurement and verification methodology to account for such improvements.

2. **Minimum Contract Provisions**

Proposal Submissions. The contents of the ESCO's RFP submission will become part of any final agreement between Institution and the ESCO.

Project Schedule. The ESCO must provide a final schedule of project milestones including construction, equipment-service and preventive maintenance provisions that will become part of any final contract. In the event any milestone or service provision is not met as scheduled, without prior approval from Institution, Institution reserves the right to consider it a default and withdraw from all contractual obligations without penalty.

Institution Inspection. Institution retains the right to have its representative visit the site during the audit and implementation phases of the project, and to attend relevant on-site or off-site meetings of the ESCO and/or its subcontractors. Institution will have the right to inspect, test and approve the materials and work conducted in the facilities during construction and operation. Institution shall have the right and access to the account books, records, and other compilations of data that pertain to the performance of the provisions and requirements of the agreement. Records shall be kept on file in legible form and retained for a minimum of three years after close-out.

Final Approval of Institution. Institution retains final approval over the scope of work and all end-use conditions.

Ownership of Drawings, Data, Reports and Materials. All drawings, reports and materials prepared by the ESCO specifically in performance of this contract shall become the property of Institution and will be delivered to Institution as needed, requested or upon completion of construction.

Compliance. All work completed under this contract must be in compliance with all applicable federal, state and local laws, rules and regulations including all building codes and appropriate accreditation, certification and licensing standards. Work must be in accordance with sound engineering and safety practices, be installed in a workmanlike manner and be in compliance with all Institution regulations relative to the premises. The ESCO and its subcontractors will be responsible for obtaining any and all required governmental permits, consents and authorizations, and for payment of any and all state and city required taxes and fees which result from this contract.

Handling of Hazardous Materials. All work completed under this contract must be in compliance with all applicable federal, state and local laws, rules and regulations regarding waste disposal and treatment/disposal of any hazardous materials that could result from this project. Work must also be in accordance with sound engineering and safety practices, and in compliance with all Institution rules relative to the premises.

Methodology to Adjust for Material Changes. The contract must contain a mutually acceptable clause whereby unanticipated changes in facility use, occupancy, schedule and/or utility rates can be accommodated in a fair manner agreeable to both parties.

Subcontractor Approval. Institution retains the right to approve any ESCO selected subcontractor prior to its commencement of work on this project. Names and qualifications of subcontractors must be submitted at least **two** weeks in advance of subcontractor scheduled start date.

Price Disclosure. The ESCO may be required to fully disclose all costs and fees associated with this project including audit, design, engineering, equipment, installation, financing, commissioning, monitoring, overhead, profit, etc.

Bonding Requirements. Performance and Payment bonds will be required for the amount of the contract as required by the Laws of the State of Alabama. The bonds will cover the installation of the Energy Cost Savings Measure and/or value of the guaranteed energy cost savings on the contract, whichever the University deems required. All projects exceeding \$50,000 will require a payment and performance bond.

Annual Reconciliation. Project savings will be verified and reconciled on an annual basis. ESCO will provide timely monthly savings reports to Institution, unless otherwise agreed to by the parties.

Contract Term. No contract shall exceed **20** years in duration and may be subject to annual appropriations. All projects undertaken must complete the required pay-back period within the term of the contract.

ESCO PROFILE AND RESPONSE TEMPLATE

Each ESCO is required to fully answer all questions in each category listed below. Provide responses on 8 ½ " x 11" sheets of paper and number and title each answer to the corresponding category. Font size should be no smaller than 10 point. All pages in your response should be numbered sequentially. ESCOs must also include a table of contents which indicates the section and page numbers corresponding to the information included. **Important:** Please restate the number and question before your response to each item.

All questions must be addressed by the ESCO in order for this application form to be properly completed. Failure to answer any question, or comply with any directive contained in this form may be used by Institution as grounds to find the ESCO ineligible. If a question or directive does not pertain to your firm in any way, please indicate with the symbol N/A.

Basic Information:

Firm Name _____

Business Address _____

City _____ **State** _____

County _____ **Zip Code** _____

Email _____ **Fax#** _____

Names and Titles of Two Contact People

1) _____ Phone (_____) _____

2) _____ Phone (_____) _____

Federal Employer Identification Number _____

Year Firm was Established _____

Name and Address of Parent Company, if applicable: _____

Four Year Summary of Contract Values for Energy Performance Contracting Projects where your firm was the prime contractor with a first party written savings guarantee to the Institution: (Note: If you are a branch office of a larger firm, indicate only those contract values associated with that specific branch.)

2022: \$ _____ (to date) 2021: \$ _____

2020: \$ _____ 2019: \$ _____

Corporate Background/Historical Data

Answer the questions below:

- How many years has your firm been in business under its present business name? ____ Years
- Please identify all states in which your firm is legally qualified to do business. _____
- Indicate all other names by which your organization has been known and the length of time known by each name. _____
- How many years has your firm been involved in energy-related business? ____ Years
- Certify that your company does not owe the state of Alabama any taxes.
- Certify that your company is not currently under suspension or debarment by the state of Alabama, any other state, or the federal government.
- Identify your firm's legal counsel for this project. Give the name and address of the primary individual responsible for contract negotiation.
- Indicate your firm's current annual gross revenue.
- Indicate if your firm is accredited by the National Association of Energy Service Companies (NAESCO). ESCOs are not required to be accredited by NAESCO. All NAESCO accredited ESCOs may receive additional points. (Note: This is optional) In the event an ESCO is not certified a detailed accounting of projects awarded will be required, the agency seeking the contract has the right to require further documentation as necessary.

1. Program Compliance

1.0 Program Compliance

Please affirm your willingness to comply with the requirements listed in each subsection below by responding "yes" to each item in your response. Exceptions, if any, must be noted immediately following the item where the exception is proposed. For each exception, please include the following information:

1. The original language for which you take exception.
2. Your proposed modification to the language.
3. Justification for the proposed modification.
4. Whether the proposed modification is Negotiable or Non-negotiable.

Where permitted, proposed exceptions will be reviewed by the University and will be deemed either Acceptable as Proposed, Acceptable with Modifications, or Unacceptable. Please note that exceptions marked as Non-negotiable, which are not deemed Acceptable as Proposed, will result in the ESCO being eliminated from further consideration.

1.1 Compliance with Mandatory Requirements

State your firm's commitment to comply with the following requirements. Please note that proposed exceptions to the requirements in this subsection will not be considered. ESCOs that fail to affirm willingness to comply with these requirements will be eliminated from further consideration.

- State Statutes on Guaranteed Energy Cost Saving Contracting (Code of Alabama, Title 41 - STATE GOVERNMENT, Chapter 16 - PUBLIC CONTRACTS, Article 7 - Guaranteed Energy Cost Savings Contracts, Sections 140-144)
- Mandatory Addendum to Troy University Contracts
- Mandatory Performance & Payment Bonds required by the University

1.2 RFP Exceptions

Any other exceptions to this RFP must be disclosed in this section of your response submittal and will not be considered if submitted later. Proposed exceptions will be reviewed and considered by the University but may be rejected at the sole discretion of the University.

1.3 Compliance with U.S. Department of Energy Model Documents

State your firm's commitment to comply with US Dept of Energy Model Documents. The requirements noted in this subsection are negotiable and ESCOs are encouraged to propose alternative or additional language, as appropriate, that will improve the overall project. While the University encourages ESCOs to disclose any desired exceptions, if known, in their response submittal, non-disclosed exceptions for the requirements in this subsection may still be raised and considered during contract negotiations.

2. Capabilities of Firm

2.1 Capabilities: Overview of Approach to Energy Savings Performance Contracting

Provide an overview, maximum of one (1) page, to present your company as it relates to this project. The purpose of this overview is to provide a good introduction of your firm to the evaluation committee.

2.2 NAESCO Accreditation

Provide verification of NAESCO Accreditation in Appendix, including either a print-out of the listing on the www.naesco.org website with the name of your firm highlighted or a letter from NAESCO that accreditation is in process and the anticipated completion date.

2.3 Other Industry Accreditations

List any other industry accreditations, partnerships, memberships, and pre-qualifications and briefly describe the relevance of each. Provide appropriate documentation in Appendix, behind the NAESCO accreditation.

2.4 History and Focus of Company

Limit your response to no more than one (1) page for this section (and subsections).

2.4.1 Structure and Evolution of the Firm. List any other names for company's business.

Provide any other information, only if deemed necessary.

2.4.2 Years in the Energy Business. State the number of years the company has been involved in the energy-efficiency related business.

2.4.3 Involvement in Performance Contracting. State the number of years the company has offered energy savings performance contracting services. State the number of project professionals (energy engineers, project managers, etc.) in your firm that are directly involved in

the performance contracting and energy efficiency or renewable energy business.

2.4.4 Number of Performance Contracting Projects. State the number of performance contracting projects completed by the company.

2.4.5 Location of nearest office to University main Campus in Troy, AL. ESCO should have office located within 150 miles to support service.

2.5 General Scope of Services

2.5.1 Energy Systems in Buildings. Provide a brief discussion (five pages maximum) for this section (Energy Systems in Buildings) to illustrate the company's capability in each of the following areas.

2.5.1.1 Mechanical/Electrical Systems. This discussion could include indoor and outdoor lighting, heating, ventilation and indoor air quality issues, cooling, control and building automation, fuel switching, central plant, etc.

2.5.1.2 Renewables. This discussion could include daylighting, solar- electric, solar thermal, geothermal, wind, biomass, distributed generation, etc.

2.5.1.3 Water Measures. This discussion could include plumbing fixtures, landscape irrigation, mechanical plant water-saving measures, etc.

2.5.1.4 Specialty Systems or Specific Building Types. This discussion could include kitchen or laundry; laboratories, clean rooms; healthcare hospitals, nursing homes, clinics; swimming pools and recreational facilities; computer laboratories, data centers; correctional facilities; etc.

2.5.1.5 Energy Management Services. This discussion could include energy management, occupant programs (behavior focus), utility bill auditing and bill payment, benchmarking, LEED for Existing Buildings, etc.

2.5.1.6 Envelope Measures. This discussion could include walls, windows, roof, infiltration reduction, etc.

2.5.1.7 Operational Savings Measures. This discussion could include eliminated maintenance costs, training programs for staff or occupants, waste measures, etc.

2.5.1.8 Other

2.5.2 Project Development and Implementation. Provide a brief discussion (five pages maximum) for this section (Project Development and Implementation) to illustrate the company's capability in each of the following areas.

2.5.2.1 Energy Auditing (potential measures, savings projections; cost estimates)

2.5.2.2 Baseline Development (including future savings adjustment)

2.5.2.3 Project Proposal (package of measures with cash flow)

2.5.2.4 System Design Engineering

2.5.2.5 Equipment and Subcontractor Procurement and Bidding

2.5.2.6 Construction Management

2.5.2.7 Commissioning of Projects and Retro-commissioning of Existing Buildings

2.5.2.8 Project Management

2.5.2.9 Hazardous Materials (identification and abatement, recycling or disposal, including asbestos)

2.5.3 Core Performance Contracting Services. Provide a brief discussion (five pages maximum) for this section (Core Performance Contracting Services) to illustrate the company's capability in each of the following areas.

2.5.3.1 Performance Guarantee (for every year of the financing term)

2.5.3.2 Insurance (per contract requirements)

2.5.3.3 Equipment Warranties – Minimum of 5 years parts and labor for HVAC & Controls. Minimum of 10 years for lighting systems.

- 2.5.3.4 Facilitation of Financing (including a municipal, tax-exempt lease purchase), to the extent your firm is registered to do so.
- 2.5.3.5 Measurement and Verification of Savings
- 2.5.3.6 Training (facility staff, occupants)
- 2.5.3.7 Code Compliance – demonstrate ESCOs familiarity and experience in working and complying with Alabama Department of Finance, Division of Construction Management oversight of a construction project.

2.5.4 Support Services. Provide a brief discussion (five pages maximum) for this section (Support Services) to illustrate the company’s capability in each of the following areas.

- 2.5.4.1 Long-term Maintenance Services on Energy Systems
- 2.5.4.2 Application for Energy Star Label and LEED Certification
- 2.5.4.3 Data Reporting (DOE/LBNL, emissions reductions, assistance to the University with preparing annual reports, etc.)

3. Project History

3.1 Market Sector Involvement

Briefly describe your company’s expertise/experience as a prime contractor for energy savings performance contracting projects in:

- 3.1.1 The State of Alabama
- 3.1.2 The higher education market

3.2 Project References

Provide detailed information on up to eight energy savings performance contracting projects developed and implemented by your company within the past five years that have completed construction. Only include projects that have at least one year of documented performance data, are currently in repayment, are currently under contract with your firm, and that can be used as references. References for projects where your firm was not the ESCO prime contractor are not acceptable. If desired, provide additional project detail, such as a case study, in any format (maximum of an additional two pages for each project) in Appendix. The University recognizes that the actual performance data of some projects may be confidential, protected by the customer and subject to confidentiality agreements in project contracts.

For each project, provide the following information:

3.2.1 Project name

- 3.2.1.1 Location (city, state)
- 3.2.1.2 Facility type and use
- 3.2.1.3 Project size (number of buildings; total square feet)
- 3.2.1.4 Project cost (installed project costs; financed amount)
- 3.2.1.5 Guaranteed annual savings (\$)
- 3.2.1.6 Financing/funding source
- 3.2.1.7 Project scope
- 3.2.1.8 Year completed (construction)
- 3.2.1.9 Project schedule (construction start/end dates; guarantee period start/end dates; describe whether project was completed on time or delayed)
- 3.2.1.10 Measurement and verification methods
- 3.2.1.11 Guaranteed savings analysis and results (analysis of actual annual savings vs.

- guaranteed savings over the term of the project to date, to specifically include years where the actual savings fell short of guaranteed savings, if any, and the steps your firm took in response to the shortfall)
- 3.2.1.12 Project personnel (list of all ESCO personnel associated with the reference project who may also be assigned to this solicitation, along with their respective roles and responsibilities)
- 3.2.1.13 Relevance of the project to this solicitation (highlight specific aspects of the project that are particularly relevant to this solicitation)
- 3.2.1.14 Client point(s) of contact (name, title, telephone number, email address of key client representatives involved in the project)

4. Technical Approach for this Project

4.0 Overall Approach

In the table below, indicate how your firm intends to provide each of the various services associated with a typical performance contracting project.

Performance Contracting Service	Direct Provider	Third Party	Not Provided
Project Energy Study			
Engineering Design			
Project Economic Analysis			
Savings Guarantee			
Project Financing			
HVAC System Training			
Energy Management Training			
Scheduled HVAC Maintenance Services			
Scheduled Building Automation System Services			
HVAC and Building Automation System Repair Services			
Emergency Services			
Guarantee Monitoring			

Investment Grade Audit

- 4.0.1 Briefly summarize your firm’s approach to auditing, to include your process for identifying facility improvement measures and recommending which measures should be included in the performance contracting project.
- 4.0.2 Provide a brief overview of your sample Investment Grade Audit. In Appendix, provide a sample Investment Grade Audit report for a relevant performance contracting project that your firm implemented at a public higher education facility. Include detailed energy/water savings and economic calculations (excluding equipment cut sheets) and samples of tables and supporting calculations. This is intended to allow

- 4.0.3 reviewers to conduct a reasonable analysis of your company’s auditing methodology. Please be judicious regarding the volume of information submitted.

4.1 Design and Construction

- 4.1.1 Briefly summarize your firm’s overall approach to engineering and design, to include evaluation of technical alternatives, equipment selection, maintainability, systems integration and interoperability, etc. If your firm is a direct manufacturer or distributor of energy equipment (lighting, HVAC mechanical systems, energy management/building automation controls, etc.), discuss your process for determining the specific manufacturer of equipment/controls to be installed. Explain how University input is incorporated into the engineering and design process.
- 4.1.2 Briefly summarize your firm’s overall approach to construction/installation, to specifically include communication protocols, project phasing/scheduling, maintaining essential services and access to essential spaces, minimizing disruptions, disturbances, and outages, and other related complexities associated with projects in higher education facilities/spaces.
- 4.1.3 Briefly discuss your firm’s approach for ensuring safety during the construction phase. What is your firm’s Experience Modification Rate (EMR)?

4.2 Commissioning

- 4.2.1 Briefly summarize your firm’s overall approach to commissioning.
- 4.2.2 Provide a brief overview of your sample Commissioning Plan. In Appendix, provide a sample Commissioning Plan from a relevant performance contracting project implemented by your firm at a public higher education facility.

4.3 Measurement and Verification

- 4.3.1 Briefly summarize your firm’s overall approach to Measurement and Verification.
- 4.3.2 Include a brief overview of your sample M&V plan. In Appendix, provide a sample Measurement and Verification Plan from a relevant performance contracting project implemented by your company at a public higher education facility.

4.4 Operations and Maintenance

- 4.4.1 Briefly summarize your firm’s approach to Operations and Maintenance, to specifically include training of University personnel, warranty response procedures, service level targets, performance monitoring, ongoing technical support, etc.
- 4.4.2 Include a brief overview of your sample Operations and Maintenance Plan. In Appendix, provide a sample Operations & Maintenance Plan from a relevant performance contracting project implemented by your firm at a public higher education facility.

4.5 Measurement and Verification Savings Report

- 4.5.1 Briefly summarize your approach to the M&V savings report.
- 4.5.2 Include a brief overview of your sample Measurement and Verification Savings Report. In the Appendix, provide a sample Measurement and Verification Savings Report prepared by your firm from a completed performance contracting project currently in repayment at a public higher education facility.

4.6 Additional Value-added Services

- 4.6.1 Briefly summarize any additional value-added services typically provided by your firm as part of an energy savings performance contract and explain how these services would be beneficial to the University.

5.0 Management Approach for this Project

5.1 Project Management and Coordination

Limit this section (Project Management and Coordination, including subsections) to no more than five pages.

- 5.1.1 **Organizational Structure.** Show the organization chart for implementing and managing the project with the core energy team assigned to this project. Show clear lines of communication and responsibility. Describe the transition and responsible parties involved from the sales to auditing phase, auditing to construction phase, construction to follow-up monitoring phase, etc. Also include an organization chart showing the corporate structure with added corporate support for the project.
- 5.1.2 **Local Staffing and Support.** List the office location (city and state) for the core energy team for this project. Describe the extent of local staffing and support for each phase of a typical project. Describe the relevance or importance of local presence with regard to this project.
- 5.1.3 **In-House vs. Subcontractors.** Describe the types of services (both professional and construction services) that your company offers in-house and the services to be offered through subcontractors. Describe how subcontractors are selected. Also comment on your ability to competitively select subcontractors.
- 5.1.4 **Construction Management.** Describe how your firm would work with current building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building's operation and use. Describe your flexibility and/or any limitations regarding possible University activities such as: management of additional energy and water projects, monitoring of installation and performance of Contractor projects and integration of other identified capital needs with Contractor projects which may or may not contain energy and water saving opportunities.
- 5.1.5 **Owner Involvement.** Describe how you engage the University in decision-making regarding project scope, equipment specifications, ongoing operational and maintenance strategies, etc., and how you incorporate the University's needs.

- 5.1.6 **Long-term Servicing.** Describe how you manage the long-term servicing of equipment and systems. State the location of your nearest servicing office.
- 5.1.7 **Data Collection and Reporting.** Describe how your firm will collect, store, secure, and maintain operational data associated with this project. Describe the type of data that is collected, any processing and/or analysis that is provided, and how that data is made available to the University for reporting and other purposes. Describe the type of assistance provided by your firm to support various ongoing reporting requirements (e.g., Energy Star Portfolio Manager, DOE/LBNL, emissions reductions, annual reports to state agencies, etc.)

5.2 Personnel and Staffing. Use this section to present background on personnel or subcontractors who will be assigned responsibility for a core project task. Resumes, if desired, may be included in Appendix. For each proposed project team member, provide the following information:

- 5.2.1.1 Name
- 5.2.1.2 Potential role
- 5.2.1.3 Base Location
- 5.2.1.4 Current employment information (current job title; company, if subcontractor; job responsibilities; number of years with firm)
- 5.2.1.5 Previous employment information (job title; company name; job responsibilities; number of years with firm)
- 5.2.1.6 Academic/professional qualifications (degree/discipline; college/ university; professional credentials/affiliations; technical training; etc.)
- 5.2.1.7 Total years of relevant experience
- 5.2.1.8 Performance contracting experience in past five years (project #; project name; project location; year implemented; type of facilities; project installed cost; role and responsibilities)
- 5.2.1.9 Other relevant experience or accomplishments

5.3 Back-up Support. Discuss additional expertise and capability of staff available through other branch offices, subcontracts, etc., that provide back-up strengths in management support for this project.

6.0 Financial Approach for this Project

6.1 *Cost and Pricing: Responses to this section only (Cost and Pricing, including subsections) will remain proprietary.*

This response will establish the maximum percentages and rates for audit costs, markups, and fees for your firm for this project. These values will be applied in any Investment Grade Audit and Project Development Contract or Energy Savings Performance Contract and may be negotiated downward.

6.1.1 Project Cost Breakdown. In the table below, provide your company’s proposed Maximum Percentage of Total Project Price for this project, for each category listed. This format is required and must be completed in its entirety. Use only the categories shown. Ranges are not acceptable.

Project Construction Cost Category	Maximum Percent of Total Project Price	Self-Performed or Subcontracted
Pre-Construction Costs		
Design and other Engineering <i>Professional architectural and engineering services; energy modeling</i>		
Pre-Construction Services <i>Construction management and project development services</i>		
Other Pre-Construction Costs <i>Site visits, owner meetings, legal review, accounting services, etc.</i>		
Construction Costs		
Trade Subcontractors <i>Construction contractors subcontracted to ESCO; lighting, construction, sheet metal, etc.</i>	N/A until Investment Grade Audit is completed	
Design/Build Subcontracts <i>Construction and design contractors</i>	N/A until Investment Grade Audit is completed	
Direct Purchase Equipment <i>Equipment directly purchased by ESCO</i>	N/A until Investment Grade Audit is completed	
Construction Management <i>Construction manager and site superintendent</i>		
Project Engineering <i>Design engineer inspections; engineering analysis</i>		
General Conditions <i>Miscellaneous non-staffing costs; equipment rentals, security fencing, etc.</i>		
Construction Completion <i>Commissioning, training, construction M&V, O&M manuals</i>		
Other Construction Costs <i>Site visits, owner meetings, permits, insurance, bonds, warranty labor</i>		

6.1.2 Project Incidental and Ancillary Work. Describe how project incidental and ancillary work will be charged (billed hourly, billed as a markup of equipment and labor costs, etc.).

Incidental and ancillary work includes, but is not limited to, work that is related to ensure jobsite safety and security, jobsite cleanliness and sanitation, limited demolition, and other incidental work that is necessary to enable subcontractors to perform their work in a timely manner.

6.1.3 Profit Markup. In the table below provide the maximum percentage profit markup that will be applied to direct purchases of equipment, material, and subcontractors for this project. Note that overhead is included in Construction Costs - General Conditions.

	Maximum % Markup
Profit	

6.1.4 Contingency. Describe your company’s typical level of contingency budget for lighting, electrical, mechanical, controls projects, and other projects and how it proposes to apply contingency to cover changes in work scope and subcontractor change orders. Note that all unused contingency funds will revert to the University or be applied to additional work scope through a change order approved by the University.

6.1.5 Investment Grade Audit Fee. In the table below, provide the maximum fee to conduct the Investment Grade Audit and Project Development Proposal, on a cost per gross square foot (gsf) basis. Through this proposed maximum fee your firm acknowledges the responsibility to adhere to and complete the full scope of work as presented in **Attachment B (Investment Grade Audit and Project Proposal Contract)**.

	Maximum Cost per gsf
Investment Grade Audit and Project Proposal	\$/gsf

6.1.5 Self-Performed Work Fees. In the table below, provide the position descriptions and hourly rates for labor and services as performed by your company. The purpose of this is to enable confirmation through open book pricing.

Position Description	Hourly Rate
Position	\$_____
Position	\$_____
Position	\$_____
Position	\$_____

6.1.6 Measurement and Verification. Describe how the post-retrofit Measurement & Verification annual fee is determined.

The Measurement and Verification Services cost is the annual cost for the services necessary after acceptance of the project to annually verify the Energy Performance Contract guarantees. The cost for the guarantee is based upon the M&V option utilized, the risk of savings failure, the field time to measure building performance, and the time to document and present the report.

6.1.7 Warranty. Describe how the warranty cost is determined.

Warranty is the burdened labor cost associated with time anticipated to be expended by ESCO staff in supporting their direct purchase equipment

warranties; and/or equipment provided by subcontractors. This warranty cost may also include costs for extended equipment warranties in those cases where the required/specified equipment warranty is longer than the equipment warranty offered by the manufacturer.

6.1.8 Other Fees. Describe any other fees and how they will be determined.

6.2 Equipment/Labor Cost Competition. Describe your company's process to solicit bids on equipment/labor or to ensure price/cost competition and the best value for the University.

6.3 Open Book Pricing. Open book pricing is required as stated in Attachment G (Energy Savings Performance Contract). Describe your company's approach to open book pricing and the method for maintaining cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records.

6.4 Financing Source. Briefly discuss your company's ability to provide or arrange for project financing. If financing is arranged through a third party, explain to whom payments will be made.

6.5 Handling of Savings Shortfalls. Briefly discuss how your firm handles situations in which the actual energy savings fall short of the guaranteed energy savings amount. Address any savings shortfalls that have occurred over the past 5 years (up to 10 examples) and describe how they were resolved. Describe all events that may lead to guarantee modification or termination.

6.6 Best Value. Briefly describe how your approach to performance contracting delivers best value for the investment. Describe any utility rebates or other financial incentives or grants you can potentially provide and/or facilitate.

Appendix items to be included with response:

1. NAESCO and Other Relevant Industry Accreditations
2. Certificate(s) of Insurance
3. Additional Details for Reference Projects
4. Sample Investment Grade Audit Report
5. Sample Commissioning Plan
6. Sample Measurement and Verification Plan
7. Sample Operations & Maintenance Plan
8. Sample Measurement and Verification Savings Report
9. Sample Maintenance Plan
10. Sample Design Documentation
11. Additional Value-added Services
12. Resumes of Key Project Personnel

Attachment A

**SAMPLE
ENERGY SERVICES AGREEMENT**

ENERGY SERVICES AGREEMENT

This Energy Services Agreement, referred to herein as "Agreement" or "ESA", dated as of _____, 201__, by and between _____ (referred to herein as the "COMPANY") and _____ (referred to hereafter as the "INSTITUTION") for the purpose of providing energy conservation measures (ECMs), consisting of services, systems and facilities designed to reduce energy consumption and costs in buildings owned and operated by the INSTITUTION which are referred to herein as the "Premises." The INSTITUTION and the COMPANY are also referred to herein as the "Party" or "Parties" as appropriate.

RECITALS

WHEREAS, the COMPANY was selected by the INSTITUTION as a qualified provider to provide professional services which will result in decreased energy consumption and costs, and which services may include but are not limited to the following: energy-use analyses, the design and delivery of ECMs which consist of systems and devices to be installed and maintained on the Premises, guaranteed energy savings, the training of designated INSTITUTION employees, and the maintenance and monitoring of the ECMs as provided herein and measurement, verification and reporting of energy savings; and

WHEREAS, under separate agreement with the INSTITUTION, the COMPANY has performed a comprehensive Energy Audit and has prepared an Energy Audit Report which has been approved and accepted by the INSTITUTION as evidenced by the Energy Audit Report and INSTITUTION's Acceptance Certification as set forth in Exhibit I; and

WHEREAS, the COMPANY has agreed to guarantee a level of energy savings to be achieved as the result of the professional services to be provided under this Agreement.

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

ARTICLE 1: THE COMPANY'S RIGHTS AND RESPONSIBILITIES

1.1 Independent Company Status. The COMPANY is an independent Company and in providing its services under this Agreement, shall not represent to any third party that its authority is greater than that granted to it under the terms of this Agreement.

1.2 Legal Responsibility. The COMPANY shall perform or cause to be performed the Work and all other services required by this Agreement. The COMPANY shall assure that all of the Work is accomplished in a workmanlike manner and that all services which require the exercise of professional skills or judgment shall be accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed in the State of Alabama, if required by law. All Project Documents which are required to be prepared by the COMPANY shall be in accord with all applicable codes, standards and regulations and shall be prepared by qualified personnel. Where required by Alabama law, Project Documents shall bear the stamp or seal of architects or engineers licensed in the State of Alabama. The COMPANY shall remain responsible for all services performed, whether by the COMPANY or its subcontractors or others on its behalf, throughout the term of this Agreement.

If the COMPANY fails to comply with the foregoing standards, the COMPANY shall perform again, at its own expense, any and all Work required to be re-performed as a direct or indirect result of such failure. Any review, approval, acceptance or payment for any and all of the COMPANY's performance by the INSTITUTION shall not relieve the COMPANY of its responsibility for the services performed. This provision in no way limits the INSTITUTION'S rights against the COMPANY either under this Agreement in law or in equity.

1.3 Insurance. The **COMPANY** shall purchase, maintain and provide evidence of insurance coverage of the types, in the amounts and for the periods specified in Schedule Q. Subsequent to the Commencement Date described in paragraph 5.1 hereof, the **INSTITUTION** shall be responsible for providing insurance coverage on the ECMs.

The **COMPANY** may not commence performance of the Work or other services under this Agreement until all required insurance is obtained and evidence of it is received and approved by the **INSTITUTION** as described in paragraph 2.1, but the failure of the **INSTITUTION** to obtain such evidence from the **COMPANY** before permitting the **COMPANY** to commence the Work shall not be deemed to be a waiver by the **INSTITUTION**, and the **COMPANY** shall remain under a continuing obligation to obtain and maintain the required coverage and to supply evidence of coverage in accordance with Schedule Q.

The **COMPANY**'s failure to obtain or keep such insurance in force shall constitute an Event of Default under this Agreement within the meaning of Article 11, and in addition to the remedies provided therein, the **INSTITUTION** reserves the right to stop the Work until evidence of the requisite coverage is provided. The **COMPANY** shall require all subcontractors performing any portion of the Work to carry the insurance required in Schedule Q and the **COMPANY** may, at its option, provide the coverage for any or all subcontractors, and, if so, the evidence of insurance submitted shall so stipulate. The **COMPANY** and each of its subcontractors agree that each insurer shall waive its rights of subrogation against the **INSTITUTION**.

The **COMPANY** shall timely renew the required insurance as necessary to keep such coverage in effect for the periods specified in Schedule Q and shall supply the **INSTITUTION**, not less than thirty (30) days prior to any expiration or renewal dates for such insurance policies, with evidence of all required insurance including updated replacement Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage, as was provided by the Certificates of Insurance, amendatory riders or endorsements originally supplied.

The **COMPANY** expressly understands and agrees that any insurance protection furnished by the **COMPANY** hereunder shall in no way limit its responsibility to indemnify and save harmless the **INSTITUTION** under the provisions of this Agreement.

1.4 Performance and Labor and Material Payment Bonds. The **COMPANY** shall, as soon as practicable following the execution date set forth in Article 15 hereof, and prior to commencing the Work, deliver to the **INSTITUTION** a Performance Bond and a Labor and Material Payment Bond securing its obligations to be performed under this Agreement until the Acceptance of the Work by the **INSTITUTION**. Each bond shall be in the amount set forth in Schedule Q hereof.

1.5 Cooperation with the Institution's Consultants. **(OPTIONAL)** The **INSTITUTION** reserves the right to designate authorized representatives or to retain consultants at its expense, including an Architect/Engineer, to act on its behalf with respect to administering the performance required under this Agreement throughout its term. The **INSTITUTION** and its representatives and consultants shall at all times have access to the Work. The **COMPANY** agrees to cooperate with any representative of, or consultant retained by, the **INSTITUTION**.

1.6 Joint and Several Liability. Each and every obligation or undertaking herein to be fulfilled or performed by the **COMPANY** shall be the joint and several obligation of the **COMPANY** and its successors or assigns.

1.7 Miscellaneous. Other rights and responsibilities of the **COMPANY** are set forth throughout this Agreement and in the Project Documents described in paragraph 3.5 hereof and are included under other titles, articles, sections and headings for convenience. It is the responsibility of the **COMPANY** to familiarize itself with all provisions of this Agreement and the Project Documents in order to understand fully the entirety of its rights and responsibilities hereunder.

ARTICLE 2: THE INSTITUTION'S RIGHTS AND RESPONSIBILITIES

2.1 Project Administration.

2.1.1 Institution Responsibility. The **INSTITUTION** shall be primarily responsible for the administration and monitoring of the performance of the Work by the **COMPANY**. The **INSTITUTION** personnel designated in paragraph 10.9 shall be the principal point of contact between the **INSTITUTION** and the **COMPANY** relative to the performance required under this Agreement.

2.2 Responsibilities of the Institution. Tasks to be performed by the **INSTITUTION** in the administration and coordination of this Agreement include, but are not limited to, the following areas:

- (a) Review and approve required insurance coverage and bonds within ten (10) business days following receipt of such documents by the **INSTITUTION** to ensure compliance with the terms of this Agreement;
- (b) Review and approve the ECM submittals required under 2.3 hereof within ____ () business days after receipt by the **INSTITUTION** of such ECM submittals to ensure:
 - (1) That the design and installation of the ECMs are adequately described and illustrated;
 - (2) That the design and installation of the ECMs are consistent with current and known future capital projects at the Premises; and
- (c) Review and approve all submittals required under paragraphs 2.3 and 3.5 herein, in accordance with the timeframes set forth in Schedule K.
- (d) Attend project meetings.

2.3. ECMs Submittals. ECMs submittals shall provide sufficient detail to allow the **INSTITUTION** to complete the reviews described in paragraph 2.2, and shall include:

- a) Date and revision dates.
- b) Project Number and Title.
- c) Names, as applicable, of the Institution representatives, subcontractor, sub-subcontractor, supplier, manufacturer or detailer.
- d) Identification of product or material.
- e) Relation to adjacent structure or material.
- f) Field Dimensions, clearly identified.
- g) Specification page and number.
- h) Specified standards, such as ASTM or ANSI.
- i) Identification of previously approved deviation from Project documents.
- j) Stamp or seal of the preparer of the ECM submittal, and the Company's certification that it has reviewed and approved the submittal as to its accuracy and compliance with the provisions of this Agreement.
- k) Drawings, plans, specifications, shop drawings, product data, and where appropriate or reasonably required, product samples.

At the request of the **INSTITUTION**, and where appropriate or reasonably required, the **COMPANY** shall provide on-site "mock-ups" and demonstrations of the ECMs at the Premises which shall also be construed as ECM submittals under the provisions of this paragraph.

Within () business days of receipt of the submittals, the **INSTITUTION** shall complete its review of the submittals and provide written approval of the submittal, or if the submittal has not been approved, written explanation as to the reason therefor. The **COMPANY** shall submit a revised submittal within ten (10) business days to the **INSTITUTION** for review and approval and the **INSTITUTION** shall have ten (10) business days from receipt thereof to complete its review of the revised submittal. The **COMPANY** shall be responsible for any delays caused by rejection of incomplete or inadequate submittals. The **COMPANY** may not commence any of the Work which requires the submittals without written approval by the **INSTITUTION**.

The **COMPANY**'s responsibility for errors, omissions, deviation from existing conditions, or deviation from the Project Documents in submittals is not relieved by the **INSTITUTION**'S review and approval thereof.

2.4 Drawings, Specifications and Surveys Provided by the Institution

(a) The **INSTITUTION** will make available for review by the **COMPANY** any of its working drawings and specifications concerning the Premises which are available to the **INSTITUTION** and which are reasonably necessary for the execution of the Work.

(b) The **INSTITUTION** shall provide the **COMPANY** with such surveys as it may have describing the physical characteristics, legal limitations and utility locations for the site of the Work.

(c) The **INSTITUTION** will make available for review by the **COMPANY** such working drawings, specifications, surveys and "As-Built" drawings concerning the Premises which are available and which relate to work being performed by other Companies at the Premises.

(d) All drawings, specifications, surveys and copies thereof furnished by the **INSTITUTION** are and shall remain **INSTITUTION** property. All "As-Built" drawings prepared under this Agreement are and shall remain **INSTITUTION** property. With the exception of one set of such drawings, specifications, surveys and "As-Built" drawings for each party hereto, such drawings, specifications, surveys and "As-Built" drawings are to be returned or suitably accounted for to the **INSTITUTION** on request at the completion of the Work.

2.5 Ownership, Dissemination and Publication of Documents. The drawings, specifications, reports, renderings, models, electronic media and all such other documents to be prepared and furnished by the **COMPANY** pursuant to this Agreement shall be the property of the **INSTITUTION** and the **INSTITUTION** shall have a license to use any copyrighted material contained in such documents. All documents listed above may be issued for informational purposes by the **INSTITUTION** without additional compensation to the **COMPANY**.

2.6 Interpretation of Agreement. The **INSTITUTION** shall have the authority to determine questions of fact that arise in relation to the interpretation of this Agreement and the **COMPANY**'S performance hereunder. However, such determinations are subject to the Alternative Dispute Resolution procedures as described in schedule P. Unless the Parties agree otherwise, or the Work cannot be continued without a resolution of the question of fact, such

determinations and Alternative Dispute Resolution procedures shall not be cause for delay of the Work. The **COMPANY** shall proceed diligently with the performance of this Agreement and in accordance with the **INSTITUTION'S** decision whether or not the **COMPANY** or anyone else has an active claim pending. Continuation of the Work shall not be construed as a waiver of any rights accruing to the **COMPANY**.

ARTICLE 3: THE ENERGY CONSERVATION PROJECT (THE "PROJECT")

3.1 Project Defined. The **COMPANY** shall design, procure, fabricate and install the energy conservation measures specified in Schedule A and provide training, commissioning, maintenance and monitoring and all other services specified in this Agreement and the Project Documents set forth in paragraph 3.5 at the Premises described in Schedule D.

3.2 Energy Audit Report. The Energy Audit Report prepared by the **COMPANY** and accepted by the **INSTITUTION** contains specific recommendations and documentation concerning the energy conservation measures, systems and services to be provided at the Premises and is incorporated herein by reference. Notwithstanding, the provisions of this Agreement and the Schedules referenced in paragraph 3.5 shall govern in the event of any inconsistencies between the Energy Audit Report and the provisions of this Agreement.

3.3 Annual Energy Savings Guaranty. The **COMPANY** has formulated and guaranteed the level of energy and operating cost savings as provided for in Schedule B, which will be achieved each year as a result of the performance by **COMPANY** of the services specified in this Agreement utilizing the Methods of Savings Measurement and Verification set forth in Schedule N.

3.4 Annual Review and Reimbursement. Energy savings achieved at the Premises shall be reported, reconciled and verified pursuant to the provisions of Schedule N. If said annual review, reconciliation and verification of energy savings discloses that the **COMPANY** has failed to achieve the annual guaranteed energy savings and operating cost savings set forth in Schedule B, the **COMPANY** will pay the **INSTITUTION** or the **INSTITUTION'S** designee, as may be directed by the **INSTITUTION**, the difference between the annual amount guaranteed and the amount of actual annual energy and operating cost savings achieved at the Premises. The **COMPANY** shall remit such payments to the **INSTITUTION** within thirty (30) days of written demand therefore by the **INSTITUTION**.

3.5 Project Documents. The Project Documents include:

- The executed ESA
- The Energy Audit Report
- **COMPANY** Submittals specified in paragraph 2.3.
- Certificates of Insurance
- Executed Performance Bond and Labor and Material Payment Bond
- Drawings, Specifications and Surveys furnished by the **INSTITUTION** in accordance with paragraph 2.4.

The Project Documents also include the following Schedules which are incorporated herein and made a part of this ESA when approved by the **INSTITUTION** and **COMPANY**:

Schedule A	ECMs to be Installed
Schedule B	Energy Savings Guaranty
Schedule C	Compensation to Company
Schedule D	Premises
Schedule E	Calculation of Baseline/Benchmarks

Schedule F	[FINANCING AGREEMENT]
Schedule G	Company Maintenance Responsibilities
Schedule H	Institution Maintenance Responsibilities
Schedule I	Operating Parameters for ECMs/Standards of Comfort & Service
Schedule J	Company Training Responsibilities
Schedule K	Project Installation Schedule
Schedule L	Current and Known Future Capital Projects at the Premises
Schedule M	Pre-Installation Equipment Inventory
Schedule N	Methods of Savings Measurement and Verification
Schedule O	Systems Startup and Commissioning of ECMs
Schedule P	Alternative Dispute Resolution Procedures
Schedule Q	Insurance and Bonds
Schedule R	Warranties

Attachment A	Sample Construction Process Language
Exhibit I	Certification of Acceptance--Energy Audit Report
Exhibit II	Certification of Acceptance—Energy Conservation Measures

3.5.1 Project Documents Furnished by the Institution; No Warranty. Pursuant to paragraph 2.4(c), the **INSTITUTION** shall make available for the **COMPANY'S** review, inspection, and duplication at **COMPANY'S** expense, such Project Documents as it may possess which relate to any work being performed by other Companies at the Premises under separate contracts with the **INSTITUTION** unrelated to the **COMPANY's** performance of the Work under this Agreement, including but not limited to drawings, specifications, surveys and as-built drawings. The furnishing of such Project Documents by the **INSTITUTION** shall not constitute a warranty as to the accuracy or completeness of such Project Documents.

3.5.2 Review of Project Documents; Notification to the Institution. The **COMPANY** shall carefully review all Project Documents, including all addenda, whether prepared by the **COMPANY**, its subcontractors or furnished by the **INSTITUTION** for errors, inconsistencies or omissions relative to the performance of the Work. Upon completion of its review of the Project Documents, and prior to commencing the Work, the **COMPANY** shall provide written notice to the **INSTITUTION** that: (i) there are no inconsistencies in the Project Documents pertaining to the performance of the Work at the Premises; or (ii) specifying the nature of any conflicts or inconsistencies noted from the **COMPANY's** review of the Project Documents. All Work to be performed under this Agreement by the **COMPANY** or its subcontractors which the Project Documents indicate is in conflict with the Project Documents or the work of other Companies performing on the Premises shall be brought to the attention of the **INSTITUTION** before the Work is commenced.

3.5.3 Correction of Conflicting Work. In the event that the **COMPANY** fails to properly prepare or review Project Documents or commences the Work without providing notice to the **INSTITUTION** of any conflict it discovers in the Project Documents, the **COMPANY** shall, upon written direction from the **INSTITUTION**, remove all such Work or portion thereof so conflicting and rebuild it as directed at no additional cost to the **INSTITUTION**, provided that the Project Documents furnished by the **INSTITUTION** have put the **COMPANY** on reasonable notice that an inconsistency, error, conflict or omission existed.

**ARTICLE 4: IMPLEMENTATION OF THE ENERGY CONSERVATION PROJECT
("THE WORK")**

4.1 Description of the Work. The design, procurement, fabrication, installation and commissioning of the ECMs specified in Schedule A and any training services described in Schedule J, which are integral to the operation of the ECMs, are referred to in this Agreement as the "Work." The maintenance, monitoring, and savings measurement and verification services detailed in Schedules G and O and the any Post-Acceptance Training services detailed in Schedule J, performance of which does not commence until after the Commencement Date, are not part of the Work.

4.2 Performance of the Work. Construction and equipment installation shall proceed in accordance with the provisions contained in _____ (*See Attachment A, Sample Construction Process Provisions*) and the project installation schedule approved by INSTITUTION and attached hereto as Schedule K.

NOTE: It is important that the construction/installation phase of the project be managed in compliance with individual institutional requirements and the appropriate governing statutes. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract. See Attachment A, Sample Construction Process Provisions.

4.3 Systems Startup/Commissioning. The COMPANY shall conduct a thorough and systematic performance test of each element and total system of the installed ECMs in accordance with Schedule O. The COMPANY shall provide advance written notice of at least ten (10) business days to the INSTITUTION of the scheduled test(s). The INSTITUTION shall have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the ECMs. The COMPANY shall demonstrate that all ECMs installed comply with the requirements of the Project Documents. The COMPANY shall test all components and systems of the installed ECMs. The COMPANY, or its subcontractor(s), shall correct or adjust all deficiencies in operation of the ECMs.

ARTICLE 5: COMMENCEMENT DATE AND TERM; INTERIM PERIOD; FISCAL FUNDING

5.1 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 the INSTITUTION and COMPANY shall have delivered a written Notice to the INSTITUTION that: (i) it has completed the installation and commissioning and commenced operating all of the energy conservation measures specified in Schedule A; (ii) no Event of Default under Article 11 exists; and (iii) the Energy Savings Guaranty set forth in Schedule B is in full force and effect; and the INSTITUTION has inspected and accepted said installation and operation as evidenced by the Certification of Acceptance as set forth in Exhibit II. Compensation payments due to ESCO for project monitoring, savings measurement and verification, reporting and maintenance services under this Contract as set forth in Schedule C shall begin no earlier than _____ from the Commencement Date as defined herein.

5.2 Term of Contract; Interim Period. Subject to the following sentence, the term of this Agreement shall be ten (20) years measured beginning with the Commencement Date. Nonetheless, the Agreement shall be effective and binding upon the parties immediately upon its execution, and the period from contract 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 the INSTITUTION (**may be negotiated**).

5.3. Nonappropriation of Funds. In the event no **INSTITUTION** or other funds or insufficient **INSTITUTION** or other funds are appropriated and budgeted, and funds are otherwise unavailable by any means whatsoever in any fiscal period for which payments are due **COMPANY** under this Agreement, then the **INSTITUTION** will, not less than ___ days prior to end of such applicable fiscal period, in writing, notify the **COMPANY** of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the **INSTITUTION** of any kind whatsoever, except as to the portions of payments herein agreed upon for which the **INSTITUTION** and/or other funds shall have been appropriated and budgeted or are otherwise available.

5.4. Nonsubstitution. In the event of a termination of this Agreement due to the nonappropriation of funds or in the event this Agreement is terminated by **COMPANY** due to a default by the **INSTITUTION**, the **INSTITUTION** agrees, to the extent permitted by Alabama law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by **COMPANY** under the terms of this Agreement for a period of three-hundred sixty five (365) days following such default by the **INSTITUTION**, or termination of this Agreement due to non-appropriations. **(Optional)**

ARTICLE 6: COMPANY COMPENSATION

6.1 Company Compensation for the Work. Payments to the **COMPANY** for the Work shall be made by the **INSTITUTION** in the amounts and in accordance with Schedule C hereto. The amount specified as Compensation for the Work is inclusive of all costs and fees to be paid for the Work pursuant to this Agreement including any training services provided prior to acceptance of the project by **INSTITUTION** and as provided for in Schedule J.

6.2 Maintenance, Monitoring, Savings Measurement and Verification and any Post-Acceptance Training Fees. Payment to the **COMPANY** for maintenance, monitoring, savings measurement, verification and reporting, and Post-Acceptance Training services performed after the Commencement Date shall be made by the **INSTITUTION** pursuant to and in accordance with Schedule C.

ARTICLE 7: ACCEPTANCE

7.1 Acceptance of the Work. Acceptance of the Work shall occur when the **COMPANY's** performance of the entire scope of the Work is complete, in accordance with the Project Documents so that the **INSTITUTION** can utilize the installed ECMs for their intended use and the Energy Savings Guaranty provided by **COMPANY** under paragraph 3.3 and Schedule B becomes effective and the **INSTITUTION** has inspected and accepted said installation and operation as evidenced by the Certification of Acceptance as set forth in Exhibit II.

7.2 Required Acceptance Submittals by the Company. The **COMPANY** shall submit the following documents to the **INSTITUTION** with its notice of Final Completion:

- (a) All Project Record Documents as described in paragraph 3.5.
- (b) All releases of liens arising out of this Agreement, or receipts in full in lieu thereof, which were not previously delivered, and an affidavit that so far as the **COMPANY** has knowledge or information, the releases and receipts include all labor and material for which a lien could be filed. The **COMPANY** shall submit lien waivers, sworn statements, guarantees, full releases or other evidence reasonably satisfactory to the **INSTITUTION** that there are no liens, claims or stop notices pending, filed or threatened against the **INSTITUTION**, the **COMPANY**, the Work or the ECMs

whatsoever. The **COMPANY** may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the **INSTITUTION** to indemnify the **INSTITUTION** against any lien. If any lien remains unsatisfied after the **COMPANY** has received payment due for the Work, the **COMPANY** shall refund to the **INSTITUTION** all moneys that the **INSTITUTION** may be compelled to pay in discharging the lien, including all costs and reasonable attorney fees.

- (c) Certificates of inspection for all ECMs which require local government inspection.
- (d) Asbestos abatement compliance records, if applicable.

7.3 Any retainage amounts will be paid at the completion of and acceptance by **INSTITUTION** of final punch list items.

ARTICLE 8: THE ENERGY CONSERVATION MEASURES

8.1 ECM Warranties. The **COMPANY** warrants that all ECMs designed, procured, fabricated and installed pursuant to this Agreement are new, in good and proper working condition and are of merchantable quality and fit for the particular purposes of enabling the **INSTITUTION** to reduce energy consumption and operating cost. The **COMPANY** further warrants that the ECMs are protected by appropriate written warranties covering all parts and equipment performance for the periods specified in Schedule R. The **COMPANY** shall deliver to the **INSTITUTION** for inspection and approval all such written warranties and shall pursue rights and remedies against the manufacturer and each prior seller of the ECMs under the warranties in the event of equipment malfunction, improper or defective function, or defects in parts, workmanship or performance. The **COMPANY** shall be responsible for managing all warranty activity during the warranty periods set forth in Schedule R and shall notify the **INSTITUTION** whenever defects in equipment, parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by the **COMPANY**. The cost of any damage, loss or claims by any person arising out of the use or operation of the ECMs or damage to the ECMs and their performance, including damage to other property and equipment of the **INSTITUTION** or the Premises, due to the **COMPANY**'s failure to exercise its warranty rights shall be borne solely by the **COMPANY**.

All warranties shall be transferable and extend to the **INSTITUTION**. The warranties shall specify that only new, and not reconditioned, parts may be used and installed when repair is necessitated by malfunction. The **COMPANY** warrants that all workmanship, materials, and equipment used in conjunction with the ECMs will be in conformance with the Project Documents and free from defects for the period, commencing with the date of the beneficial use of each ECM to the **INSTITUTION** and continuing for the period set forth in Schedule R.

8.2 Correction of Warranted Work.

(a) Commencing with the date of beneficial use of each ECM to the **INSTITUTION** and continuing for the warranty periods set forth in Schedule R for each ECM, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Project Documents, the **COMPANY** shall correct or replace all faulty, defective or nonconforming Work in accordance with the timeframes set forth in 8.2(c). After receipt of written notice from the **INSTITUTION** to correct such fault or defect, whether it was observed before or after acceptance of the Work, the **COMPANY** will correct the Work unless the **INSTITUTION** has given the **COMPANY** a written waiver of the specific fault or defect. Notice may be given by telephone in the event of an emergency situation. The

COMPANY shall bear all costs of replacing or correcting such faulty, defective or nonconforming Work.

(b) The **COMPANY** shall, at its own expense, remove from the Premises all portions of defective and nonconforming Work which **COMPANY** is obligated to replace or correct under this paragraph 8.2 unless removal has been waived in writing by the **INSTITUTION**.

(c) If the **COMPANY** fails to correct faulty, defective or nonconforming Work as provided in this Section within twenty-four (24) hours after notice, in the case of emergency conditions, or within five (5) business days in other cases after the **COMPANY**'s receipt of written notice from the **INSTITUTION** of such faulty, defective or nonconforming Work, the **INSTITUTION** may correct such work at the **COMPANY**'s expense including costs incurred due to the removal of faulty, defective or non-conforming and removal and storage of equipment or materials left at the Premises by the **COMPANY**.

(d) If the **COMPANY** does not pay the cost incurred by the **INSTITUTION** for such repair, removal and storage within ten (10) days of written demand therefor, the **INSTITUTION** may upon ten (10) additional days' written notice, sell any material and equipment not removed by the **COMPANY** at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the **COMPANY**. If such proceeds of sale do not cover all costs which the **COMPANY** should have borne, the difference shall be charged to the **COMPANY**. If the payments then or thereafter due the **COMPANY** are not sufficient to cover such amount, the **COMPANY** shall pay the difference to the **INSTITUTION**.

(e) The **COMPANY** shall bear the cost of repairing or replacing all work of other Companies destroyed or damaged by such removal or correction.

(f) Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation which the **COMPANY** might have under the Project Documents. The establishment of the time period set forth in paragraph 8.2(a) above, relates only to the specific obligation of the **COMPANY** to correct the Work and has no relationship to the time within which its obligation to comply with the Project Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the **COMPANY**'s liability with respect to its obligations other than to specifically correct the Work. Notwithstanding the provisions of this paragraph 8.2, the **COMPANY** shall, on demand made by the **INSTITUTION**, at any time within the ten (10) year period following Acceptance, promptly repair or replace all defective or non-conforming work resulting from fraudulent misrepresentation, fraudulent concealment or gross negligence by the **COMPANY** or its subcontractors in the performance of the Work.

8.3 Location and Access. The **INSTITUTION** shall provide sufficient space at the Premises for the installation and operation of the ECMs for the term of this Agreement, including access to office space with a telephone line, if necessary, to allow the **COMPANY** to perform required maintenance, monitoring and training services. The **INSTITUTION** shall provide access to the Premises for the **COMPANY** and its employees or subcontractors to install, adjust, inspect, maintain and repair the ECMs in accordance with the terms of this Agreement during regular business hours, or such other reasonable hours as may be requested by the **COMPANY** and acceptable to the **INSTITUTION**. The **COMPANY**'s access to correct any emergency condition shall not be unreasonably restricted by the **INSTITUTION**.

8.4 Company Maintenance and Monitoring Responsibilities for ECMs. The **COMPANY** shall be responsible for providing the maintenance, monitoring, repairs, and

adjustments to the ECMs as set forth in Schedule G. All replacements of and alterations or additions to the ECMs shall become part of the ECMs and shall become the property of the **INSTITUTION**. Any replacements of and alterations or additions made by the **COMPANY** to the **INSTITUTION**'s pre-existing equipment, or equipment acquired by the **INSTITUTION** during the term of this Agreement, shall become part of said equipment and be owned by the **INSTITUTION**. The **COMPANY** shall be compensated for such maintenance and monitoring services pursuant to Schedule C hereof. In the event of the **COMPANY**'s failure to provide maintenance, service, repairs and adjustments to the ECMs, as provided in Schedule G or if an Event of Default exists pursuant to Article 11, the **INSTITUTION** may withhold fees due to the **COMPANY** for such services until such repairs or adjustments are completed or such Event of Default is cured. The **INSTITUTION** shall notify the **COMPANY** in writing when any payments are so withheld. The withholding of fees by the **INSTITUTION** under this paragraph 8.4 shall not release the **COMPANY** from its obligation to provide the Energy Savings Guaranty pursuant to paragraph 3.3 and Schedule B hereof.

8.5 Institution Operating and ECMs Maintenance Responsibilities. The **INSTITUTION** shall be responsible for providing the maintenance, monitoring, service, repairs and adjustments to the ECMs as set forth in Schedule H. Except as set forth in Schedule H, the **INSTITUTION** shall not move, modify, remove, adjust, alter or change in any material way the ECMs, or any part thereof, during the term of this Agreement, without prior written direction or approval of the **COMPANY**, except in the event of an occurrence reasonably deemed by the **INSTITUTION** or the **COMPANY** to constitute a bona fide emergency. The **INSTITUTION** acknowledges that substantial deviations from the operating parameters set forth in the Schedules to the ESA may constitute a material change in accordance with paragraph 9.3 hereof. In addition to the responsibilities set forth in Schedule H, the **INSTITUTION** shall use its best efforts to maintain the Premises in good repair and to protect and preserve the ECMs in good repair and condition in accordance with applicable manufacturers' recommendations which shall be provided to the **INSTITUTION** by the **COMPANY** and to maintain the operating conditions of all mechanical systems and energy related systems located at the Premises. The **COMPANY** shall notify the **INSTITUTION** of any improper maintenance or repair as soon as **COMPANY** has notice thereof. The **INSTITUTION** acknowledges that improper repairs or maintenance of the ECMs may constitute a Material Change in accordance with paragraph 9.3, and that the provisions of paragraph 9.5 may be applicable.

8.6 Training by the Company. The **COMPANY** shall conduct the training program described in Schedule J hereto.

8.7 ECMs Upgrades; Alterations. The **COMPANY** shall have the right, at all times during the term of this Agreement, subject to the **INSTITUTION**'s written approval, to modify or replace any of the ECMs or install additional ECMs and to revise any procedures for the operation of the ECMs or implement other procedures at the Premises provided that: (i) such actions by the **COMPANY** do not result in modifying the standards of comfort and service set forth in Schedule I without the express written approval of the **INSTITUTION**; (ii) such modifications or additions to, or replacements of the ECMs, and any operational changes, or new procedures are necessary to enable the **COMPANY** to achieve the energy savings guaranteed by the **COMPANY** at the Premises; and (iii) any costs incurred relative to such modifications, additions or replacements of the ECMs, or operational changes or new procedures shall be the responsibility of the **COMPANY**. All modifications, additions or replacements of the ECMs or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the **INSTITUTION** for approval, which shall not be unreasonably withheld, and incorporated into this Agreement provided that any replacement ECM shall be new and have equal or better potential to reduce energy consumption at the Premises than the ECM being replaced. The **COMPANY** shall update any and all software to be used in connection with the ECMs in accordance with the provisions of Schedule G. All replacements of and alterations or additions to

the ECMs shall become part of the ECMs described in Schedule A and shall become the property of the **INSTITUTION**. The **COMPANY** and the **INSTITUTION** shall determine in accordance with the provisions of paragraph 9.5, what, if any, adjustments to the Baseline/Benchmarks set forth in Schedule E are necessary due to upgrades or alterations of the ECMs which are necessary to enable the **COMPANY** to achieve the level of energy savings guaranteed by the **COMPANY**.

8.8 Malfunction and Emergencies. The **INSTITUTION** shall use its best efforts to notify the **COMPANY** or its designee within forty-eight (48) hours after the **INSTITUTION**'s actual knowledge of the occurrence of:

- 8.8.1 Any material malfunction in the operation of the ECMs or any pre-existing energy-related equipment;
- 8.8.2 Any material interruption or alteration of the energy supply to the Premises;
- 8.8.3 Any material alteration or modification in the ECMs or their operation; and
- 8.8.4 Any material alteration, modification or change in the Premises or the use of the Premises.

The **INSTITUTION**'s obligation to use its best efforts to notify the **COMPANY** as soon as reasonably possible shall be deemed satisfied if the **INSTITUTION** reports any said material malfunction, interruption, alteration, modification or change within forty-eight (48) hours of the **INSTITUTION**'s actual knowledge thereof.

The **COMPANY** and the **INSTITUTION** shall determine in accordance with paragraph 9.5 what, if any, adjustments to the Baseline/Benchmarks set forth in Schedule E are necessary due to any of the events described in this paragraph 8.8.

8.9 Responsibility for ECM Malfunction. Company agrees to compensate the Institution for business expenses, damages to real or personal property, lost profits, lost revenues, resulting from ECM malfunction due solely or in part to nonperformance or error by the **COMPANY**.

8.10 Ownership of Certain Proprietary Property Rights. The **INSTITUTION** shall acquire no ownership interest in any software, formulas, patterns devices, secret inventions or processes, or copyright, patents, and other intellectual and proprietary rights or similar items of property which are or may become used in connection with the ECMs. The **COMPANY** shall grant to the **INSTITUTION** a perpetual, irrevocable royalty-free license of any and all software or other intellectual property rights necessary for the **INSTITUTION** to continue to operate, maintain, and repair the ECMs in a manner that will maximize energy consumption reductions beyond the expiration of this Agreement.

ARTICLE 9: THE PREMISES

9.1 Description of the Premises. The Premises in which the ECMs are to be installed and services are to be provided by the **COMPANY** under this Agreement are described in Schedule D.

9.2 Ownership of Existing Property. The Premises and all equipment and materials existing at the Premises at the time of execution of this Agreement shall remain the property of the **INSTITUTION**.

9.3 Material Change Defined. A Material Change shall include any change in or to the Premises, not covered by Schedule B, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the **INSTITUTION** to increase or decrease annual costs of energy usage by at least \$_____.00, in the aggregate, after adjustments for climatic variations Actions by the **INSTITUTION** which may result in a Material Change which is subject to this paragraph 9.3, include, but are not limited to the following:

- 9.3.1 Changes in the manner of use of the Premises by the **INSTITUTION**; or
- 9.3.2 Changes in the hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or
- 9.3.3 Permanent changes in the comfort and service parameters set forth in Schedule I; or
- 9.3.4 Changes in the occupancy of the Premises; or
- 9.3.5 Changes in the structure of the Premises; or
- 9.3.6 Changes in the types and quantities of equipment used at the Premises; or
- 9.3.7 Modification, renovation or construction at the Premises; or
- 9.3.8 The **INSTITUTION's** failure to provide maintenance of and repairs to the ECMs pursuant to paragraph 8.5 hereof; or
- 9.3.9 Any significant damage to the Premises or the ECMs caused by fire, flood, or other casualty or any condemnation affecting a significant portion of the Premises; or
- 9.3.10 The permanent or temporary closing of a building at the Premises; or
- 9.3.11 Any other substantially changed condition, other than weather, affecting energy use at the Premises.

9.4 Reported Material Changes: Notice by Institution. The **INSTITUTION** shall use its best efforts to deliver to the **COMPANY** a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises no less than thirty (30) days before any actual or proposed Material Change is implemented. Notice to the **COMPANY** 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 **INSTITUTION** within forty-eight (48) hours after the event constituting the Material Change occurred or was discovered by the **INSTITUTION** to have occurred.

9.5 Reported Material Changes: Adjustments to Baseline/Benchmarks. Any changes in energy usage which occur as the result of a Reported Material Change shall be timely reviewed by the **COMPANY** and the **INSTITUTION** to determine what, if any, adjustments to the Baseline/Benchmarks set forth in Schedule E are necessitated by such Material Change(s). The **COMPANY** and the **INSTITUTION** agree that any adjustments made to the Baseline/Benchmarks shall be in accordance with generally accepted engineering principles. Any

disputes between the **COMPANY** and the **INSTITUTION** concerning any such adjustment shall be resolved in accordance with the provisions of Schedule P hereto.

9.6 Unreported Material Changes. Upon and after the Commencement Date and in the absence of any reported Material Change(s) in the Premises or in their operations, if energy savings deviates more than ____ (___%) percent during any month from projected energy savings for that month, after adjustment for changes in climatic conditions, then the **COMPANY** shall timely review such changes to ascertain the cause of such deviation. The **COMPANY** shall report its findings to the **INSTITUTION** in a timely manner. The **COMPANY** and the **INSTITUTION** shall determine what, if any, adjustments to the Baseline/Benchmarks set forth in Schedule E are necessary. Any disputes between the **COMPANY** and the **INSTITUTION** concerning any such adjustment shall be resolved in accordance with the provisions of Schedule P hereto.

ARTICLE 10: GENERAL TERMS AND CONDITIONS

10.1 Assignment. The **COMPANY** acknowledges that the **INSTITUTION** is induced to enter into this Agreement by, among other things, the professional qualifications of the **COMPANY**. The **COMPANY** agrees that neither this Agreement nor any right or obligation hereunder may be assigned in whole or in part, without the prior written approval of the **INSTITUTION**.

10.1.1 Assignment by Company. The **COMPANY** may, with prior written consent of the **INSTITUTION**, which consent shall not be unreasonably withheld, delegate its duties and its performance under this Agreement, and/or utilize subcontractors, provided that any assignee(s), delegee(s), or subcontractor(s) shall honor the terms of this Agreement. Notwithstanding the provisions of this paragraph, the **COMPANY** shall remain jointly and severally liable with its assignee(s), or transferee(s) to the **INSTITUTION** for all of its obligations under this Agreement.

10.1.2 Assignment by the Institution. The **INSTITUTION** may, transfer or assign this Agreement and its rights and obligations herein to a successor or purchaser of the Premises, or an interest therein, subject to the approval of the **COMPANY** which will not be unreasonably withheld.

10.2 Duty to Indemnify. The **COMPANY** shall defend, indemnify, keep and save harmless the **INSTITUTION** and its agents and employees against all suits, claims, damages, losses and expenses, including attorney's fees, caused by, growing out of, or incidental to, the wrongful or negligent performance of the Work under this Agreement by the **COMPANY** or its subcontractors to the full extent as allowed by the laws of the State of Illinois provided that the **INSTITUTION** shall promptly notify the **COMPANY** of any suits or claims and shall allow **COMPANY**, at its sole expense, to settle or defend and control the defense of any suit based upon such claim or claims. In the event of any such injury (including death) or loss or damage, or claims therefor, the **COMPANY** shall give prompt notice to the **INSTITUTION**. The **COMPANY**'s subcontractors shall include the foregoing indemnitees as parties as to whom indemnification is due under their subcontracts.

10.2.1 Effect of Statutory Limitations. In the event of any claim against the **INSTITUTION** or against any of its officials or employees, in either their personal or official capacities, made by any direct or indirect employee or agent of the **COMPANY** or of any subcontractor, the **COMPANY**'s indemnification obligation shall not be affected by any limitation on the amount or type of damages, compensation or benefits payable to said employee or agent contained in any other type of employee benefit act.

10.2.2 Intellectual Property Claims Indemnification. The **COMPANY** shall protect, defend, indemnify and hold the **INSTITUTION** harmless against and from any and all claims,

judgments, amounts paid in settlement, costs and expenses, including reasonable attorneys' fees relating to alleged patent, trademark or copyright infringement, misappropriation of proprietary rights, or trade secrets or similar claims, resulting from actions taken by the **COMPANY** in connection with this Agreement.

10.3 Alternative Dispute Resolution. The provisions for Alternative Dispute Resolution (ADR) attached as Schedule P shall govern the resolution of any disputes arising relative to the terms of, or performance required by, this Agreement.

10.4 No Waiver. The failure of **COMPANY** or the **INSTITUTION** 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 the **COMPANY** or the **INSTITUTION**.

10.5 Severability. It is agreed that the illegality or invalidity of any term or clause of this Agreement, shall not affect the validity of the remainder of this Agreement and this Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein.

10.6 Complete Agreement; Amendments. This Agreement, when executed, together with all Project Documents and Schedules referred to in paragraph 3.5 and any other exhibits or attachments referred to in this Agreement, shall constitute the entire agreement between the Parties and this Agreement may not be amended or modified except by a written agreement signed by the Parties hereto.

10.7 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.

10.8 Applicable Law. This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the State of Alabama.

10.9 Notices. All notices required under this Agreement shall be in writing and shall be deemed properly served if delivered in person to the individual to whom it is addressed or, three (3) days after deposit in the United States mail, if sent postage prepaid by United States registered or certified mail, return receipt requested, as follows:

- a) To the **INSTITUTION**:
(___ copies of all
submittals,
correspondence
and notices)
required under
the ESA)
- b) To the **COMPANY**

10.10 Termination for Convenience by the Institution. Subsequent to the Acceptance Date, this Agreement may be terminated at the sole discretion of the **INSTITUTION** in accordance with the provisions of this paragraph 10.10.

The **INSTITUTION** shall provide notice of its election to terminate to the **COMPANY** no later than thirty (30) days in advance of the end of the current guaranty period. The termination shall become effective on the last day of said guaranty period. The **COMPANY**'s obligation to report, reconcile and verify the energy savings achieved during the guaranty period proceeding termination remains in full force and effect, as does its obligation, pursuant to paragraph 3.4 of this Agreement, to remit payment to the **INSTITUTION** in the event that the energy savings have not been achieved at the level guaranteed by the **COMPANY**.

The termination of this Agreement by the **INSTITUTION** shall release the **COMPANY** from its obligation to provide maintenance, monitoring and training services after the effective date of termination, as well as its obligation to provide the Energy Savings Guaranty after the termination date. Termination by the **INSTITUTION** shall release it from the obligation to make any payments to the **COMPANY** for maintenance, monitoring and training services after the termination date, provided, however, that the **INSTITUTION** is responsible for payment for maintenance, monitoring and training services performed in accordance with the terms of this Agreement prior to the termination date.

ARTICLE 11: EVENTS OF DEFAULT; REMEDIES; TERMINATION; RIGHT TO OFFSET

11.1 Events of Default by the Institution. Each of the following events or conditions shall constitute an "Event of Default" by the **INSTITUTION** with respect to its obligations under this Agreement:

- (i) Any failure to make payments to the **COMPANY** in accordance with the provisions of Schedule C hereof more than thirty (30) days after written notification by **COMPANY** that **INSTITUTION** is delinquent in making such payment, provided that the **COMPANY** is not in default in its performance under the terms of this Agreement;
- (ii) Any representation or warranty furnished by the **INSTITUTION** in this Agreement proves to be false or misleading in any material respect when made;
- (iii) Any other material failure by the **INSTITUTION** to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein except, provided that such failure if corrected or cured within thirty (30) days after written notice to the **INSTITUTION** demanding that such failure to perform be cured shall be deemed cured for purposes of this Agreement.

11.2 Remedies Upon Default by the Institution. If an Event of Default by the **INSTITUTION** described in paragraph 11.1 occurs, the **COMPANY** shall exercise the remedies as provided for in Schedule P.

11.3 Events of Default by the Company. Each of the following events or conditions shall constitute an "Event of Default" by the **COMPANY** for purposes of this Agreement with respect to obligations of the **COMPANY**:

- (i) The **COMPANY**'s failure to furnish and install the ECMs in accordance with the provisions of this Agreement and within the time specified by this Agreement.
- (ii) Failure by the **COMPANY** to pay any amount owing to the **INSTITUTION** due to the **COMPANY**'s failure to achieve its Energy Savings Guaranty during any Guaranty Year throughout the term of this Agreement or to perform any obligation under the Energy Savings Guaranty.

- (iii) The standards of comfort and service set forth in Schedule I are not provided due to failure of the **COMPANY** to properly design, install, maintain, repair or adjust the ECMs except that such failure if corrected or cured within thirty (30) days after written notice to the **COMPANY** demanding that such failure be cured shall be deemed cured for purposes of this Agreement.
- (iv) Failure to perform its obligations in accordance with the terms of this Agreement, including failure to provide sufficient personnel, equipment or material to ensure the performance required and failure to meet the Project Installation Schedule provided for in Schedule K, due to a reason or circumstance within the **COMPANY's** reasonable control.
- (v) The **COMPANY's** failure to promptly re-perform within a reasonable time Work or services that were rejected as defective or nonconforming.
- (vi) The **COMPANY's** discontinuance of the required performance for reasons not beyond the **COMPANY's** reasonable control.
- (vii) Any lien or encumbrance upon the ECMs by any subcontractor, laborer, materialman or other creditor of the **COMPANY**.
- (viii) Any change in ownership or control of the **COMPANY** without the prior approval of the **INSTITUTION**, which shall not be unreasonably withheld.
- (ix) Default under any other agreement the **COMPANY** may presently have or may enter into with the **INSTITUTION** during the term of this Agreement. The **COMPANY** acknowledges and agrees that in the event of a default under this Agreement the **INSTITUTION** may also declare a default under any such other agreements.
- (x) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by the **COMPANY** to the **INSTITUTION**, the **INSTITUTION** or a third party.
- (xi) The filing of a bankruptcy petition whether by the **COMPANY** or its creditors against the **COMPANY** which proceeding shall not have been dismissed within sixty (60) days of its filing, or an involuntary assignment for the benefit of creditors or the liquidation or insolvency of the **COMPANY**.
- (xii) Any failure by the **COMPANY** to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty (30) days after notice to the **COMPANY** demanding that such failure to perform be cured, shall be deemed cured for purpose of this Agreement.

11.4 Remedies upon Default by the Company. The occurrence of any Event of Default described in paragraph 11.3(viii) or (xi) shall constitute an immediate default. The occurrence of any Event of Default other than an Event of Default described in paragraph 11.3(viii) or (xi) which the **COMPANY** has failed to cure within thirty (30) calendar days after receipt of notice given in accordance with the terms of this Agreement and specifying the Event of Default shall, at the sole option of the **INSTITUTION**, permit the **INSTITUTION** to declare the **COMPANY** in default; provided however, that if such Event of Default cannot reasonably be cured within such thirty (30) day period, such Event of Default shall not constitute a default if the **COMPANY** begins to cure

such Event of Default within such thirty (30)-day period and diligently pursues the actions necessary to cure such Event of Default so that the Event of Default is cured as soon as reasonably possible. Written notification of the Event of Default, and the intention of the **INSTITUTION** to terminate this Agreement, shall be provided to the **COMPANY** and such decision shall be final and effective upon the **COMPANY**'s receipt, as defined herein, of such notice. Upon the giving of such notice as provided herein, the **COMPANY** must discontinue any services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in process, to the **INSTITUTION**. At such time the **INSTITUTION** make invoke any or all of the following remedies:

- (a) The right to take over and complete the Work, or any part thereof.
- (b) The right to immediately terminate this Agreement as to any or all of the Work or other services yet to be performed by the **COMPANY**.
- (c) The right of specific performance, injunctive relief or any other appropriate equitable remedy.
- (d) The right to money damages.
- (e) The right to withhold all or any part of the **COMPANY**'s compensation hereunder.

If the **INSTITUTION** considers it to be in its best interests, it may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the **INSTITUTION** and that if the **INSTITUTION** permits the **COMPANY** to continue to perform the Work and other services despite one or more Events of Default, the **COMPANY** shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the **INSTITUTION** waive or relinquish any of its rights.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power nor shall it be construed as a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

11.5 Right to Offset. Any additional costs incurred by the **INSTITUTION** in the event of termination of this Agreement for default or otherwise resulting from the **COMPANY**'s performance or non-performance under this Agreement, including the exercise by the **INSTITUTION** of any of the remedies available to it under paragraph 11.4 hereof, and any credits due to or overpayments made by the **INSTITUTION** may be offset by use of any payment due for the Work or other services completed before the termination for default or before the exercise of any remedies. If such amount offset is insufficient to cover such excess costs, the **COMPANY** shall be liable for and promptly remit to the **INSTITUTION** the difference upon written demand therefor. This right to offset is in addition to and not a limitation of any other remedies available to the **INSTITUTION**.

ARTICLE 12: REPRESENTATIONS AND WARRANTIES

12.1 Each party warrants and represents to the other that:

(a) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;

(b) 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;

(c) Its execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and

(d) 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.

12.2 Representations and Warranties by the Institution. The **INSTITUTION** hereby warrants and represents to the **COMPANY** that:

(a) It will provide throughout the term of this Agreement (or cause its energy suppliers to furnish) to the **COMPANY**, upon its request, copies of all available records and data concerning energy usage for the Premises including but not limited to the following data: utility records and rate schedules; occupancy information; descriptions of any major changes in the structure or use of the buildings or heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Premises; descriptions of energy management procedures presently utilized; and any prior energy analyses of the Premises. The **INSTITUTION** shall make knowledgeable employees and agents available for consultations and discussions with the **COMPANY** concerning energy usage of the Premises.

(b) It has not entered into any leases, contracts or agreements 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.

12.3 Representations and Warranties by the Company. The **COMPANY** represents and warrants the following to the **INSTITUTION** (in addition to the other representations and warranties contained in the Project Documents), as an inducement to the **INSTITUTION** to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement and the Final Completion of the Work.

(a) 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;

(b) That it and each of its employees, agents and subcontractors of any tier are competent to perform its obligations under this Agreement;

(c) That it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

(d) That it is authorized to do business in the State of Alabama and is properly licensed by all necessary governmental and public and quasi-

public authorities having jurisdiction over it and over the Work and the Premises;

- (e) That its execution of this Agreement and its performance thereof is within its duly authorized powers; and
- (f) That its duly authorized representative has visited the Premises, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Project Documents.

ARTICLE 13: APPLICABLE LAWS

13.1 Statutory and Regulatory Requirements. All applicable Federal and State laws and the codes, rules and regulations of all authorities having jurisdiction over the performance of the Project shall apply to this Agreement throughout its term and they will be deemed to be included in this Agreement the same as though written herein in full.

13.2 Company's Failure to Comply with Statutory and Regulatory Requirements. The **COMPANY**, and its subcontractors shall comply with all laws, rules regulations and codes applicable to performance of the Work and the maintenance, monitoring and training services to be performed pursuant to Article 6. Except where expressly required by applicable laws and regulation, the **INSTITUTION** shall not be responsible for monitoring the **COMPANY's** compliance with any laws or regulations. When the **COMPANY** observes conflicting regulatory requirements, it shall notify the **INSTITUTION** in writing immediately. If the **COMPANY** performs any of the Work or other services required by this Agreement knowing or having reason to know that the Work or such services are contrary to such laws, rules and regulations, the **COMPANY** shall pay all costs arising therefrom.

ARTICLE 14: RIGHT TO AUDIT

The **INSTITUTION** shall have the right to have access to and audit all of the **COMPANY's** records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. In addition, the **INSTITUTION** or its authorized representative shall have access to the **COMPANY's** facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

ARTICLE 15: EXECUTION

IN WITNESS WHEREOF, the Parties have executed this Energy Services Agreement by their authorized signatures as of this ___ day of _____, 200__.

THE INSTITUTION :

THE COMPANY:

BY:_____

BY:_____

Title:_____

Title:_____

SCHEDULE P

SAMPLE ALTERNATIVE DISPUTE RESOLUTION (ADR) LANGUAGE

1. **All Disputes:** In the event any dispute or claim related to construction or the contracts should arise between any of the parties to this Agreement, each party agrees to exercise good faith efforts to resolve the matter fairly, amicably, and in a timely manner. The parties shall consider litigation as a last resort, to be employed only when ADR methods fail. To this end, the parties agree to take affirmative steps to communicate effectively, to keep lines of communication open, and to handle all disputes in a reasonable and businesslike manner, which may include the use of a dispute resolution board.

2. **Mediation: Disputes under \$50,000:** Each party to any dispute under \$50,000 agrees, upon the request of any other party to the dispute, to submit the matter to mediation. The parties shall first confer informally with one another to attempt to resolve the dispute. The mediator shall be a person the parties agree is unbiased and qualified to understand the dispute and make the determinations that are required.

3. **Methods of ADR: Disputes over \$50,000:** Each party to any dispute over \$50,000 agrees, upon the request of any other party to the dispute, to submit the matter to ADR, in a form to be determined by agreement of the parties. The parties shall first confer informally with one another to attempt to resolve the dispute. In the event that the assistance of an unbiased neutral is required, the parties shall meet and come to an agreement as to what form the ADR should take and who the unbiased neutral should be. Forms of ADR that may be utilized include, but are not limited to, mediation and mini-trials, but do not include formal arbitration. The unbiased neutral may be a professional mediator, an attorney, an architect, an engineer, a board composed of two (2) or more qualified persons, or any person(s) the parties agreed is unbiased and qualified to understand the dispute and make the determinations that may be required.

4. **Authority:** When ADR is utilized, regardless of the dollar value of the dispute, each party agrees to have in attendance at their mediation (or whatever method is utilized) a person with actual authority to resolve the dispute.

5. **Non-parties:** Persons who have a stake in the dispute but who are not parties to this Agreement may be included in the ADR by consent of the parties. When disputes arise between only persons involved in the project who are not parties to this Agreement, the parties agree to encourage and facilitate the use of ADR when possible.

6. **Court of Claims:** The Company agrees that ADR is a condition precedent to the filing of a Court of Claims action or other administrative proceeding seeking economic recovery from **insert name of party** in an amount greater than \$50,000.

7. **Costs of ADR:** When ADR is utilized, the parties included in the process agree to equally share the costs of same.

8. **Appendixes:** Any and all written agreements for mediation or other method of ADR must be agreed to by all contractual parties and shall be incorporated into the contract.

INSTITUTION ACCEPTANCE INITIALS: _____ DATE: _____

ATTACHMENT A

SAMPLE CONSTRUCTION PROCESS PROVISIONS

A.1.1 Description of the Work. The design, procurement, fabrication, installation and commissioning of the ECMs specified in Schedule A and the Training services described in Schedule J, which are integral to the operation of the ECMs, are referred to in this Agreement as the "Work." The maintenance, monitoring, and savings measurement and verification services detailed in Schedules G and O and the any Post-Acceptance Training services detailed in Schedule J, performance of which does not commence until after the Commencement Date, are not part of the Work.

A.1.2 Supervision of the Work. The **COMPANY** shall supervise and direct the performance of the Work using its best skill, attention and judgment. The **COMPANY** shall be solely responsible for site safety and for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement.

A.1.3 Rejection of the Work by the Institution. The **INSTITUTION** may reject any sequences or procedures proposed by the **COMPANY** in connection with the Work which might constitute or create a hazard to the Premises, or to persons or property, or which deviate from the Project Documents or will result in schedule delays or additional costs to the **INSTITUTION**. This provision shall not be construed to mean that Work which is not rejected is therefore approved.

A.1.4 Responsibility for the Work. The **COMPANY** shall not be relieved of its obligations to perform the Work in accordance with the Project Documents by reason of observations or inspections, tests or approvals by any person or entity except as expressly agreed to in writing by an authorized representative of the **INSTITUTION**.

A.1.5 Coordination of the Work. The **COMPANY** shall consult with the personnel designated by the **INSTITUTION** in order to coordinate the Work, including installation of any ECM, and to provide appropriate training in the operation of any ECM. The **COMPANY** shall not permit any act which will interfere with the performance of the **INSTITUTION's** business activities at the Premises without the prior written approval of the **INSTITUTION**. The **COMPANY** may install no ECM that will require the hiring of additional personnel by the **INSTITUTION** without the express permission and written approval of the **INSTITUTION**.

The **COMPANY** shall consult with the **INSTITUTION** regarding the coordination of the Work with any other work being performed by other Companies at the Premises.

A.1.6 Sufficient Workforce. The **COMPANY** shall furnish a competent and adequate staff as necessary for the proper administration, coordination and supervision of the Work; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; and ensure that an adequate force of skilled workmen are available to complete the Work in accordance with all requirements of this Agreement.

A.1.7 Project Manager. The **COMPANY** shall employ a competent project manager who shall be responsible for the coordination of the Work, and who shall be authorized to commit the **COMPANY** with regard to manpower, schedule, coordination and cooperation. The project manager shall not have less than two (2) years of documented experience in responsible field supervision for projects of comparable size and complexity. The **COMPANY** shall give the **INSTITUTION** advance written notice if it intends to remove or replace the project manager. In

the event the project manager fails to perform its duties under this Agreement the **COMPANY** shall provide a competent replacement.

A.1.8 Harm to Structure of the Premises. The **COMPANY** shall perform the Work under this Agreement and install the ECMs in such a manner so as not to harm the structural integrity of the Premises or their operating systems, except as specifically described in the Project Documents which have been approved by the **INSTITUTION**. The **COMPANY** shall repair and restore to its condition immediately preceding the performance of the Work, any area of damage caused by its performance under this Agreement which has not been so described in the Project Documents and approved by the **INSTITUTION**. The **COMPANY**'s failure to complete the repair or restoration required under this paragraph A.1.8 shall constitute an Event of Default under paragraph 11.3 hereof.

A.1.9 Responsibility for Damages. The **COMPANY** shall be responsible for all loss or damage to the Work, the Premises, or to improvements or personal property thereon and the work of other Companies caused by the **COMPANY**'s performance of the Work.

A.1.11 Verification of Dimensions and Existing Conditions. The **COMPANY** is responsible for becoming knowledgeable of the conditions of the Premises relating to the performance of the Work and the conditions under which the Work is to be performed, other than concealed conditions which the **COMPANY** should not have reasonably been expected to discover or anticipate. All dimensions and existing conditions have been verified by the **COMPANY** during the energy audit conducted at the Premises by actual measurement and observation. All discrepancies between the requirements of the Project Documents and the existing conditions or dimensions shall be reported to the **INSTITUTION** as soon as they are discovered. Failure to verify and report prior to the commencement of work shall constitute the **COMPANY**'s acceptance of existing conditions as fit for the proper execution of the Work under this Agreement, other than concealed conditions which the **COMPANY** should not have reasonably been expected to discover or anticipate.

A.1.12 Changed Conditions. Should the **COMPANY** encounter subsurface or latent physical conditions at the site which differ materially from those indicated in the Project Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, the **COMPANY** shall give written notice to the **INSTITUTION** before any such condition is disturbed or further disturbed. No claim of the **COMPANY** under this provision will be allowed unless the **COMPANY** has given the required notice. The **INSTITUTION** will promptly investigate and, if it is determined that the conditions materially differ from those which **COMPANY** should reasonably have been expected to discover or anticipate, the **INSTITUTION** will approve such changes in the Project Documents as may be necessary. If such changed conditions cause an increase or decrease in the **COMPANY**'s cost or time of performance, the parties may negotiate a mutually acceptable solution.

A.2 The Institution's Right to Carry Out the Work.

A.2.1 In the event that the **COMPANY** neglects or fails to carry out the Work in accordance with this Agreement and the Project Documents, the **INSTITUTION** may correct such deficiencies after giving twenty (20) business days written notice to the **COMPANY** and its surety. This shall be without prejudice to any other remedy the **INSTITUTION** may have. **INSTITUTION** may deduct from the payments to be made to the **COMPANY** for the Work, pursuant to paragraph 6.1 hereof and of Schedule C, the amount of all costs incurred in correcting deficiencies made necessary by such neglect or failure. If such payments to be made to the **COMPANY** are not sufficient to cover such amount, the **COMPANY** shall be liable in such amount to the **INSTITUTION**.

A.2.2 Emergencies. In case of bona fide emergencies as determined by the **INSTITUTION** involving public health or public safety or to protect against further loss or damage to the **INSTITUTION's** property or to prevent or minimize serious disruption of **INSTITUTION** services or to insure the integrity of **INSTITUTION's** records, the **INSTITUTION** may cause such Work as is necessary to be performed without prior notice to the **COMPANY** or its surety.

A.2.3 Right to Reject or Stop the Work. The **INSTITUTION** may reject any of the Work which does not conform to the Project Documents. If the **COMPANY** fails to correct defective Work or fails to supply labor, materials or equipment in accordance with the Project Documents or to execute the Work in a workmanlike manner, the **INSTITUTION** may order the **COMPANY** to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

A.2.4 Right to Terminate the Company's Performance of the Work. If the **COMPANY** fails or refuses to prosecute the Work with such diligence as to allow completion of the Work substantially in accordance with the Project Installation Schedule, or commits a material breach of any other provision of this Agreement or the Project Documents, and provided that such breach continues for thirty (30) days after written notice to the **COMPANY** demanding that such breach be cured or if cure cannot be effected in such thirty (30) days, **COMPANY's** failure to propose and commence a cure acceptable to the **INSTITUTION** within such thirty (30) days, the **INSTITUTION** may terminate the **COMPANY's** right to proceed with the Work as specified herein. In no event shall the **INSTITUTION** have any obligation to compensate the **COMPANY** for delays arising pursuant to the **COMPANY's** failure or refusal to complete the Work and damages arising in connection therewith.

In such case, the **INSTITUTION** will give the **COMPANY** and its surety written notice of intention to terminate the **COMPANY's** right to complete the Work and the reason therefor and, unless within seven (7) business days the delay or violation shall cease or a cure acceptable to the **INSTITUTION** for correcting the situation is proposed, the **INSTITUTION** may issue a termination notice to such effect for the **COMPANY** and its surety. Thereupon, the surety will be given the opportunity to complete the Work in accordance with the Project Documents. Such completion may include, but not be limited to, the use of a completing **COMPANY**, satisfactory to the **INSTITUTION**, pursuant to a written takeover agreement, the payment of a sum of money required to allow the **INSTITUTION** to complete the Work, or other arrangements agreed to by the **INSTITUTION** and the surety.

If within seven (7) business days following the issuance of the termination notice, the surety fails to notify the **INSTITUTION** that it intends to exercise its right to undertake the Work, the **INSTITUTION** may take over the Work, exclude the **COMPANY** from the Premises and take possession of all of the **COMPANY's** tools, appliances, equipment and machinery at the Premises and use the same to the full extent they could have been used by the **COMPANY** (without liability for trespass or conversion), incorporate into the Work all materials and equipment stored at the Premises and finish the Work as the **INSTITUTION** may deem expedient.

In the event the **INSTITUTION** terminates the **COMPANY's** right to complete the Work under this paragraph A.2(d), the **COMPANY** shall not be entitled to receive further payments until a Certificate of Acceptance has been delivered pursuant to paragraph 5.3 hereof specifying the amount, if any, payable to the **COMPANY** pursuant. If the **INSTITUTION's** expenses in completing the Work exceed the **COMPANY's** Compensation for the Work, the **COMPANY** shall pay the difference to the **INSTITUTION** upon demand therefor.

Provided further, that a Certificate of Acceptance directing payment to the **COMPANY** for any portion of the Work be issued only if the notification required pursuant to Article 7 has been delivered by the **COMPANY**. If the **COMPANY** is not able to deliver such notification, the **INSTITUTION** shall not execute and deliver a Certificate of Acceptance and may terminate this Agreement in accordance with the provisions of Article 11 and may pursue any and all remedies provided therein.

A.3 Permits and Approvals. The **COMPANY** shall obtain and pay for all necessary permits and approvals for the design, installation and operation of the ECMs. The **INSTITUTION** shall exercise its best efforts to assist the **COMPANY**. The ECMs and the operation of the ECMs by the **COMPANY** shall at all times conform to all applicable codes. The **INSTITUTION** cannot and will not waive any permits or approvals required from any other governmental bodies.

The **COMPANY** shall furnish copies of each permit or license which is required to perform the Work to the **INSTITUTION** before the **COMPANY** commences the portion of the Work requiring such permit or license.

If the **COMPANY** observes that any of the Project Documents are at variance with permits or licenses granted, or laws, ordinances, codes, rules or regulations of governmental authorities, the **COMPANY** shall promptly notify the **INSTITUTION** in writing and shall make any necessary changes, subject to the approval thereof by the **INSTITUTION** in accordance with the terms of this Agreement. If the **COMPANY** performs any Work which is contrary to any permit or license granted, or any applicable laws, ordinances, codes, rules or regulations, the **COMPANY** shall make changes as required to comply therewith and shall bear all costs arising therefrom without additional compensation from the **INSTITUTION**.

A.4 Royalties and Patents The **COMPANY** shall pay all royalties and license fees due to third parties in connection with the Work. The approval of any method of construction, invention, appliance, process, article, device, material or equipment of any kind by the **INSTITUTION** will only be an approval of its adequacy for the Work, and will not be an approval of the use thereof by the **COMPANY** in violation of any Patents or other rights of any third person. The **COMPANY** shall indemnify the **INSTITUTION** against all suits and claims that may be based on an infringement of Patents, trademark or trademark on designs.

A.5 Project Schedule. The **COMPANY** shall consult with the **INSTITUTION** concerning the development of a detailed Project Installation Schedule and, recognizing that time is of the essence of this Agreement, shall perform the Work in such manner and with such sufficient equipment and forces to complete the Work in accordance with Schedule K.

A.6 Extensions. Extensions of time will be allowed for delays which affect critical items on the Project Installation Schedule arising from unforeseeable causes beyond the control and without the fault or negligence of the **COMPANY**.

A request for an extension of time must be made in writing to the **INSTITUTION** within fifteen (15) calendar days after the cause of delay. In the case of a continuing cause of delay, only one request is necessary. The grant of an extension of time to the **COMPANY** shall not impair or prejudice the rights of the **INSTITUTION** hereunder.

A.7 Compensation for Delay.

(a) Certain risks and uncertainties in connection with the Work are assumed by the **COMPANY** as a part of this Agreement and are included in the **COMPANY** Compensation for the Work. Thus, the **COMPANY**, except as otherwise definitely specified

herein, shall bear all loss or damage for hindrances or delays during the progress of any portion of the Work and also all loss or damage arising out of the nature of the work to be done, or from inclement weather, or from any unforeseen and unexpected conditions or circumstances encountered in connection with the Work, and except as otherwise definitely specified in this Agreement, no payment shall be made by the **INSTITUTION** for such loss or damage.

(b) The **COMPANY** shall be entitled to payment from the **INSTITUTION** only for those actual damages, costs or expenses which are directly attributable to delays in the performance of the Work which are caused by the **INSTITUTION**.

A.8 Subcontracts and Subcontractors. The **COMPANY** shall have the right to have any of the services to be provided by the **COMPANY** under this Agreement accomplished by subcontractors pursuant to written subcontracts between the **COMPANY** and such subcontractors.

The **COMPANY** shall, upon entering into any agreement with a subcontractor, furnish the **INSTITUTION** with an executed copy thereof. All subcontracts shall be subject to, consistent with, and in conformance with all applicable State and federal laws, rules, regulations and codes, and shall contain provisions that require all services to be performed in strict accordance with the requirements of this Agreement and shall provide that the subcontractors are subject to all the terms of this Agreement. Provided that such agreements do not prejudice any of the **INSTITUTION**'s rights under this Agreement, such agreements may contain different provisions than are provided herein with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Work.

The **COMPANY** shall not grant or allow to exist any lien or security interest for labor or material or otherwise on the ECMs, the Premises or any other property owned by the **INSTITUTION**.

A.9 Interim Savings and Utility Rebates.

(a) Interim Savings. Interim Savings as defined in Article 4 belong to the **INSTITUTION**.

(c) Utility Rebates. Utility rebates secured or obtained due to the installation of the ECMs at the Premises belong to the **INSTITUTION**.

A.10 Hazardous Materials.

(a) The **COMPANY** acknowledges that compliance with the National Emission Standard for Hazardous Air Pollutants as promulgated by the United States Environmental Protection Agency pursuant to Section 112 of the Clean Air Act is a continuing obligation requiring any and all demolition or renovation activity completed by or on behalf of the **INSTITUTION**, to conform to the standards for such activity as set forth in 40 CFR 61.145. The **COMPANY** shall observe all notification procedures established by the United States and Illinois Environmental Protection agencies in the execution of the Work under this Agreement.

(b) The pertinent provisions of the Hazardous Substances Construction Disclosure Act, 415 ILCS 70/1, (the "Act") shall apply in the event that the **COMPANY** or any of its subcontractors encounters any hazardous substance or material covered by the Act in the performance of the Work, the existence of which has not previously been disclosed to the **COMPANY** by the **INSTITUTION**. The **COMPANY** shall, before disturbing such materials, immediately notify the **INSTITUTION** of the location thereof. The **COMPANY** shall advise the **INSTITUTION** as to whether it is feasible to re-route the Work as to avoid such materials. If

such re-routing is reasonably feasible, the **COMPANY** shall do so without additional compensation hereunder.

If such re-routing or avoidance is not reasonably feasible in the judgment of the **INSTITUTION** and such material must be disturbed or relocated to complete the Work, and if (i) removal or containment of the hazardous substance or material cannot be effectuated without a cessation of the Work; or (ii) applicable law, rule or regulation requires cessation of the Work, or (iii) continuation of the Work exposes any person to a substantial risk, the **COMPANY** may suspend its performance of the Work without penalty until the substance or material is removed or contained by the **INSTITUTION**.

(c) The following options are available to the **INSTITUTION** in the event that undisclosed hazardous materials are encountered in the performance of the Work by the **COMPANY** or its subcontractors:

- (i) If feasible, the **INSTITUTION** may direct the **COMPANY** to modify the scope of the Work to eliminate portions of the Work affected by the undisclosed hazardous substance or material.
- (ii) The **INSTITUTION** may terminate this Agreement upon payment to the **COMPANY** of the amount due for services or materials and equipment supplied by the **COMPANY** prior to suspension of the Work, including damages caused by the delay as prescribed by the Act. Provided, however, that the **INSTITUTION** shall not be liable for damages or other costs or expenses incurred by the **COMPANY** if the existence of the hazardous substance or material was disclosed to the **COMPANY** by the **INSTITUTION** or, if as a result of the **COMPANY**'s review of the Project Documents, including any Asbestos Management Plan developed for the Premises and its investigation of the Premises, the **COMPANY** should reasonably have been expected to discover or anticipate the existence of the hazardous substance or material and the **COMPANY** could have developed the scope of the Work in such a manner as to avoid said hazardous substance or material.

(d) The **COMPANY** and the **INSTITUTION** agree that any work relating to (i) asbestos, material containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, or (ii) pollutants, hazardous wastes, hazardous materials, contaminants (collectively "Hazardous Materials") or the storage, handling, use, transportation, treatment or the disposal, discharge, leakage, detection removal or containment thereof which is not specifically provided for in this Agreement, is the responsibility of the **INSTITUTION**. Notwithstanding the foregoing, the **COMPANY** will utilize due diligence in order to determine whether the Work will require the removal of PCB ballasts and whether asbestos is likely to be encountered in the performance of the Work. **COMPANY** shall provide the **INSTITUTION** with an estimate for the cost of removal and disposition of PCB ballasts and asbestos it expects may be encountered in the performance of the Work and shall allow for an amount equal to the estimated cost of removal and disposal in the Guaranteed Savings detailed in Schedule B.

If an Asbestos Management Plan has been developed for the Premises, the **INSTITUTION** shall make said plan available for the **COMPANY**'S review and inspection throughout the Interim Period.

A.11 Material and Workmanship.

- (a) The **COMPANY** shall ensure that all materials used by the **COMPANY** and its subcontractors and workmanship performed or caused to be performed by the **COMPANY** in connection with the Work meets or exceeds all applicable codes and is performed in a workmanlike manner. Where conflicts exist between applicable codes, the more stringent provision shall apply.
- (b) The **COMPANY** shall ensure that all equipment and materials to be used in the Work for which Underwriters Laboratory labeling services is provided shall be UL labeled.
- (c) The **COMPANY** shall obey the following list of codes where applicable:
 - 1) Applicable construction and electrical code;
 - 2) Underwriters Laboratories (UL);
 - 3) Insulated Power Cable Engineers Association (IPCEA);
 - 4) National Electrical Code (NEC);
 - 5) National Electrical Manufacturers Association (NEMA);
 - 6) American National Standards Institute (ANSI); and
 - 7) Institute of Electrical and Electronic Engineers (IEEE).
- (d) The **COMPANY** shall timely advise the **INSTITUTION** in writing of all existing equipment and materials to be replaced at the Premises as part of the Work and the **INSTITUTION** shall within _____ () days designate in writing to the **COMPANY** the equipment and materials which should not be disposed of off-site by the **COMPANY**. The **COMPANY** shall be responsible for the disposal of all equipment and materials removed or replaced through its performance of the Work in accordance with all applicable laws and regulations regarding such disposal, except those items designated by the **INSTITUTION** as nondisposable. The cost of disposal to be performed by the **COMPANY** is included in the **COMPANY** compensation for the Work set forth in Schedule C.

A.12 Warranty of Materials. The **COMPANY** warrants that all materials and equipment installed as part of the Work will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Project Documents. All work not so conforming to these requirements may be considered defective. If required by the **INSTITUTION**, the **COMPANY** shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of paragraph 8.1 below. This warranty of materials, equipment and workmanship is separate from, independent of, and in addition to any other guarantees in this Agreement or any other warranties in this Agreement or required by the Project Documents.

A.13 Responsibility for Materials. The **INSTITUTION** does not assume any responsibility for the availability of any controlled materials or other materials and equipment required for the Work. However, **INSTITUTION** reserves the right to review and approve the quality and standards for all materials. The **COMPANY** shall be responsible for the contracted quality and standards of all materials, components or completed Work furnished by the **COMPANY** pursuant to the terms hereof. Materials, components or completed Work which fails to comply with this Agreement and the Project Documents may be rejected by the **INSTITUTION** and shall be replaced by the **COMPANY** at no cost to the **INSTITUTION**. The **COMPANY** shall remove from the Premises within a reasonable time any materials or components so rejected at the entire expense of the **COMPANY**, after written notice has been delivered by the **INSTITUTION** to the **COMPANY** that such materials or components have been rejected. (OPTIONAL)

A.14 Inspections.

- (a) All materials and equipment and each part of the detail of the Work shall be subject at all times to inspection by the **INSTITUTION** or its designated representatives or consultants, and the **COMPANY** will be held strictly to the true intent of this Agreement and the Project Documents with regard to quality of materials, workmanship, and the diligent execution of the Work.
- (b) The **COMPANY** shall allow the **INSTITUTION** access to all parts of the Work, and shall furnish such information and assistance as is required to make a complete and detailed inspection or inspections.
- (c) All material and equipment installed as part of the Work must be inspected, tested and approved in accordance with the Project Documents and this Agreement prior to its use.
- (d) The **COMPANY** shall, if the **INSTITUTION** requests, remove or uncover such portions of the finished Work as the **INSTITUTION** may direct. After the examination, the **COMPANY** shall restore said portion of the Work to the standard required by this Agreement and the Project Documents. If the Work thus exposed or examined proves acceptable, the expenses of uncovering or removing and the replacing of the parts removed shall be the responsibility of the **INSTITUTION** and such uncovering, removing and replacing shall be deemed to be an excusable event of delay, if a delay in completion is caused thereby. If the Work so exposed or examined has not been performed in accordance with the Project Documents, the expense of uncovering, removing and replacing any portion of the Work necessary to comply with this Agreement and the Project Documents shall be borne by the **COMPANY** and requests for a time extension or claims for delay will not be granted.
- (e) Upon written request by the **COMPANY**, the **INSTITUTION** shall schedule preliminary inspections of the Work as soon as practicable after notification by the **COMPANY** that major ECMs or systems are substantially installed. If such Work is not acceptable to the **INSTITUTION** at the time of such preliminary inspections, the **COMPANY** will be provided written notice as to the particular defects to be remedied before the Work will be accepted. The date such Work is approved by the **INSTITUTION**, shall be the date of beneficial use to the **INSTITUTION** for the applicable ECM, relative to the commencement of the warranty period set forth in Schedule R for such ECM.

Notwithstanding the foregoing, the Certificate of Acceptance shall not be executed until a final inspection has been performed.

A.15 Project Meetings. The **COMPANY** shall provide for regularly scheduled project meetings in the Project Installation Schedule, and shall give timely advance written notice and agenda of such meetings to the **INSTITUTION**. The **COMPANY** shall record minutes and distribute copies of minutes of meetings to the **INSTITUTION** within five (5) business days after each meeting. The **COMPANY** shall schedule additional project meetings if requested by the **INSTITUTION**.

A.16 Assignment of Claims. The **INSTITUTION** shall not be bound by any assignment by the **COMPANY** to third parties of moneys due or to become due or of any other claims it may have under this Agreement except where the **INSTITUTION** consents in writing to be so bound.

A.17 Claims and Disputes. The **COMPANY** shall promptly notify the **INSTITUTION** in writing of any claims or disputes relating to the Work. Failure to notify the **INSTITUTION** in such instances may result in rejection of any such claim.

Sample

Attachment B

SAMPLE ENERGY AUDIT AGREEMENT

STATE OF ALABAMA
ENERGY PERFORMANCE CONTRACTING PROGRAM
MODEL ENERGY AUDIT AGREEMENT (DRAFT COPY)

This Energy Audit Agreement is entered into on _____, 201_, by and between _____ (the "**Institution**") and _____ (the "**Company**"). The Institution and the Company are referred to herein as the "**Parties**".

Whereas, the Institution has issued a Request For Proposals (RFP) to identify a Qualified Provider for a guaranteed energy savings contract;

Whereas, the Company submitted a response to the RFP and participated in a competitive evaluation procedure designed to identify a Qualified Provider;

Whereas, the Institution has selected the Company as a Qualified Provider;

Whereas, the Institution is responsible for the operation, management and maintenance of _____ (the "**Facility**");

Whereas, a comprehensive energy use and savings analysis (the "**Energy Audit**") must be performed at the Facility in order to determine the feasibility of entering into an Energy Performance Contracting Project to provide for the installation and implementation of energy conservation measures (ECMs) at the Facility;

Whereas, if the ECMs are demonstrated to be feasible, and if the amount of energy savings can be reasonably ascertained and guaranteed in an amount sufficient to cover all costs associated with an energy performance contracting project at the Facility, the Parties intend to negotiate an Energy Services Agreement (ESA) under which the Company shall design, procure, implement, provide training, maintain and monitor such energy conservation measures at the Facility;

Therefore, the Parties agree as follows:

ARTICLE 1: SCOPE OF ENERGY AUDIT

The Company will perform the Energy Audit and prepare a detailed engineering and economic report (the "Report") which specifically identifies the energy improvements and operational changes which are recommended to be installed or implemented at the Facility. The Report shall contain detailed projections of energy and cost savings to be obtained at the Facility as a result of the installation of the recommended energy conservation measures (ECMs). The savings calculations must utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings for the Facility, including accurate marginal cost for each unit of savings at the time the audit is performed; documented material and labor costs actually avoided; adjustments to the baseline to reflect current conditions at the Facility, compared to the historic base period; calculations which account for the interactive effects of the recommended ECMs; etc. The Report shall clearly describe how utility tariffs were used to calculate savings for all ECMs. The Report shall describe the Company's plan for installing or implementing the measures in the Facility, including all anticipated costs associated with such installation and implementation. The primary purpose of the Report is to provide an engineering and economic basis for

negotiating an ESA between the Institution and the Company; however, the Institution shall be under no obligation to negotiate such a contract.

The Company shall perform the following tasks in performing the Energy Audit and preparing the Report:

A. Collect General Facility Information

The Company shall collect general Facility information such as: size, age, construction type, condition and general use of the Facility. The Company shall also collect and summarize Facility utility cost and consumption data for the most recent 36-month period. Company shall evaluate the impact on utility cost and consumption for any energy measures currently being installed or currently contemplated to be installed by the Institution in the Facility which will remain separate from the Energy Services Agreement throughout the duration of the ESA.

Institution shall furnish (or cause its energy suppliers to furnish) all available records and data concerning energy and water usage for the Facility for the most current 36 month period, if available, including: Utility records; occupancy information; descriptions of any changes in the structure of the Facility or its heating, cooling, lighting or other systems or energy requirements; descriptions of all major energy and water consuming or energy and water saving equipment used in the Facility; and, description of energy management procedures presently utilized. The Facility shall also furnish a record of any energy related improvements or modifications that have been installed during the past three years, or are currently being installed or are currently contemplated to be installed by the Institution in the Facility separate from the Energy Service Agreement throughout the duration of that agreement. The Institution shall also provide copies of drawings, equipment logs and maintenance work orders to the Company insofar as this information is readily available.

B. Inventory Existing Systems and Equipment

Company shall compile an inventory based on a physical inspection of the major electrical and mechanical systems at the Facility, including:

- Cooling systems and related equipment
- Heating and heat distribution systems
- Automatic temperature control systems and equipment
- Air distribution systems and equipment
- Outdoor ventilation systems and equipment
- Kitchen and associated dining room equipment, if applicable
- Exhaust systems and equipment
- Hot water systems
- Electric motors 5 HP and above, transmission and drive systems
- Interior and exterior lighting
- Laundry equipment, if applicable
- Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
- Other major energy using systems, if applicable

The inventory shall address the following considerations:

1. The loads, proper sizing, efficiencies or hours of operation for each system; (Where measurement costs, facility operating or climatic conditions necessitate, engineering estimates

may be used, but for large fluctuating loads with high potential savings, appropriate measurements are required unless waived by the Institution).

2. Current operating condition for each system;
3. Remaining useful life of each system;
4. Feasible replacement systems;
5. Hazardous materials and other environmental concerns

The Company shall use data loggers and conduct interviews with Facility operation and maintenance staff regarding the Facility's systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

C. Establish Base Year Consumption and Reconcile with End Use Consumption Estimates

Company shall examine the most recent 36 months of utility bills and establish Base Year consumption for electricity, fossil fuels and water by averaging, or selecting the most representative contiguous 12 months. Company shall consult with Facility staff and account for any unusual or anomalous utility bills which may skew Base Year consumption from a reasonable representation.

Company shall estimate loading, usage and/or hours of operation for all major end uses representing more than 5% in aggregate of total Facility consumption including, but not limited to:

- Water
- Lighting
- Heating
- Cooling
- HVAC motors (fans and pumps)
- Plug load
- Kitchen equipment
- Other equipment
- Miscellaneous

Where loading and/or usage are highly uncertain Company shall employ spot measurement and/or short term monitoring at its discretion, or at the request of the Institution. Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment. The annual end use estimated consumption shall be reconciled with the annual Base Year consumption to within 5% for electricity (kWh), fossil fuels and water. The contribution to electric peak demand for each end use shall also be reconciled to within 5% of the annual Base Year peak. The "miscellaneous" category shall not be more than 5%. The purpose of this is to place reasonable limits on potential savings.

D. Develop List Of Potential Energy Conservation Measures (ECMs)

1. Identify and propose potential ECMs for installation or implementation at the facility, including water conservation measures;¹

¹ECMs that the Institution is particularly interested in are specified in Attachment A, and should be addressed in the Report. The attached list is **not** intended to be exhaustive nor limit the Company's evaluation and development of a comprehensive list of potential ECMs.

2. Estimate the cost, savings and life expectancy of each proposed ECM;
3. Specify Facility operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs;
4. Provide analysis methodology, supporting calculations and assumptions used to estimate savings. Manual calculations should disclose essential data, assumptions, formulas, etc. so that a reviewer could replicate the calculations based on the data provided;
5. For savings estimates using computer simulations, Company shall provide access to the program and all inputs and assumptions used, if requested by the Institution;
6. Provide a preliminary savings measurement and verification plan for each proposed ECM;
7. Provide a preliminary commissioning plan for the proposed ECMs;
8. Provide detailed calculations for any rate savings proposals;
9. Provide detailed supporting calculations for any proposed maintenance savings;
10. Estimate any environmental costs or benefits of the proposed ECMs (e.g. disposal costs, avoided emissions, water conservation, etc.).

This list shall be compiled and submitted to the Institution within ___ days (120 days is recommended) of the execution of this Project Development Agreement.

E. Select Final Recommended ECMs

Company shall, in consultation with the Institution, recommend specific ECMs from its preliminary compilation for installation and implementation at the Facility.

F. Cost and Fee Estimates

Company shall provide detailed estimates of costs associated with the installation, implementation and commissioning of each of the ECMs proposed in the Audit including breakouts for labor, materials, and equipment. In addition, project cost data must be provided in the format included in Attachment B: ESCO Cost Proposal and Cash Flow Analysis.

Company shall also provide estimates of monthly costs associated with sustaining the project performance including breakouts for maintenance fees, monitoring fees, and training fees.

G. Savings Estimates

The Institution has endeavored to provide the Company with sufficient general and specific guidance in this Article 1 to develop the savings estimates for the Report. In the event that questions arise as to the calculation of savings or whether certain items will be allowed as savings, the Company should seek written guidance from the Institution. The Institution reserves the right to reject items claimed as savings which are not in the Institution's utility budget line or which have been claimed contrary to the guidance given in this agreement or contrary to written guidance given to Company.

The Institution also reserves the right to reject Company calculations of savings when it determines that there is another more suitable or preferable means of determining or calculating such savings.

For the purposes of completing the Cash Flow Analysis in Attachment B, the following items will be allowed as savings or in the development of savings:

- Escalation rates of _____ % for natural gas²
- Escalation rates of _____ % for electricity
- Escalation rates of _____ % for oil
- Escalation rates of _____ % for steam
- Escalation rates of _____ % for water
- Escalation rates of _____ % for other fuel type (specify)
- Escalation rates of _____ % for operation and maintenance cost savings
- Escalation rates of _____ % for material/commodity cost savings
- Escalation rates of _____ % for allowable labor savings

The following items will not typically be credited as savings derived from a proposed ECM. The Company may seek exemptions from the Institution on a case-by-case basis. However, the final determination of allowable savings in each case considered shall reside with the Institution:

- Institution in-house labor cost**
- Institution deferred maintenance cost**
- Offset of future Institution capital cost**

H. Report Format

The Report shall, at a minimum, include the following:

1. An executive summary which describes the facility, measures evaluated, analysis methodology, results and a summary table presenting the cost and savings estimates for each measure and for the project as a whole.
2. A discussion of measures not evaluated in detail and the explanation of why a detailed analysis was not performed.
3. A summary of all utility bills, Base Year consumption and how it was established, and end use reconciliation with respect to the Base Year including a discussion of any unusual characteristics and findings.
4. Detailed descriptions for each ECM including analysis method, supporting calculations (may be submitted in appendices), results, proposed equipment and implementation issues.
5. A discussion of the conclusions, observations and caveats regarding cost and savings estimates.
6. Thorough appendices which document the data relied upon to prepare the analysis and how that data was collected.

² It should be noted that the base rate value for each fuel and water unit will not devalue in the event of any rate decrease. The Institution reserves the right to impose ceiling rates for fuel escalations.

The Report shall be completed within _____ days (120 days is recommended) of the date of execution of this Energy Audit Agreement. The cost for the completed Energy Audit and Report will be _____.

ARTICLE 2: ENERGY SERVICES AGREEMENT (ESA)

The Parties intend to negotiate an ESA under which the Company shall design, install and implement energy conservation measures which the Parties have agreed to and provide certain training, maintenance and monitoring services. However, nothing in this Agreement should be construed as an obligation on any of the Parties to execute such an ESA. The terms and provisions of such an ESA shall be set forth in a separate agreement.

ARTICLE 3: PAYMENT

Payment to Company for services performed in connection with the Energy Audit Agreement shall be made by Institution only in accordance with the provisions of Article 4 herein.

ARTICLE 4: TERMINATION

A. By Contractor:

Company may terminate this Agreement prior to the completion of the Energy Audit and Report or subsequent to the scheduled completion of the Energy Audit and Report if:

- (i) it determines that it cannot guarantee a minimum ___% savings in energy costs through the implementation of an energy performance contracting project at the Facility; or
- (ii) it determines that even though it can guarantee a ___% savings in energy costs, that amount would be insufficient to cover the costs associated with performing the Audit, installing energy conservation measures and related training, maintenance and monitoring services.

In the event Company terminates the Agreement pursuant to Section 4 A (i) or (ii) the Institution shall not be obligated to pay any amount to Company for services performed or expenses incurred by Company in performing the Energy Audit and Report required under this Agreement. Company shall provide the Facility with any Audit documents (preliminary notes, reports or analysis) which have been produced or prepared prior to the effective date of the termination. Company will return any documents or information that was provided by the Institution.

Termination under this section shall be effective upon Institution's receipt of written notification from the Company stating the reason for the termination and all documents which support termination pursuant to 4 A (i) or 4 A (ii) herein.

B. By Institution:

Institution may terminate this Agreement:

- (i) If the Company fails to complete the Energy Audit and deliver the Report to the Institution by the date established in Article 1 H. above; or fails to obtain a written extension of that date from the Institution. Termination under this subsection B (i) shall be effective upon Company's receipt of written notification from the Institution that the deadline for

submission of the Energy Audit and Report has past. In this event, the Institution shall not be obligated to pay any amount to Company for services performed or expenses incurred by the Company in performing the Energy Audit and preparing the Report required under this Agreement. Company shall provide the Facility with any Audit documents (preliminary notes, reports or analysis) which have been produced or prepared prior to the effective date of the termination. Company will return any documents or information that was provided by the Institution.

- (ii) If, prior or subsequent to the completion of the Energy Audit or Report, the Company notifies the Institution in writing that it is unable to guarantee a sufficient level of savings pursuant to subsection 4 A (i) or (ii) above. Termination under this subsection B (ii) shall be effective upon Company's receipt of written notification of termination from the Institution. In this event, the Institution shall not be obligated to pay any amount to Company for services performed or expenses incurred by Company in performing the Energy Audit and preparation of the Report required under this Agreement. Company shall provide the Facility with any Audit documents (preliminary notes, reports or analysis) which have been produced or prepared prior to the effective date of the termination. Company will return any documents or information that was provided by the Institution.
- (iii) If, prior or subsequent to the completion of the Energy Audit or Report, the Institution notifies the Company in writing that it has elected to terminate this Agreement and not enter into an ESA, the Institution shall reimburse the Company for either the actual expenses incurred or percent of the Audit and Report completed as of the effective date of the termination, the amount being determined as fair and equitable by the Institution. Termination under this subsection B (iii) shall be effective upon Company's receipt of written notification from the Institution.

Company agrees to provide the Institution with any records of expenses incurred and any preliminary notes, reports or analyses which have been produced or prepared prior to the effective date of the termination. Such documentation shall be used by the Institution to determine the extent of work completed by Company prior to termination and shall become the property of the Institution.

If after completion and acceptance of the Energy Audit, the Institution does not enter into an ESA with the Company within _____ days (**60 days is recommended**) after written acceptance of the Energy Audit, the Institution agrees to reimburse the Company for the cost of the Energy Audit as detailed herein. Termination under this subsection B (iii) shall be effective upon Company's receipt of written notification from the Institution. The Energy Audit and Report will become the property of the Institution.

It is clearly understood by both parties hereto that, if the Parties successfully negotiate and execute an Energy Services Agreement, no payment shall be due for the Energy Audit or Report under the terms of this Agreement. This Agreement shall automatically terminate upon the execution of an ESA by Company and the Institution for an energy performance contracting project at the Facility. It is further understood that provisions for payment for the Energy Audit shall be incorporated into the ESA.

ARTICLE 5: STANDARD TERMS AND CONDITIONS

SECTION 1. Agreement Term

The Agreement term shall commence on the date the Agreement is executed by the Institution and end on _____, unless earlier terminated pursuant to the provisions of Article 4 hereof. Notwithstanding, Company shall adhere to the deadlines set forth in Article 1 regarding the completion and submittal of the list of ECMs and the Report.

SECTION 2. Materials, Equipment and Supplies

The Company shall provide or cause to be provided all facilities, materials, equipment and supplies necessary to perform the Energy Audit and prepare the Report.

SECTION 3. Patent and Copyright Responsibility

The Company agrees that any material or design specified by the Company or supplied by the Company pursuant to this Agreement shall not knowingly infringe any patent or copyright, and the Company shall be solely responsible for securing any necessary licenses required for patented or copyrighted material utilized by the Company in the performance of the Energy Audit and preparation of the Report.

SECTION 4. Institution Access to Records

The Institution shall have the right, throughout the term of this Agreement and for a minimum of ____ years following completion of the Agreement, to inspect, audit and obtain copies of all books, records and supporting documents which Company is required to maintain according to the terms of this Agreement.

SECTION 5. Personnel

All personnel necessary for the effective performance of the Energy Audit shall be employed by Company and its designated subcontractors, shall be qualified to perform the services required under this Agreement, and shall in all respects be subject to the rules and regulations of Company governing staff members and employees. Neither Company, its designated subcontractors, nor its personnel shall be considered to be agents or employees of the Institution.

SECTION 6. Compliance with Applicable Law

In performance of its obligations pursuant to this Agreement, Company shall comply with all applicable provisions of federal, state and local law. All limits or standards set forth in this Agreement to be observed in the performance required under this Agreement are minimum requirements, and shall not affect the application of more restrictive federal, state or local standards applied to the performance of the Agreement.

SECTION 7. Waivers

No right of either party hereto shall be deemed to have been waived by non-exercise thereof, or otherwise, unless such waiver is reduced to writing and executed by the party entitled to exercise such right.

SECTION 8. Assignment

This Agreement may not be assigned by the Company without the prior written consent of the Institution.

SECTION 9. Federal Taxpayer Identification Number and Legal Status Disclosure

Under penalty of perjury, the Company certifies that ___-_____ is the Company's correct Federal Taxpayer Identification Number and that the Company is doing business as a Corporation.

SECTION 10. Governing Law

This Agreement shall be governed by and construed only in accordance with the laws of the State of Alabama.

SECTION 11. Agreement

The following documents are incorporated in, and made a part of, this Agreement:

- Attachment A - Facility's Recommended ECMs (Optional)
- Attachment B – ESCO Cost Proposal and Project Cash Flow Analysis
- (Note: Institution should include all required policy provisions which may include the following:)*
- Attachment I - Drug Free Workplace Provisions
- Attachment II - Equal Employment Opportunity Clause
- Attachment III - Certification of Capacity to Contract
- Attachment IV- Americans With Disabilities Act
- Attachment V- Certifications

SECTION 12. Project Management

All necessary and ordinary communications, submittals, approvals, requests and notices related to Project work shall be issued or received by:

For Institution:

For Company:

SECTION 13. Amendments

This Agreement and Attachments referenced in Section 11 herein constitute the entire Agreement between the Parties. No amendment hereof shall be effective until and unless reduced to writing and executed by the Parties.

ARTICLE 6: EXECUTION

IN WITNESS WHEREOF, the parties have executed this Agreement this _____day of _____, 200_.

INSTITUTION _____

COMPANY _____

BY: _____

BY: _____

TITLE: _____

TITLE: _____

BY: _____

BY: _____

TITLE: _____

TITLE: _____

ATTACHMENT A

FACILITIES Recommended Energy Conservation Measures

Sample

ATTACHMENT B

ESCOs Cost Proposal and Project Cash Flow

Sample

**ESCOs COST PROPOSAL
ENERGY PERFORMANCE CONTRACT**

INSTITUTION NAME: _____ **ESCO NAME:** _____

VALUE OF HARD COSTS¹: \$ _____

Category of Service Fees	Estimated Percentage (%) of Hard Costs	Dollar (\$) Value of Service Fees
Investment Grade Energy Audit		
Design Engineering Fees		
Construction Management		
System Commissioning		
First Year Training Fees		
Annual Service Fees including: Measurement and Verification Maintenance Performance Monitoring On-going Training Services		
Contingency Costs		
Totals		

¹The total value of Hard Costs is defined in accordance with standard AIA definitions which include:

- Labor Costs**
- Subcontractor Costs**
- Costs of Materials and Equipment, Temporary Facilities and Related Items**
- Miscellaneous Costs such as Permits, Bonds Taxes, Insurance, etc.**

NOTE: Percentages should include all mark-ups, overhead, and profit. Figures stated as a range (e.g. 2%-5%) are not acceptable.

Sample

**B-10. ESCO's PRELIMINARY CASH FLOW ANALYSIS
ENERGY PERFORMANCE CONTRACTING PROJECT
(Insert Name of Institution)**

Escalation Rate by Savings Category

Financed Project Costs:	_____	Electric:	_____
Finance Term:	_____	Natural Gas:	_____
Annual Interest Rate : *	<u>4.5%.</u>	Steam:	_____
Construction Months	_____	Water:	_____
Annual Payment	_____	Operations & Maintenance costs:	_____
		Other (specify):	_____

*Information to be provided by Institution Escalation Rate for Annual Fees : 4%.

Year	Electric Cost Savings	Natural Gas Cost Savings	Steam Cost Savings	Water Cost Savings	Other (Please Specify)	Operational Cost Savings	Total Utility Cost Savings	Maintenance, Monitoring, M&V, and Training Fees	Financing Payment	Net Savings
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
TOTAL										

ATTACHMENT C

Campus	BUILDING NAME	GROSS BUILDING AREA (SQ FT) BY FUNDING CATEGORY					YEAR CNST	YEAR RNVT	% RNVT
		E&G	HEALTH	AUXILIARY	OTHER	TOTAL			
Mont	Whitley Hall	86,263		40,761		127,024	1925	2000	95.00%
Mont	Davis Theatre			20,641		20,641	1925	1985	80.00%
Troy	Adams Administration Building	56,315				56,315	1988	2017	8.00%
Troy	Trojan Center	65,960	2,383	42,066		110,409	1975	2003	60.00%
Troy	Rushing Hall			125,530		125,530	2015	-	-
Troy	John Robert Lewis Hall	119,306				119,306	1929	2013	100.00%
Troy	Jack Paden House			6,239		6,239	1957	1995	100.00%
Troy	Chancellor's Home			6,310		6,310	1962	1990	100.00%
Troy	Clements Hall			35,916		35,916	1963	2003	100.00%
Troy	Collegeview	26,937				26,937	1973	1991	100.00%
Troy	Bartlett Hall	44,250				44,250	1940	2001	100.00%
Troy	Cowart Hall			35,919		35,919	1951	1993	100.00%
Troy	Kingry Cottage / 113 Veteran's Memorial Dr.(Student Counseling Center)			1,904		1,904	1957	1995	100.00%
Troy	Davis Field House	2,252		32,408		34,660	1971	1998	100.00%
Troy	Eldridge Hall	28,744				28,744	1951	2000	85.00%
Troy	Forest Resource Center	4,285				4,285	1992	-	-
Troy	Shackelford Hall			57,904		57,904	1930	2000	100.00%
Troy	Greenhouse	921				921	1993	-	-
Troy	Heating Plant	635		992		1,627	1946	-	-
Troy	Alpha Omicron Pi Sorority House			4,700		4,700	1956	1995	100.00%
Troy	105 Veteran's Memorial Drive	3,525				3,525	1954	1993	100.00%
Troy	Storage	336				336	1990	-	-
Troy	Honors Student Center			4,219		4,219	1989	-	-
Troy	Curtis Cottage / 107 Veteran's Memorial Dr.			1,663		1,663	1956	-	-
Troy	Laundry			830		830	1969	-	-
Troy	Long Hall	31,625				31,625	2014	-	-
Troy	Malone Hall	25,805				25,805	1962	1985	100.00%

Campus	BUILDING NAME	GROSS BUILDING AREA (SQ FT) BY FUNDING CATEGORY					YEAR CNST	YEAR RNVT	% RNVT
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Mont	Whitley Hall	86,263		40,761		127,024	1925	2000	95.00%
Mont	Davis Theatre			20,641		20,641	1925	1985	80.00%
Troy	Adams Administration Building	56,315				56,315	1988	2017	8.00%
Troy	Trojan Center	65,960	2,383	42,066		110,409	1975	2003	60.00%
Troy	Rushing Hall			125,530		125,530	2015	-	-
Troy	John Robert Lewis Hall	119,306				119,306	1929	2013	100.00%
Troy	Jack Paden House			6,239		6,239	1957	1995	100.00%
Troy	Chancellor's Home			6,310		6,310	1962	1990	100.00%
Troy	Softball Press Box			4,149		4,149	2001	-	-
Troy	Intramural Field House			1,595		1,595	1999	-	-
Troy	Grounds Shop	5,000				5,000	2001	-	-
Troy	Tennis Pro Shop	1,152				1,152	2001	-	-
Troy	Pace Hall	14,500		43,295		57,795	1947	1998	100.00%
Troy	136 Catoma Street	26,210				26,210	1955	2006	50.00%
Troy	Physical Plant Administration	2,990		4,678		7,668	1984	-	-
Troy	Veteran's Memorial Stadium	50,870		40,870		91,740	1986	2003	100.00%
Troy	Recreational Gym	16,240				16,240	2003	-	-
Troy	Smith Hall	68,665				68,665	1961	2010	100.00%
Troy	Sorrell Chapel				3,060	3,060	1983	-	-
Troy	International Arts Center			23,358		23,358	1966	2016	100.00%
Troy	Time Off Cottage / 109 Veteran's Memorial Dr.			1,496		1,496	1961	-	-
Troy	Wallace Hall	86,680			12,190	98,870	1970	-	-
Troy	Wright Hall	20,483				20,483	1939	1977	100.00%
Mont	Lee Street Parking Deck			37,350		37,350	2001	-	-
Troy	Hawkins Adams Long Hall of Honor	6,436			1,760	8,196	1997	-	-
Troy	Math/Science Complex	100,699				100,699	1961	1999	80.00%
Troy	Wendell Mitchell Hall - ROTC	12,500				12,500	1929	2010	100.00%
Troy	Alpha Gamma Delta Sorority House			4,991		4,991	1985	1998	100.00%

Campus	BUILDING NAME	GROSS BUILDING AREA (SQ FT) BY FUNDING CATEGORY					YEAR CNST	YEAR RNVT	% RNVT
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Mont	Whitley Hall	86,263		40,761		127,024	1925	2000	95.00%
Mont	Davis Theatre			20,641		20,641	1925	1985	80.00%
Troy	Adams Administration Building	56,315				56,315	1988	2017	8.00%
Troy	Trojan Center	65,960	2,383	42,066		110,409	1975	2003	60.00%
Troy	Rushing Hall			125,530		125,530	2015	-	-
Troy	John Robert Lewis Hall	119,306				119,306	1929	2013	100.00%
Troy	Jack Paden House			6,239		6,239	1957	1995	100.00%
Troy	Chancellor's Home			6,310		6,310	1962	1990	100.00%
Troy	Alpha Delta Pi Sorority House			4,644		4,644	1949	1998	100.00%
Troy	Phi Mu Sorority House			5,474		5,474	1989	1998	100.00%
Troy	Kappa Delta Sorority House			5,444		5,444	1956	1998	100.00%
Troy	Chi Omega Sorority House			5,718		5,718	1948	1998	100.00%
Troy	Delta Kappa Epsilon Fraternity			8,881		8,881	2010	-	-
Troy	Madison Street Apartments			9,166		9,166	1952	2017	100.00%
Troy	Sigma Chi Fraternity House			8,881		8,881	2010	-	-
Troy	Lambda Chi Alpha Faternity House			8,881		8,881	2010	-	-
Troy	Tau Kappa Epsilon Fraternity House			8,881		8,881	2010	-	-
Troy	Delta Chi Fraternity House			8,881		8,881	2010	-	-
Troy	Farmhouse Fraternity House			8,881		8,881	2010	-	-
Troy	Alpha Tau Omega Fraternity House			8,881		8,881	2010	-	-
Troy	Married Student Apartments			9,318		9,318	1969	-	-
Troy	Married Student Apartments			5,736		5,736	1969	-	-
Troy	Married Student Apartments			9,459		9,459	1969	-	-
Troy	Married Student Apartments			5,460		5,460	1969	-	-
Troy	Married Student Apartments			5,460		5,460	1969	-	-
Troy	Married Student Apartments			5,460		5,460	1969	-	-
Troy	Physical Plant-Trade	5,059				5,059	2001	-	-
Troy	Physical Plant-Paint	1,749				1,749	2001	-	-
Troy	104 Highland Avenue			1,666		1,666	1962	-	-
Troy	Riddle Pace Stadium			41,829		41,829	2002	-	-

Campus	BUILDING NAME	GROSS BUILDING AREA (SQ FT) BY FUNDING CATEGORY					YEAR CNST	YEAR RNVT	% RNVT
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Mont	Whitley Hall	86,263		40,761		127,024	1925	2000	95.00%
Mont	Davis Theatre			20,641		20,641	1925	1985	80.00%
Troy	Adams Administration Building	56,315				56,315	1988	2017	8.00%
Troy	Trojan Center	65,960	2,383	42,066		110,409	1975	2003	60.00%
Troy	Rushing Hall			125,530		125,530	2015	-	-
Troy	John Robert Lewis Hall	119,306				119,306	1929	2013	100.00%
Troy	Jack Paden House			6,239		6,239	1957	1995	100.00%
Troy	Chancellor's Home			6,310		6,310	1962	1990	100.00%
Troy	116 Highland Avenue			1,658		1,658	1968	-	-
Troy	120 Highland Avenue			1,593		1,593	1952	-	-
Troy	Alumni House			1,967		1,967	1952	-	-
Troy	Patterson Hall	41,982				41,982	2005	-	-
Troy	Storage Hanger	2,831				2,831	1965	-	-
Troy	106 Highland Avenue			1,396		1,396	2004	-	-
Troy	Soccer/Track Press Box	151				151	2005	-	-
Troy	Extended Learning Center	64,581				64,581	2006	-	-
Troy	Bus Maintenance Building	7,975				7,975	2005	-	-
Troy	Track Concessions Building			2,746		2,746	2006	-	-
Troy	Hawkins Hall	96,644				96,644	2009	-	-
Troy	Gerald O. Dial Hall			51,724		51,724	2007	-	-
Troy	Trojan Village(300)			54,406		54,406	2007	-	-
Troy	Trojan Village(200)			49,348		49,348	2007	-	-
Troy	Trojan Village(100)			49,584		49,584	2007	-	-
Troy	University Park	47,520		53,238		100,758	1970	2011	100.00%
Troy	711 Elm Street			1,408		1,408	1945	-	-
Troy	Lott Baseball Complex			10,968		10,968	2008	-	-
Troy	215 Franklin Drive			3,315		3,315	1968	-	-
Troy	Softball Dodd Center			10,359		10,359	2014	-	-
Mont	GAP Building	26,270				26,270	1952	-	-
Troy	Trojan Dining			79,257		79,257	2011	-	-

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Mont	Whitley Hall	86,263		40,761		127,024	1925	2000	95.00%
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Troy	Adams Administration Building	56,315				56,315	1988	2017	8.00%
Troy	Trojan Center	65,960	2,383	42,066		110,409	1975	2003	60.00%
Troy	Rushing Hall			125,530		125,530	2015	-	-
Troy	John Robert Lewis Hall	119,306				119,306	1929	2013	100.00%
Troy	Jack Paden House			6,239		6,239	1957	1995	100.00%
Troy	Chancellor's Home			6,310		6,310	1962	1990	100.00%
Troy	Trojan Arena			138,553		138,553	2012	-	-
Troy	Newman Center Bldg A			48,475		48,475	2013	-	-
Troy	Newman Center Bldg B			48,475		48,475	2013	-	-
Troy	Football Practice Storage Garage			2,778		2,778	2014	-	-
Mont	Rosa Parks Children's Annex			10,842		10,842	1921	2006	100.00%
Troy	Golf Facility			5,517		5,517	2014	-	-
Troy	218 Highland Avenue			1,664		1,664	1970	-	-
Troy	513 Park Street	4,509				4,509	1975	-	-
Troy	214 Highland Avenue			1,391		1,391	1973	-	-
Troy	Joint Training Center			12,168		12,168	2017	-	-
Troy	Idea Bank #1	17,910				17,910	1946	-	-
Troy	Idea Bank #2	4,979				4,979	1960	-	-
Troy	709 Elm Street			1,203		1,203	1945	-	-
Troy	204 Highland Avenue			1,790		1,790	1960	-	-
Troy	208 Highland Avenue			1,589		1,589	1960	-	-
Troy	North Endzone			65,998		65,998	2018	-	-
Troy	206 Highland Avenue			1,923		1,923	1960	-	-
Troy	210 Highland Avenue			1,750		1,750	1960	-	-
Mont	Rosa Parks Library & Musuem	46,474		5,526		52,000	2000	-	-
Mont	Montgomery Bookstore			3,478		3,478	1998	-	-
Troy	Trojan Wellness Center			125,530		125,530	2019		
Troy	202 Highland Avenue			2,553		2,553	1960	-	-

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Mont	Whitley Hall	86,263		40,761		127,024	1925	2000	95.00%
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Troy	Rushing Hall			125,530		125,530	2015	-	-
Troy	John Robert Lewis Hall	119,306				119,306	1929	2013	100.00%
Troy	Jack Paden House			6,239		6,239	1957	1995	100.00%
Troy	Chancellor's Home			6,310		6,310	1962	1990	100.00%
Troy	212 Highland Avenue			2,500		2,500	1950	-	-
Troy	TROY School of Nursing Building	15,392				15,392	2000	-	-
Phenix C	Higginbotham Hall	16,456				16,456	1993	-	-
Phenix C	Phenix City Riverfront	46,764				46,764	2015		
Dothan	Malone	41,395		403		41,798	1990	2004	16.00%
Dothan	Adams	38,608		2,562		41,170	1990	2004	2.00%
Dothan	R. Terry Everett Hall	34,306				34,306	2001	-	-
Dothan	R. Terry Everett Hall	22,130				22,130	2001	-	-
Dothan	Dothan Physical Plant			8,750		8,750	2014	-	-
Dothan	Coleman Hall	13,366				13,366	2019	-	-
	TOTAL	1,506,635	2,383	1,625,170	17,010	3,151,198			