# CONSULTANCY AGREEMENT FOR INVESTMENT GRADE ENERGY AUDIT AND DEVELOPMENT OF GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACT

**BACKGROUND**

The ESCO is a company with experience and technical and management capabilities to provide for the discovery, engineering, packaging, procurement, installation, maintenance and monitoring of energy and water saving measures at facilities similar in size, function and system type to the Agency/company’s facilities; and

The ESCO has submitted a response to Tender for the Provision of Guaranteed Energy Savings Performance Contracting Services pertaining to the discovery, engineering, packaging, procurement, installation, maintenance and monitoring of energy and water saving measures at the Agency/company’s premises; and

The Agency/company has selected the ESCO to provide the services described herein; ie. to perform an Investment Grade Energy Audit and to develop and propose a Guaranteed Energy Savings Performance Contract so as to enable the Agency/company to determine the feasibility of entering into such a Guaranteed Energy Savings Performance Contract.

Now it is hereby agreed as follows:

1. Investment Grade Energy Audit and Development of Guaranteed Energy Savings Performance Contract

1.1 The ESCO agrees to perform an Investment Grade Energy Audit in accordance with **Phase 1** of the document: **Scope of Work**, this document: **Consultancy Agreement** and the other applicable documents in the **Invitation to Tender.** The ESCO agrees to complete the Investment Grade Energy Audit and present to the Agency/company a final report within ***<Number of Days – about 90 days recommended depending on size and complexity of facilities>*** calendar days from the Consultancy Commencement Date **<The date of submittal of the Letter of Acceptance to the ESCO>.**

1.2 If the ESCO discovers feasible energy and water saving measures from the Investment Grade Energy Audit, and if the amount of savings that would accrue to the Agency/company would be sufficient for the purposes of the Guaranteed Energy Savings Performance Contract (“GESP Contract”), the ESCO shall, if required by the Agency/company, carry out the Development of Guaranteed Energy Savings Performance Contract in accordance with **Phase 2** of the document: **Scope of Work**, this document: **Consultancy Agreement** and the other applicable documents in the Invitation to Tender The ESCO agrees to develop the GESP Contract within ***<recommended 40 days>*** from receipt of written instructions from the Agency/company to do so***.*** However, this does not commit the Agency/company to entering into such Guaranteed Energy Savings Performance Contract.

1.3 If the Agency/company so requires, the ESCO shall enter into the GESP Contract based on the ESCO’s findings and recommendations in its Investment Grade Energy Audit report, the GESP Contract developed by the ESCO in accordance with **Phase 2** of the document: **Scope of Work** and in accordance with the Invitation to Tender. The Agency/company shall have ***<Number of days – allow about 30 days>*** days from the completion and submission of all the work and deliverables referred to in **Phase 2** of the document: **Scope of Work**, to decide whether or not it requires the ESCO to enter into the GESP Contract.

1.4 The Agency/company will, when and if requested, provide the ESCO with information or other assistance that the ESCO would reasonably require to perform the Investment Grade Energy Audit in accordance with Phase 1 described in the document: **Scope of Work.** The ESCO agrees to work diligently to assess the validity of information provided and to confirm or correct the information as needed.

1.5 The ESCO warrants that the implementation costs, i.e. the Contract Price in Schedule C (Contract Price) of the document: **Conditions of GESP Contract,** for the energy and water saving measures that will be worked out under this Consultancy Agreement will not exceed the Contract Price specified in the Form of Tender ***< Contract price as quoted by the ESCO in the Tender Proposal>*** in all instances.

1.6 The ESCO warrants that the personnel performing the tasks under the Consultancy Agreement are suitably qualified and competent to carry out the Investment Grade Energy Audit and development of the GESP Contract, and further warrants that the Audit and development of the GESP Contract will be carried out in a professional and diligent manner.

2. Compensation to ESCO

2.1 Except as provided for in subclauses a) to d) below, within ***<Number of Days: about 45 to 60 days recommended>*** days after the ESCO’s submission of the final approved Investment Grade Energy Audit report, the Agency/company shall compensate the ESCO for performance of the services under Phase 1 of the document: **Scope of Work** by payment to the ESCO of 50% of the Consultancy Fee. However, the ESCO shall not be entitled to any part of the Consultancy Fee or to any fees, costs, disbursements or any other payment of any nature whatsoever**,** whether under this Consultancy Agreement or otherwise, if

1. the ESCO determines at any time during the Investment Grade Energy Audit that energy and water cost savings cannot be attained in accordance with its offer as set forth in the Tender Proposal;
2. the ESCO is unable to finalise the Investment Grade Energy Audit or present the final report within *<Number of Months – allow about 4 months>* months of the Consultancy Commencement Date;
3. the Agency/company determines that the ESCO's final Investment Grade Energy Audit report does not contain a package of energy and water saving measures which, if implemented, will result in Annual Realised Savings equivalent to or in excess of the Annual Guaranteed Savings in the Tender Proposal and a Project ROI equivalent to or greater than the Guaranteed ROI in the Tender Proposal; or
4. the ESCO determines, at any time, that it is unable to achieve the Declared Chilled-water Plant Specific Consumption in accordance with its offer as stated in the Form of Tender.
   1. Notwithstanding anything in the Invitation to Tender, the Agency/company shall have no obligation to pay the remaining 50% of the Consultancy Fee in the event it decides (whether before or after the ESCO has developed the GESP Contract) not to enter into the GESP Contract.
   2. Within ***<Number of Days: about 21 days recommended>*** days after the Agency/company’s decision to enter into the GESP Contract with the ESCO, the Agency/company shall compensate the ESCO for performance of the services under Phase 2 of the document: **Scope of Work** by payment to the ESCO of the remaining 50% of the Consultancy Fee.

3. Insurance

***<Note to Agency/company: Insert Agency/company’s insurance requirements and amounts of coverage below in this Section as needed.>***

4. Termination

4.1 The Agency/company may terminate this Consultancy Agreement at any time:

(a) on the occurrence of any of the events set out in **Clause 2.1 a) to d)** above; or

(b) if the ESCO defaults in his performance of this Consultancy Agreement and the Agency/company has issued a notice of default to the ESCO informing the ESCO of its default, but the ESCO has failed to remedy the default within thirty (30) days of the date of the notice of default.

Upon such termination, the ESCO shall pay the Agency/company an amount equivalent to 5% of the Consultancy Fee as compensation for the Agency/company’s time and resources spent on the Consultancy Agreement. This compensation shall not preclude the Agency/company from claiming damages for breach of contract if the ESCO’s default has, apart from the time and resources wasted, also caused the Agency/company to suffer other losses.

4.2 The Agency/company may terminate this Consultancy Agreement without cause upon at least 14 days written notice to the ESCO. In this event, the Agency/company shall pay the Consultancy Fee.

5. [Not used]

**6. Restrictions on proposed energy and water saving measures**

6.1 The energy and water saving measures recommended and installed by the ESCO shall not:

1. Jeopardize the operation or environmental conditions of dedicated computers or computer rooms;
2. Increase water consumption; e.g., once through fresh water cooling systems (Note: evaporative cooling technologies may be considered where environmentally appropriate);
3. Result in an adverse effect upon the quality of the human environment or violate any codes or regulations;
4. Degrade performance or reliability of existing Agency/company equipment; or
5. Create unsafe conditions or otherwise adversely impact Agency/company facilities, operations, and/or personnel

6.2 The energy and water saving measures recommended and installed by the ESCO shall take into account capacity requirement for future growth, mobilization needs, safety and emergency back-up, and any additional restrictions on the energy and water saving measures as specified in Clause 12 below.

7. Measurement and Verification of Savings

The framework of definitions and broad approaches for determination, measurement and verification of the Baseline Energy and Water Costs, Realised Savings, baseline adjustment, actual consumption and actual savings shall conform with the International Performance Measurement and Verification Protocol (Sep 2009). The detailing of the measurement methods shall, where possible, make use of ASHRAE Guideline 14: Measurement of Energy and Demand Savings, except for measurements pertaining to the chilled-water plant retrofit. For installation of measuring instruments for central chilled-water plant, the specifications of the measuring system shall make use of the requirements listed in Schedule P of Annex I1.

8. Unit Cost of Electricity and Water

For the purpose of computing and verifying energy and water cost savings, the following unit costs shall be used:-

1. the unit cost of electricity is 18 cents per kWh *<Agency/company to amend accordingly>*, and
2. the unit cost of potable water is $2.11 per cubic meter *<Agency/company to amend accordingly>*.

All unit rates used in the computation of cost factors other than electricity and water shall be based on actual costs avoided.

**9. Allowable cost and savings factors for energy and water related work**

9.1 Any cost savings that are related to maintenance and operation of the facilities will be rigorously reviewed and will be limited to those that can be thoroughly documented with reasonable effort and that are approved by the Agency/company.

9.2 Subject to **Clause 9.1** above, the following are allowable payment sources for computation of savings that form part of the Annual Guaranteed Savings:

1. Energy and water savings,
2. Material/commodity savings, including scheduled replacement of parts (only for the years that these savings are applicable),
3. External labour cost savings, including maintenance contracts,
4. Maintenance cost savings such as terminated service contracts on equipment, and
5. Other savings identified by the ESCO and specifically approved by the Agency/company

***<Note: Categories b), c) and d) are recommended to help increase the scope of work through added source of funds; thorough documentation and review is critical to ensure these anticipated savings are verifiable.>***

9.3 Payment sources that are not allowed include:

1. The Agency/company’s in-house labour costs

***<This category is generally not advised unless there are terminations; otherwise budgetted savings may not achieved>***

1. The Agency/company’s deferred maintenance costs
2. Offset of future Agency/company capital cost
3. Interest rates (borrowing rates for Agency/company)
4. Projected rentals from space savings

***<Note to Agency/company: Move any disallowed items to this section. Ensure consistency with other documents.>***

**10. Standards of comfort**

Unless otherwise agreed to by the Agency/company as a result of the Audit, the following standards of comfort on minimum air quality, noise volume, temperature, and lighting standards shall be complied with:

1. SS 553: 2009 (Code of Practice for Air-conditioning and Mechanical Ventilation in Buildings)
2. SS 554: 2009 (Code of Practice for Indoor Air Quality for Air-conditioned Buildings)
3. SS 531 Series (Code of Practice for Lighting of Work Places), and
4. All applicable standards established by building regulations.

***<Note to Agency/company: Agency/company to insert or amend the above according to its needs>***

11. Submissions

The ESCO shall ensure that it makes all necessary submissions and resubmissions to all relevant Government authorities and Statutory Boards in compliance with all relevant Acts, Regulations, Codes of Practice and requirements and shall bear all costs and fees in connection with such submissions and resubmissions. For the avoidance of doubt, the parties agree that the Agency/company shall not be responsible for the actions of such or any Government authorities and Statutory Boards.

12. Agency/company’s Particular Conditions

*<Note to Agency/company: Insert Agency/company’s particular conditions in this Section as needed.>*

**13. Scope of Work**

The Scope of Work is attached hereto and shall be deemed to form and be read and construed as part of the Consultancy Agreement.