

**ANNEXURE II**

**FORMAT OF GUARANTEE**

## PRGFEE BANK GUARANTEE

Bank Guarantee No.:

Dated:

To,

[Name and address

of the Participating Financial Institution]

This Deed of Guarantee (“**PRGFEE Guarantee**”) is executed by [*Complete Name and address of the Issuing Bank*] (herein after referred to as “**Bank**”) in favour of [*Complete Name and address of the Participating Financial Institution*] (hereinafter referred to as the “**Beneficiary**” or “**EE Loan Lender**” which expression shall, unless repugnant to the context thereof, include its successors, assignees, novatees and transferees) for a maximum amount not exceeding Rs.[●]/- (Rupees [●] only) (hereinafter referred to as the “**Guarantee Amount**”) payable in the manner stated herein, at the request of **REC Power Distribution Company Ltd.**, a company incorporated under the Companies Act, 1956, having its registered office at Core-4, Scope Complex, 7, Lodhi Road New Delhi- 110003 and its corporate office at 1016-1023, 10<sup>th</sup> Floor, Devika Tower, Nehru Place, New Delhi – 110019 (hereinafter referred to as the “**Implementation Agency**” or “**IA**” which expression shall, unless repugnant to the context thereof, include its successors, assignees, novatees and transferees).

1. The EE Loan Lender had approached the Implementation Agency with a request that the project of the Borrower be appraised by the Implementation Agency from the perspective eligibility for availment of the benefit under the Partial Risk Guarantee Fund for Energy Efficiency (“**PRGFEE**”) being managed by the Implementation Agency pursuant to the terms of the Implementation Agency Agreement dated July 16, 2015 (“**IA Agreement**”) and the Operations Manual (“**OM**”). Pursuant to such request, the Implementation Agency has approved the project of the Borrower (as defined hereinafter) for drawing benefit under PRGFEE vide its guarantee approval letter dated [●].
2. Subsequently, the EE Loan Lender has agreed to extend facilities aggregating to Rs. [●] /- (Rupees [●] Only) (“**Facility**”) in terms of the facility/loan agreement dated [●] entered into by and between the EE Loan Lender and [*Complete Name and address of the Energy Services Company availing the loan facility*] (hereinafter referred to as the “**Borrower**” or “**ESCO**”, which expression shall, unless repugnant to the context thereof, include its successors and permitted assigns). Simultaneously, the EE Loan Lender and the Implementing Agency have entered into the Guarantee Agreement dated [●], 2015 and pursuant to the terms thereof the Implementing Agency had instructed the Bank to issue this PRGFEE Guarantee up to the maximum extent of the Guarantee Amount.

- §. Accordingly, the Bank does hereby undertake to pay, immediately upon receipt of demand from the EE Loan Lender (substantially in the format annexed hereto) (“**Demand Notice**”) along with the approval letter from the Implementation Agency confirming the claim to be released to the EE Loan Lender (“**Guarantee Claim Approval Letter**”) in accordance with the terms of the OM and without any demur or protest, 75% of the Guarantee Amount or as may be approved by the Implementing Agency vide the Guarantee Claim Approval Letter. The Guarantee Amount, or part thereof, as may be claimed under the Demand Notice, shall be credited to the bank account of the Beneficiary specified in the Demand Notice or by way of a demand draft drawn in favour of the Beneficiary. Any demand made on the Bank by way of a Demand Notice shall be conclusive as regards the amount due and payable by the Bank under this Bank Guarantee on or before the claim expiry date. Thereafter, the Bank shall release the remaining 25% of the Guarantee Amount in accordance with the terms of the Demand Notice.
4. Subject to the provisions hereof, the Bank’s liability hereunder shall be absolute and unequivocal and the Bank undertakes to pay to the EE Loan Lender any amount of money so demanded upto the Guarantee Amount, without any delay, demur or reference to the Borrower and notwithstanding any dispute or disputes raised by the Borrower in any suit or proceeding pending before any court or tribunal relating thereto. The payment made by the Bank under this Bank Guarantee pursuant to any Demand Notice shall be a valid discharge of its liability for payment hereunder and the Borrower shall have no claim against the Bank for making such payment.
  5. The Bank agrees that this Bank Guarantee shall remain in force from \_\_\_\_\_ until \_\_\_\_\_ (“**Expiry Date**”) and unless a demand or claim hereunder is made on the Bank until 60 days after the Expiry Date (“**Claim Date**”) of this Bank Guarantee in writing and paid by the Bank in accordance with the terms hereof, and the Bank shall be discharged from all liabilities under this Bank Guarantee thereafter.
  6. The issuance of this Bank Guarantee shall not have the effect of deemed acceptance of the Bank to renew this Bank Guarantee or issue any further bank guarantees in relation to the Borrower or the Facility.
  7. The EE Loan Lender shall have the fullest liberty, without the Bank’s consent and without affecting in any manner the Bank’s obligations hereunder, to vary any of the terms and conditions of the Facility and to forbear or enforce any of the terms and conditions there under. The Bank agrees that no change or addition to or other modification of the terms of the Facility Agreement shall in any way release the Bank from any liability under this Bank Guarantee and hereby waives notice of any such change, addition or modification. However, the EE Loan Lender shall always be bound by the terms of the OM and the Bank shall only be liable to honour any claim of the EE Loan Lender if the same has been raised on the Bank in accordance with the terms of the OM.
  8. This Bank Guarantee will not be discharged due to the change in the constitution of the Bank or the Borrower or Implementation Agency or the EE Loan Lender.
  9. The EE Loan Lenders shall not assign or transfer all or any of its rights, benefits and obligations under the Bank Guarantee.

10. The Bank undertakes not to revoke and not cause the revocation of this Bank Guarantee during its currency except with the prior consent (in writing) of the EE Loan Lender/BENEFICIARY
11. The liability of the Bank under this Bank Guarantee shall not be affected on account of:
  - i) any change in the constitution or winding up of the Borrower/the Bank or the EE Loan Lender or any absorption, merger or amalgamation of the Borrower/the Bank or the EE Loan Lender; or
  - ii) any change in the management of the Borrower/the Bank or the EE Loan Lender or take over of the management of the Borrower/the Bank or the EE Loan Lender by any Government or by any other authority; or
  - iii) acquisition or nationalization of the Borrower/the Bank or the EE Loan Lender and/or of any of their undertaking(s) pursuant to any law; or
  - iv) bankruptcy/insolvency of the Bank or the Borrower.
12. This Bank Guarantee shall be governed by the laws of India. The courts / tribunals at New Delhi shall have exclusive jurisdiction in relation to all matters arising in relation to this Bank Guarantee. The EE Loan Lender/other beneficiaries of this Bank Guarantee shall be free to approach any court in NEW DELHI in connection with matters arising out of or in relation to this Bank Guarantee.
13. The Bank shall not in the event of the liquidation / insolvency of the Borrower prove in competition with the EE Loan Lender in the liquidation/insolvency proceedings in respect of any amounts to be recovered by the Bank from the Borrower pursuant to invocation of this Bank Guarantee and for assets exclusively charged to the EE Loan Lender by the Borrower.
14. Any sum or sums that are payable to the EE Loan Lender under this Bank Guarantee shall be paid at the place and in the account as specified in the Demand Notice.
15. The Bank shall be discharged from all its liabilities hereunder, upon full invocation of this Bank Guarantee and realization of the entire Guarantee Amount by the EE Loan Lender in terms hereof. No partial invocation is permitted.
16. The Bank hereby specifically acceptssubject to the terms hereof that:
  - i) The Bank Guarantee shall be unconditional and absolute.
  - ii) The Bank Guarantee shall be without any delay or demur if claim arises.
  - iii) The Bank Guarantee shall guarantee all losses, claims, damages and costs suffered by the EE Loan Lender.
17. Any provision of the Bank Guarantee which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but shall not invalidate the remaining provisions of the Bank Guarantee or affect such provision in any other jurisdiction.

18. The Bank represents that it has the requisite authority and the power to issue this Bank Guarantee in favour of the EE Loan Lender and hereby declares that Mr. [●], [●] of the Bank and Mr. [●], [●] of the Bank, are authorized to sign this Bank Guarantee on behalf of the Bank and to bind the Bank hereby.

Notwithstanding anything contained hereinabove:

- (a) Our liabilities under this Bank Guarantee shall not exceed Rs. \_\_\_\_\_/-.
- (b) This Bank Guarantee shall be valid up to \_\_\_\_\_ [*Please insert Expiry Date*].
- (c) We are liable to pay Guarantee Amount or any part thereof under this Bank Guarantee only and if we receive (if you serve upon us) a written claim or demand on or before [*Please insert Claim Date*] at ICICI Bank Ltd , 9-A , Phelps Building, Connaught Place New Delhi 110001 , thereafter we shall be discharged from all liabilities under this Bank Guarantee whether or not the original Bank Guarantee is returned to us.

**For [*Issuing Bank*]**

**(Authorised Signatory)**

**(Name and Designation /SS NO)**

ANNEX

FORM OF DEMAND CERTIFICATE

Date: [•]

To: *[Issuing Bank]*

Kind Attn[•]

Dear Sir,

Re: Bank Guarantee dated [•] and bearing no..... issued by *[Issuing Bank]*(the “**PRGFEE Guarantee**”) for the maximum guarantee amount of Rs. \_\_\_\_\_ /- (“**Guarantee Amount**”)

Please find enclosed the approval letter issued by REC Power Distribution Company Limited (“**Implementation Agency**”) approving our claim for the Guarantee Amount and authorizing the release of Rs. [•] under the PRGFEE Guarantee being 75% of the Guarantee Amount. Accordingly, we hereby give you this notice pursuant to the Bank Guarantee that we require you to pay such amount. We hereby agree that the remaining amount being 25% of the Guarantee Amount shall be released by you upon receipt of an intimation in that regard from Implementing Agency.

All amounts due should be paid through demand draft or telegraph transfer or RTGS (the details whereof are as follows)immediately and no later than 5 days from the date hereof:

Name of Beneficiary: [•]

[Account/RTGS Details]: [•]

Yours faithfully,

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(Authorized Signatory)

## TECHNICAL & FINANCIAL MODEL

### PROJECT TECHNICAL MODEL

#### A. Exiting Facility Details

Name of Project	
Name of PFI	
Name of ESCO Company	

Type of Project	New	
	Expansion	
	Diversification	
	Modernization	

Sr. No.	Existing Facility Details						
1	Sr. No.	Name of Equipment	Quantity (No.)	Type of Equipment	Indigenous Equipment	Imported Equipment	BEE Star Rated or Equivalent
Details of existing equipments to be Replaced, Modernize etc.	1						
	2						
	3						
	3						
	4						
	5						
	6						

		7						
		8						
		9						
		10						
		11						
		12						
		13						
		14						

		Particulars	Unit (KVA, Ton, etc.)
2	Connected Load	Total Connected Load of Complete Facility	
		Total Connected Load of Proposed Project	

3	Gate to Gate Energy Consumption of existing facility	Please provide the Gate To Gate Energy Consumption Chart or Figure
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4	Project Boundary	Please Specify the Project Boundary Chart or Figure
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5	Last Five Year Energy Consumption of	Sr. No.	Type of Fuel	Year 1	Year 2	Year 3	Year 4	Year 5



	existing Facility (Quantity Unit)	1	Electricity (MU)					
		2	Coal (ton)					
		3	Natural Gas (kg)					
		4	Furnace Oil (KL)					
		5	Biomass (MW)					
		6	Any other source					

6	Monetary Value of Last Five Year Energy Consumption of existing Facility (value INR)	Sr. No.	Type of Fuel	Year 1	Year 2	Year 3	Year 4	Year 5
		1	Electricity (MU)					
		2	Coal (ton)					
		3	Natural Gas (kg)					
		4	Furnace Oil (KL)					
		5	Biomass (MW)					
6	Any other source							

7	Monthly energy consumption for last 12 Months (Quantity Unit)	Sr. No.	Month	Electricity (MU)	Coal (Ton)	Natural Gas	Furnace Oil	Biomass	Any other sources
		1	January						
		2	February						
		3	March						
		4	April						
		5	May						
		6	June						
		7	July						
8	August								

		9	September						
		10	October						
		11	November						
		12	December						

8	Monthly energy consumption for last 12 Months (Value) INR	Sr. No.	Month	Value (INR)
		1	January	
		2	February	
		3	March	
		4	April	
		5	May	
		6	June	
		7	July	
		8	August	
		9	September	
		10	October	
		11	November	
		12	December	

**B. Project Detail**

Sr. No.	Proposed Energy Efficiency Project					
1	Details of Proposed Energy Efficient equipments	Sr. No.	Name of Equipments	Indigenous Equipment	Imported Equipment	BEE Star Rated or Equivalent
		1				
		2				
		3				
		3				
		4				
		5				
		6				
		7				
		8				
		9				
		10				
		11				
		12				
13						
14						
2	Cost Break of the Energy Efficient equipments & associated services	Sr. No.	Name of Equipments	Indigenous Equipment (Amount in Rs.)	Imported Equipment (Amount in Rs.)	BEE Star Rated or Equivalent if any (Amount in Rs.)
		1				
		2				
		3				
3						

		4				
		5				
		6				
		7				
		8				
		9				
		10				
		11				
		12				
		13				
		14				
		Total				
		Sum Total				
3	Connected Load	Particulars			Unit (KVA, Ton, etc.)	
		Total Connected Load of Complete Facility after implementation of proposed project				
		Total Connected Load of Proposed Project after implementation				

4	Gate to Gate Energy Consumption complete facility with project	Please provide the Gate To Gate Energy Consumption Chart or Figure
5	Project Boundary	Please Specify the Project Boundary Chart or Figure
6	Detailed Calculation considered for Energy saving	Please Specify the detailed Energy Saving calculation

7	Assumption for calculation of Energy Saving	Sr. No.	Particulars	Units					
		1							
		2							
		3							
		4							
		5							
		6							
		7							
8	Forecasted Five Year Energy Saving of Proposed Energy Efficiency Project (Quantity Unit) (after COD)	Sr. No.	Type of Fuel	Year 1	Year 2	Year 3	Year 4	Year 5	
		1	Electricity (MU)						
		2	Coal (ton)						
		3	Natural Gas (kg)						
		4	Furnace Oil (KL)						
		5	Biomass (MW)						
		6	Any other source						
9	Monetary Value of Forecasted Five year Energy Saving (value INR) (after COD)	Sr. No.	Type of Fuel	Year 1	Year 2	Year 3	Year 4	Year 5	
		1	Electricity (MU)						
		2	Coal (ton)						
		3	Natural Gas (kg)						
		4	Furnace Oil						

			(KL)						
		5	Biomass (MW)						
		6	Any other source						
10	Forecasted Monthly energy Saving for First 12 Months after the commissioning date(Quantity Unit)	Sr. No.	Month	Electricity (MU)	Coal (Ton)	Natural gas	Furnace Oil	Biomass	Any other sources
		1	January						
		2	February						
		3	March						
		4	April						
		5	May						
		6	June						
		7	July						
		8	August						
		9	September						
		10	October						
		11	November						
		12	December						
11	Forecasted Monthly energy Saving for First 12 Months after the commissioning date(Quantity Unit)	Sr. No.	Month	Electricity (MU)	Coal (Ton)	Natural gas	Furnace Oil	Biomass	Any other sources
		1	January						
		2	February						
		3	March						
		4	April						
		5	May						
		6	June						
		7	July						

		8	August						
		9	September						
		10	October						
		11	November						
		12	December						



Sr. No.	<b><u>PROJECT FINANCIAL MODEL</u></b>			
1	Name of the Company			
2	Type of Power Project			
3	Installed Capacity	-		-
4	Load Factor for ops days	Y1		
		Y2		
		Y3+		-
	All Amounts in	INR		
	All Denominations	Lakh		
	Currency Conversion (USD/ INR)	-		
5	Total Project Cost		INR Lakh	
6	Equity Contribution (%)			
7	Debt Funding (%)			
	Promoters' Contribution	-	INR Lakh	
	Term Loan from Banks	-	INR Lakh	
8	Rate of Interest on Debt/ Working Capital			
9	Construction Period (months)		-	Construction Period (Years)
10	Moratorium Period (months)			
	Total Moratorium Period (months)			
11	Total Tenure of Loan (months)			
12	Principal Repayment Period (months)	-		
13	Power saved through Energy Efficiency		'000 KWH	
14	Reduction in Energy Efficiency		Per year	
15	Tariff for Power (Rs. / Unit)			
16	Annual Increase in tariff			

17 Number of Working Days in a year

18 Number of Hours in a day

19 Operations & Maintenance Cost  
(Percentage of Total Project Cost)  
*Annual Increase*

20 Insurance Cost  
(Percentage of Total Project Cost)  
*Annual Increase*

21 *Average Cost of Material*  
*(Average cost of Consumables during the year)*

INR Lakhs

22 PERSONNEL COSTS

<u>No. of Workers</u>	<u>Monthly Remun</u>	<u>Annual Increase</u>
Plant Staff	INR	
Plant Manager		
Maintenance Manager		
Shift Supervisor		
Foreman		
Technicians/Instrumentation		
Helpers		
Any other		
Administrative & Management Staff		
General Manager		
Company Secretary cum Finance manager		
Accounts Officer		

23 ADMINISTRATIVE COSTS

<u>No. of Offices</u>	<u>Annual Expense</u>	<u>Ann Increase</u>
Printing & Stationery		
Postage & Telephone		
Travelling & Conveyance		
Legal & Other Professional Charges		

	Rents, Rates & Taxes			
	Miscellaneous Expenses			
24	Rate for Taxation (MAT)		Minimum Alternate Tax	
			Basic Tax Rate	
			Surcharge	
			Education cess/ Secondary & Higher Education cess	
25	Corporate Tax Rate		Corporate Tax Rate	
			Basic Tax Rate	
			Surcharge	
			Education cess/ Secondary & Higher Education cess	
26	Method of Depreciation		SLM	SLM
	<u>Rates of Depreciation</u>		SLM	WDV
	Building			
	Plant & Machinery			
	Equipments			
27	Working Capital Margins			
			Time (months)	
	Current Liabilities			
	Cost of Material			
	Operating & Maintenance Cost			
	Insurance Cost			

	Personnel Cost				
	Administrative Cost				
28	Contingencies				
29	NPV Discounting rate				(Post tax Calculation)
30	Risk Free Rate of Return (10 years Government of India Securities)				
31	Beta				
32	Expected Return on Market Index 20year average of BSE Sensex annual return				
33	Environment Cost (Percentage of Total Project Cost)				
	GHG Emission Reduction + Average Grid Emission Factor 0.825 tCO2/Mwh				
34	Capacity (W)				
35	No. of system				
36	Guarantee Period				
37	Conversion Factor of Manpower cost for Economic Analysis				
38	Energy Saving shared with Facility owner				

## ENERGY PERFORMANCE CONTRACT

This Energy Performance Contract ("Contract") is made and entered into as of **<date>**, by and Between \_\_\_\_\_ *<name of Facility Owner entity>* having its office at \_\_\_\_\_ (hereinafter referred to as the "**Facility Owner**" which expression shall unless repugnant to the context or meaning there of include its administrators, successors and assigns) of **One Part**;

### AND

\_\_\_\_\_ *<name of Energy Service Company>* having its office at \_\_\_\_\_ (hereinafter referred to as the "**ESCO**" which expression shall unless repugnant to the context or meaning there of include its administrators, successors and assigns) of **Other Part**

### WHEREAS:

- A. The Facility Owner owns and operates facilities and wishes to acquire equipment and services to reduce energy costs and related expenses towards the operation cost of the facilities.
- B. The Facility Owner had accordingly invited bids by issuance of Request for Proposal (RFP) pertaining to the engineering, design, packaging, procurement, installation, financing and measurement of cost effective CSMs at Facility Owner's facilities.
- C. The Facility owner had prescribed technical and commercial criteria, and invited bids from the bidders pursuant to RFP for undertaking the Project.
- D. ESCO has experience and technical and management capabilities to provide for engineering, procurement, installation, financing, maintenance and measurement of cost effective energy and cost saving measures ("CSMs").
- E. After evaluation of the bids received, the Facility Owner had accepted the bid of the \_\_\_\_\_ (hereinafter

referred to as “ESCO”) and issued its Letter of Acceptance No. \*\*\*\*\* dated \*\*\*\*\* (hereinafter called the “LOA”) to the \_\_\_\_\_ (ESCO) for performing, technical energy audit. After conducting the Technical Energy Audit has delivered to the Facility Owner a Technical Energy Audit Report and Project Development Plan (hereinafter Technical Energy Audit Report and Project Development Plan, both together are referred to as “Audit Report”) providing an assessment of the energy consumption characteristics of the facilities under operations of the Facility Owner, identification and evaluation of viable cost effective energy and cost saving measures (CSMs), and estimates of expected energy and operational savings and associated project costs for each recommended CSM.

- F. The Facility owner has accepted the Audit Report submitted by ESCO and is desires to enter into Energy Performance Contract with ESCO for design, installation, financing, maintenance and measurement of the CSMs as set forth herein.
- G. Facility Owner and ESCO acknowledge and agree that the purpose of this Contract is to achieve cost saving contemplated by this Contract to the benefit of Facility Owner and agree to cooperate to achieve the purpose of this Contract.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:-

## 1. ENERGY MANAGEMENT PLAN

### 1.1 Plan Details

The Audit Report submitted by the ESCO and accepted by the Facility Owner is annexed as Appendix A and incorporated by reference, which specifies the CSMs.

### 1.2 Schedules, Exhibits and Appendices

The Schedules and Exhibits as submitted by the ESCO and accepted by the Facility Owner are annexed and shall be part of this Contract and incorporated by reference.

#### Schedules:

Schedule A	Equipment to be Installed by ESCO
Schedule B	Description of facilities Pre-Existing Equipments Inventory
Schedule C	Energy Savings Assurance
Schedule D	Compensation to ESCO
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement & Calculation Formulae; Methodology to Adjust Baseline
Schedule G	Construction and Installation Schedule
Schedule H	System Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule I	Standards of Comfort
Schedule J	ESCO's Maintenance Responsibilities
Schedule K	The Facility Owner's Maintenance Responsibilities
Schedule L	Facility Maintenance Checklist
Schedule M	ESCO's Training Responsibilities
Schedule N	General Conditions
Schedule O	Payment Schedule <b>&lt;Or may be titled "Financing Amortization Schedule", "Debt Service Payment Schedule", etc.&gt;</b>
Schedule P	Pre-existing Service Agreements
Schedule Q	Current and Known Capital Projects at Facility

## Schedule R Projected Financial Performance

**<Note: Schedules P, Q and R are not yet specifically listed in the body of the Contract. If they are used, reference as to their function should be made in the body of the Contract.>**

### **Exhibits:**

Exhibit I	Certificate of Acceptance — Installed Equipment
Exhibit II	Operations and Maintenance Manuals (to be provided)
Exhibit III	Equipment Warranties (to be provided)

### **Appendices:**

Appendix A	Technical Energy Audit Report and Project Development Plan
Appendix B	RFP
Appendix C	ESCO Proposal
Appendix D	Lease Agreements and Documents, if applicable

**<Note: The contract schedules detail the substantive technical parameters of the projects negotiated and agreed to by the parties. These schedules are referenced throughout the Contract. Their titles shall be included in the main body of the Contract for easy reference and details as Schedules at the end of the Contract. If any schedules need to be completed after Contract execution, such clause may be incorporated to that effect.>**

**<Note: For Schedule N: General Conditions – If any General Conditions are specified in Schedule N, the reference shall be provided to the articles and paragraphs to which such condition is applicable.>**

**<Note: Descriptions for each schedule, exhibit and appendix are provided at the end of this sample contract in Attachment I.>**

### **1.3 Other Documents**

The RFP and ESCO Proposal for this Project, Appendix B (**RFP**) and Appendix C (**ESCO Proposal**) respectively are attached and incorporated by reference. The provisions of this



Contract shall have priority over other documents in the event of any inconsistencies between the RFP, ESCO proposal or Audit Report and the provisions of this Contract. Unless and otherwise expressly provided elsewhere in this agreement, the priority in the event of any conflict between them shall be in the following order:

- a) This agreement;
- b) Schedules and Exhibits
- c) Audit Report
- d) RFP and ESCO Proposal
- e) Other documents

## **2. ENERGY USAGE RECORDS AND DATA**

The Facility Owner has furnished or shall furnish (or cause its energy suppliers to furnish if reasonably possible) to ESCO, upon request, available records and data concerning energy usage and energy-related maintenance for the Premises described in Schedule B **(Description of Premises; Pre-Existing Equipment Inventory)**, including the following data for the most current twenty-four (24) month period; utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Premises; bills and records relating to maintenance of energy-related equipment, and a description of energy management procedures presently utilized. If requested, the Facility Owner shall also provide any prior energy audits of the Premises and shall make employees who are familiar with such records available for consultations and discussions with ESCO.

By the \_\_\_\_\_ day after receipt of letter of award, the Facility Owner shall provide ESCO with copies (hard or electronic) of all energy bills for the Premises that it shall have received for the preceding month. Upon receipt of the required information, ESCO shall calculate the savings in accordance with the agreed-upon calculation formulae in Schedule F **(Savings Calculation Formulae; Methodology to Adjust Baseline)**.

## **3. COMMENCEMENT DATE AND TERMS; INTERIM PERIOD**

### **3.1 Commencement Date**

The Commencement Date shall be the first day of the following month in which all of the

following have been met: (i) all schedules are in final form and accepted by the Facility Owner; (ii) ESCO has delivered a Notice to the Facility Owner that it has installed and commenced operating all the Equipment as specified in Schedule A (Equipment to be Installed by ESCO) and in accordance with the provisions of Section 8 (Construction Schedule and Equipment Installation; Approval) and Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment); and (iii) The Facility Owner has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance as set forth in Exhibit I (Certificate of Acceptance—Installed Equipment). Compensation payments payable to the ESCO for the services and maintenance as set forth in Schedule D (Compensation to ESCO) under this Contract shall begin no earlier than thirty (30) days from the Commencement Date and shall be as per the ESCO Proposal.

### **3.2 Term of Contract; Interim period**

Subject to the conditions mentioned in this clause, the term of this Contract shall be **<contract term in Months>** months beginning from the Commencement Date. Nonetheless, the Contract 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 shall be fully credited to the Facility Owner, unless specifically agreed between the parties during RFP and submission of ESCO Proposal.

## **4. PAYMENTS TO ESCO**

### **4.1 Energy Savings Assurance**

ESCO has formulated and, subject to the adjustments provided for in Section 14, **(Material Changes)** has assured the annual energy and operations savings to be achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in Schedule J **(ESCO's Maintenance Responsibilities)** and in accordance with the savings calculation formula as set forth in Schedule F **(Savings Calculation Formulae; Methodology to Adjust Baseline)**. The Energy Savings assurance is set forth for the term of the Contract as specified in Schedule C **(Energy Savings Assurance)**.

#### **4.2 Review and Reimbursement/Reconciliation.**

The Facility Owner and ESCO agree; to work in good faith to resolve any disagreement over the calculation of the energy savings. In the event of any unresolved dispute between the parties regarding calculation of energy savings, following procedure shall be adopted:

- a. an independent Energy Auditor / Energy Auditing Firm mutually agreeable to both the parties shall be appointed by either party to conduct a review and give an opinion on whether the calculation of savings or deficiencies as prepared by ESCO is fairly stated in accordance with this agreement.
- b. If the parties cannot agree upon an accounting firm, then each shall designate a firm; and the two designated firms shall identify a mutually agreeable third firm. The independent Energy Auditor / Energy Auditing Firm shall include in its report any exceptions determined by its review.
- c. Exercise of the right to request a review shall in no way affect the Facility Owner's obligation to make current payments pursuant to this Contract unless otherwise described herein.

Any payments between the parties necessary to resolve any irregularities identified in the review will be made within sixty (60) days after submission of the review to the parties. If any such payments were not made within specified period of Sixty (60) days, then such payment shall be made along with interest @ rate of 4% above the prevailing Bank Rate, as prescribed by the State Bank of India, If ESCO calls the review; ESCO shall pay the cost of the review. If the review is called by the Facility Owner, the following structure will be applied to paying for the review:

If the review determines that ESCO's preparation of the Energy Savings was more than ten percent (10%) in error, ESCO shall pay the entire cost of the review; however if ESCO's determination of the Energy Savings are in error of ten percent (10%) or less than the amounts as determined by the independent Energy Auditor / Energy Auditing Firm, the Facility Owner shall pay for the entire cost of the review.

#### **4.3 ESCO Compensation and Fees**

ESCO has structured the energy savings assurance referred to in clause 4.1 above, so as to be sufficient to equal or exceed the sum of any and all annual payments required to be made by the Facility Owner in connection with the acquisition of Equipment to be installed by ESCO under this Contract as set forth in Schedule O (Annual Installment Payment

Schedule) and any and all annual fees to be paid by the Facility Owner to ESCO for the provision of services as set forth and in accordance with the provisions of Schedule D (Compensation to ESCO) and Schedule J (ESCO's Maintenance Responsibilities).

#### **4.4 Billing Information Procedure**

Payments due to ESCO under this Section 4 shall be calculated in accordance with the provisions of Schedule D. ESCO shall provide the Facility Owner with an invoice of the total amount due.

#### **4.5 Effective Date of Payment Obligation**

Notwithstanding the above provisions in Section 4, the Facility Owner shall not be required to begin any payments to ESCO under this Contract unless and until all equipment installations are completed by ESCO in accordance with the provisions of Section 8 (Construction and Equipment Installation; Approval) and Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment), and accepted by The Facility Owner as evidenced by the signed Certificate of Acceptance as set forth in Exhibit I (Certificate of Acceptance — Installed Equipment), and unless and until said equipment is fully and properly functioning.

### **5. PERMITS AND APPROVALS; COORDINATION**

#### **5.1 Permits and Approvals**

The Facility Owner shall use its best efforts to assist ESCO in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall the Facility Owner be responsible for payment of any permits fees. The Equipment and the operation of the Equipment by ESCO shall at all times conform to all national, State and local code requirements. ESCO shall furnish copies of each permit or license, which is required to perform the work to the Facility Owner, before ESCO commences the portion of the work requiring such permit or license.

ESCO shall pay for electrical permits required by the facility owner. ESCO shall obtain and pay for all licenses and permits and shall pay all fees and charges for connections to outside services and for the use of municipal or private property for storage of materials, parking, utility services, temporary obstructions, enclosures, opening and patching of streets,

including any related works, arising from the construction and completion of the installation and maintenance contemplated by this Contract.

## **5.2 Coordination during Installation**

The Facility Owner and ESCO shall coordinate the activities of ESCO's equipment installers with the Facility Owner employees, and agents. ESCO shall not commit or permit any act that will interfere with the performance of business activities conducted by the Facility Owner or its employees without prior written approval of the Facility Owner.

## **6. LOCATION AND ACCESS**

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

## **7. PERFORMANCE BY ESCO**

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

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

## **8. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL**

8.1 Construction and equipment installation shall proceed in accordance with the construction schedule approved by the Facility Owner and attached hereto as Schedule G (Construction and Installation Schedule).

### **8.2 Systems Startup and Equipment Commissioning**

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

### **8.3 Inspection and Final Approval**

The Facility Owner shall have right to inspect, test and approve the work conducted in the facilities during construction and operation. The Facility owner shall have right to access the account books, records, and other compilations of data that pertain to the performance of the provisions and requirements of this Contract. Records shall be kept as per the generally recognized accounting practice, and calculations shall be maintained in a file in legible form. All such records shall maintain at least for three (3) years after close-out or as agreed between the parties.

## **9. STANDARDS OF COMFORT**

ESCO shall maintain and operate the Equipment in a manner so as to provide the standards of heating, cooling, and lighting etc. as described in Schedule I (Standards of Comfort).

## **10. EQUIPMENT WARRANTIES AND COMPATIBILITY**

ESCO covenants and agrees that all equipments installed, as part of this Contract, are New, in good and proper working condition and protected by appropriate written warranties covering all parts and equipment performance. Demonstrators, previously rented, refurbished, or reconditioned items are not considered "New" except as specifically

provided in this section. "New" shall mean items that have not been used previously and that are being actively marketed by the manufacturer. Equipment shall have the ESCO as their first customer and must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). Equipment offered must be provided with a full, unadulterated, and undiminished new item warranty against defects in workmanship and materials. The warranty shall include replacement, repair for the warranty period. ESCO further agrees to deliver to the Facility Owner for inspection and approval of all such written warranties, which shall be attached and set forth as Exhibit II (Equipment Warranties); to transfer warranties to the Facility Owner; to pursue rights and remedies against the manufacturer of the equipment under the warranties in the event of equipment malfunction or improper or defective function, and defects in parts, workmanship and performance; and to notify the Facility Owner whenever defects in equipment parts or performance occur or when warranty rights and remedies are exercised by ESCO. The cost of any risk of damage or damage to the equipment and its performance, including damage to property and equipment of the Facility Owner or the Premises, due to ESCO's failure to exercise its warranty rights shall be borne solely by the ESCO.

When new equipment is required to be fitted at the time of repair arising out of any malfunction, all warranties shall specify that only new, and not reconditioned parts, have been used and installed. All warranties required hereunder shall be in force for a minimum of one (1) year from the Commencement Date.

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

#### **11. TRAINING BY ESCO**

ESCO shall conduct the training program described in Schedule M (ESCO's Training Responsibilities) hereto. The training specified in Schedule M (ESCO's Training Responsibilities) must be completed prior to acceptance of the Equipment installation. ESCO shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software, and including to any newly hired maintenance