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ANNEXURE 4
Guidelines for EnPC Contract

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ACRONYMS AND ABBREVIATIONS

BBBEE	Broad-Based Black Economic Empowerment
CMA	Competent Management Agent
DEE	Department Energy and Electricity
EE	Energy Efficiency
EEPBIP	Energy Efficiency Public Buildings and Infrastructure Programme
EnPC	Energy Performance Contracting
EPC	Energy Performance Certificate
ESCO	Energy Services Company
GHG	Greenhouse Gas Emissions
HVAC	Heating, Ventilation and Air Conditioning
IRR	Internal Rate of Return
kVA	kilo Volt Amps (1 000 volt-amps)
kWh	kilowatt hour
kWh/a	kilowatt hour per annum
M&V	Measurement and Verification
MW	Megawatt
NPV	Net Present Value
SANS	South African National Standards
SANEDI	South African National Energy Development Institute
PV	Photovoltaic (Solar)

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DEFINITIONS

Baseline Change Event: has the meaning ascribed thereto in Clause "Change in Baseline Conditions".

Baseline Conditions: means the conditions that prevailed at the Property during the Baseline Period as outlined in Appendix *Baseline Conditions*. (Study Phase, Appendix 5).

Baseline Electrical Consumption: means the electrical consumption of the Property during the Baseline Period adjusted from changes in the Baseline Conditions. (Study Phase, Operational Phase, Appendix 6).

Baseline Period: means the [ ] months before the Signature Date of this Contract.

Change in Baseline Conditions: means the changes in the Baseline Conditions at the Property due to a decision from the Contracting Authority, such as a modification of the property, a modification of the operations, a modification of internal policies that impact the electrical consumption.

Competent Management Agent: For the purposes of this Contract, the Competent Management Agent (CMA) refers to a qualified individual or entity appointed by the Contracting Authority to serve as the principal technical and contractual liaison with the Energy Services Company (ESCO). The CMA shall possess the requisite expertise in energy efficiency projects, including engineering, project execution, contract management, and performance monitoring, and shall be responsible for supporting the implementation, supervision, and verification of the Energy Efficiency Measures under this Contract.

Contract: means this energy shared service contract concluded by the Parties in accordance with the Contract Term. (Entire Document including Listed Appendices).

Contract Term: means the duration of this Contract, commencing on the date of its signature and expiring on [insert date], encompassing collectively the Study Phase, the Implementation Phase, and the Operation Phase. (Page 7).

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Contracting Authority: means [ ]. TBA.

Delivery Date: means the date of the Notice of Completion of Works. It corresponds to the end of the Implementation Phase and to the beginning of the Operational Phase. (Implementation Phase).

Electricity Tariff: means the electricity tariff during (Appendix 8).

Energy Efficiency Audit: means the evaluation during the Study Phase carried out by the ESCO at the Property in order to determine the Energy Efficiency Equipment to be installed and the potential for Energy Savings to be achieved at the Property (Study Phase, Appendix 1).

Energy Efficiency Equipment: means all the equipment installed by the ESCO during the Implementation Phase. This includes new equipment replacing existing systems or add-ons implemented to optimize the functioning of Existing Installations. The equipment encompasses all necessary spare parts required throughout the Contract Term. (Implementation Phase, Appendix 3).

Energy Efficiency Solutions: means the combination of the installation of the Energy Efficiency Equipment Implementation phase and the operation of Energy Management Services during the Operational Phase (Study Phase, Implementation Phase, Appendix 2).

Energy Savings: means the reduction of the Property's electrical consumption resulting from the Energy Efficiency Solutions. It corresponds to the difference between the yearly Real Consumption and the Baseline Energy Consumption. (Study Phase).

Energy Savings Payment: means the remuneration to which the ESCO is entitled as set out in Article "Energy Savings Payment". (Appendix 13).

Energy Savings Target: means the target Energy Savings at the Property which the ESCO expects to achieve. (Study Phase).

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Early Termination: means any circumstance whereby this Contract is terminated prior to the expiry date of the Contract Term.

ESCO: means [ ]. TBA.

Existing Installations: means all electrical equipment already installed in the Property by the Contracting Authority. (Study Phase, Appendix 4).

Financing Agreement: means the agreements relating to the financing provided by a lending institution to the ESCO. (Appendix 14).

Good Industry Practice: means standards, practices, methods and procedures conforming to Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of business carrying out the same duties under the same or similar circumstances. (Implementation Phase).

Implementation Phase: means the period commencing on the next Business Day following the Delivery Date which shall be a period of [ ] months as stipulated in Appendix *Implementation Schedule*.

Implementation Schedule: (Appendix 10).

Insurance Agreement: (Appendix 18).

Logbook: means a written record maintained by the Contracting Authority at the Property documenting all relevant actions, changes, and events that affect the electrical consumption at the Property. (Operational Phase).

Law: means any decree, resolution, law, statute, act, ordinance, rule, directive, order, treaty, code or regulation or any interpretation of the foregoing, as enacted, issued or promulgated by the Government of the Republic of South Africa that is publicly available and published in

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the Government Gazette, including amendments, modifications, extensions, replacements or re-enactments thereof.

Maintenance: means maintenance activities scheduled to be performed in respect of the Energy Efficiency Equipment at the Property (Operational Phase, Appendix 16).

Monitoring Equipment: means the smart metering system, hardware and software, installed at the Property. (Implementation Phase).

M&V Agent: means the party appointed to carry out measurement and verification of Energy Savings. (Appendix 12).

M&V Plan: (Appendix 11).

Natural Changes in Baseline Conditions: means changes in weather conditions (temperature, humidity) and production (manhours) compared to the conditions that prevailed during the Baseline Period.

Notice of Completion of Works: means the official document issued by the ESCO to inform the Contracting Authority that all Works during the Implementation Phase have been completed. (Implementation Phase, Appendix 15).

Operational Phase: means the period between to the Delivery Date and the expiry or Early Termination of this Contract, whichever occurs first.

Parties: means both the ESCO and the Contracting Authority.

Property: means [ ]. TBA.

Real Electrical Consumption: means to the Property's electrical consumption during the Operational Phase.

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Remuneration Adjustment: means the reimbursement owed by or additional remuneration due to THE ESCO to adjust the yearly Energy Savings.

Risks Register: means the risks collaboratively identified by the Parties at the time of contract signature. (Appendix 9).

Savings Share: means the proportional share of the Energy Savings to which the ESCO is entitled to.

Signature Date: means the date of signature of this Contract by the last party signing.

Study Phase: means the period starting the Business Day after the signature date of this Contract and lasting for [ ] months.

Users' Comfort Requirements: means the conditions and standards of comfort that shall be maintained within the Property during the Baseline Period, as stipulated in Appendix *Users' Comfort Requirements*. These requirements include temperature, humidity, air quality, lighting, and noise levels, all of which contribute to the overall comfort and well-being of the building's occupants (Appendix 7).

Works: means any engineering, sourcing, installation and commissioning of Energy Efficiency Equipment at the Property to be undertaken by the ESCO or its subcontractors during the Implementation Phase. (Implementation Phase).

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1. DOCUMENTS FORMING PART OF THE CONTRACT

Appendix 1: Energy Efficiency Audit and Report Requirements

Appendix 2: Description of Energy Efficiency Solutions

Appendix 3: Energy Efficiency Equipment

Appendix 4: Contracting Authority 's Existing Installations

Appendix 5: Baseline Conditions

Appendix 6: Electrical Consumption Baseline

Appendix 7: Users' Comfort Requirements

Appendix 8: Electricity Tariff

Appendix 9: Risk Register

Appendix 10: Implementation Schedule

Appendix 11: M&V Plan

Appendix 12: M&V Agent Agreement

Appendix 13: Calculation of Energy Savings Payment

Appendix 14: Financing Agreement

Appendix 15: Notice of Completion of Works Template

Appendix 16: Maintenance Plan

Appendix 17: Instructions for Operating the Energy Efficiency Equipment

Appendix 18: Insurance Agreement

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2. INTERPRETATION OF CONTRACT

In the event of a contradiction between this Contract and any of its annexes, the Contract shall prevail unless the annex explicitly states an overriding provision.

This Contract, including the attached Annexes, constitutes the entirety of the Contract between the Parties. In case of discrepancies or ambiguities, this Contract supersedes all prior written or verbal communications related to the content of this Contract. This ensures alignment with the shared Energy Savings goals and performance metrics.

Any amendment to this Contract shall be done through a written amendment signed by both Parties to be valid. Such amendments shall specifically address changes in performance criteria, Energy Savings Target, or payment schedules to reflect evolving circumstances.

If any of the provisions of this Contract is held to be invalid, illegal, null and void, or without purpose, it shall be deemed as unwritten and shall not lead to any of the remaining provisions becoming ineffective. However, if any of the foregoing characteristics negatively impact the rights or obligations of the Parties, particularly in relation to Energy Savings or performance Target, they shall be subject to a fair and reasonable modification agreed by the Parties.

3. PURPOSE

This Contract sets forth the terms and conditions pursuant to which the ESCO shall:

Finance, design, and implement the Energy Efficiency Solutions at the Property as described in Appendix 2 - *Description of Energy Efficiency Solutions.*

Maintain the Energy Efficiency Equipment as outlined in Appendix 16 *Maintenance Plan* and monitor and report on electrical consumption and Energy Savings.

Generate Energy Savings, which shall be shared between the Parties as specified in Article 15.

Receive Energy Payments from the Contracting Authority for the Energy Savings achieved, as specified in Article 16.

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4. CONTRACT TERM

This Contract shall come into force from the date on which this Contract is signed by the Parties and covers (i) the Study phase, (ii) the Implementation Phase and (iii) the Operational Phase. The Operational Phase covers a period of [ ] years following the Delivery Date. This Contract shall terminate at the end of the Operational Phase.

5. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

The ESCO represents and warrants that:

It has taken all necessary actions to authorize its execution of this Contract.

It has inspected the Property and acknowledges the potential Energy Savings outlined in the Tendering documentation, confirming sufficient space and access for the installation and operation of the equipment, with confidence in its ability to achieve these savings.

It commits that the equipment installed will be free of defects for the duration of the Contract. Furthermore, it will design the Energy Efficiency Solutions to reduce electricity consumption at the Property, selecting the most suitable and advanced Energy Efficiency Equipment available in the market. This process will include thorough due diligence to identify optimal solutions and will consider internationally recognized quality labels as a guarantee of performance and reliability.

It is registered as an ESCO with the South African National Energy Development Institute (SANEDI).

It will not cause damage to the Property and will be responsible for any damage caused, making repairs at its own expense.

No litigation, arbitration, or investigation is ongoing or threatened that could negatively affect the ESCO's ability to perform its obligations.

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It has engaged with Financial Institutions to secure the required Finance Agreements for the project and has also coordinated with Insurance Companies for the necessary coverage.

It did not engage in any corrupt activities in relation to being awarded this Contract.

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The Contracting Authority represents and warrants that:

It has taken all necessary actions to authorise the execution of this Contract.

All information disclosed by the Contracting Authority to the ESCO up to the Signature Date, including during the tendering process before the award of this Contract, is true, complete, and accurate in all material respects.

It is not aware of any material facts or circumstances not disclosed to the ESCO which, if disclosed, would likely adversely affect the ESCO's ability to perform its obligations under this Contract.

No encumbrances or restrictive conditions of title exist over the title deed for the Property that would prevent or obstruct the ESCO from performing its obligations under this Contract.

It grants the ESCO, its employees, sub-contractors, agents, and representatives the right of access to and non-exclusive possession of the Property for the performance of the Works during the Implementation and Operational phases during business hours.

It will maintain the Property and any Existing installations (Appendix 4) to ensure the performance of the Energy Efficiency Equipment is not affected and that the ESCO's ability to achieve Energy Savings is not hindered.

It will not interfere with, and will ensure that its employees do not interfere with, the Works and the Energy Efficiency Equipment installed by the ESCO, or with the adjustments to the systems made by the ESCO.

6. EnPC PROJECT DEVELOPMENT PHASES

6.1 STUDY PHASE

At the signature of the Contract, the Contracting Authority commits to halting any activities

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undertaken by other parties under separate contracts that could impact the Property's electricity consumption, either positively or negatively.

The Study Phase shall begin on the date of signing this Contract and conclude no later than three (3) months thereafter, unless otherwise agreed upon by the Parties.

No later than thirty (30) Business Days following the signature of the Contract, the ESCO shall conduct an Energy Efficiency Audit of the Property in accordance with EN 16247 or ISO50002 and Energy Audit Type II standards.

Upon completion of the Energy Efficiency Audit, the ESCO shall provide an Energy Efficiency report that includes all required information as specified in the Appendix 1 - Energy *Efficiency Audit and Report Requirements*.

Based on the results of the Energy Efficiency Audit, the ESCO shall calculate the Energy Savings Target, representing the expected reduction in electrical consumption at the Property as a result of implementing the Energy Efficiency Solutions, referencing the Electrical Consumption Baseline (Appendix 6) and Baseline Conditions (Appendix 5) from the Baseline Period.

The ESCO shall submit the Energy Efficiency Audit report and the Energy Savings Target to the M&V Agent for review. The M&V Agent shall either recommend the acceptance of both the Energy Efficiency Audit report and Energy Savins Target by the Contracting Authority or return them to the ESCO with comments. Upon receiving comments, the ESCO shall revise the Energy Efficiency report and/or the Energy Savings Target and resubmit them for further review.

After reviewing the revised Energy Efficiency Audit report and Energy Savings Target, the Contracting Authority shall either accept both the Energy Efficiency Audit report and the Energy Savings Target or return them to the ESCO with additional comments. The ESCO shall address the comments and make the necessary revisions before resubmitting both documents for further review.

The Parties shall cooperate to ensure that the entire process, from submission of the Energy Efficiency Audit report and Energy Savings Target to the M&V Agent to the final resubmission of the revised Energy Efficiency report and/or Energy Savings Target, is completed within a

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maximum of two (2) months, with a maximum of two (2) rounds of revisions and resubmissions between the Parties. The M&V process shall comply with the ISO50010.

If, during the Study Phase and upon completion of the M&V process, the actual Energy Savings potential is determined to be materially lower than expected due to a material change in the Baseline Conditions or a substantial deviation from the assumptions defined in the Tendering Stage Documentation, the ESCO shall have the right to withdraw from the Project. Such withdrawal shall be subject to the ESCO providing written notice to the Contracting Authority within two (2) Business Days of the final outcome of the M&V process. Upon withdrawal, the Contracting Authority shall compensate the ESCO with a fee, as mutually agreed upon at the time of contract signing. This fee shall cover all Works completed by the ESCO up to that point, including the Energy Efficiency Audit and any other related activities, ensuring fair compensation for the services rendered. The Contracting Authority shall make the payment within thirty (30) days of receiving the withdrawal notice.

If the ESCO proceeds with the project, following the completion and acceptance of the Energy Efficiency Audit report and Energy Savings Target by the Parties, the ESCO shall secure the required Finance Agreements for implementing the Energy Efficiency Solutions within a maximum period of three (3) months, or within a period mutually agreed upon by the Parties prior to the signature of this Contract. If the ESCO fails to secure the necessary Finance Agreements within the specified period, the Contracting Authority may terminate the contract at no cost to either Party.

In the event that the Contracting Authority decides not to proceed with the implementation of the Energy Efficiency Solutions after the Financing Agreement (Appendix 14) have been finalized, the Contracting Authority shall compensate the ESCO with a fee, the amount of which shall be mutually agreed upon by the Parties at the time of contract signing, reflecting the Works completed up to that point.

The Energy Efficiency Solutions shall be designed to maintain conditions comparable to those of the Baseline Period, based on the Existing Installations and operating conditions of that year, including the consideration of Users' Comfort Standards. The Energy Efficiency Solutions shall not cover any compliance-related work if the installations and conditions are found to be non-compliant with applicable regulations or internal policies, nor do they include modifications to the Baseline Conditions, whether upgrades or downgrades. Should the Contracting Authority request changes to the Baseline Conditions, the ESCO shall assess the impact on electricity

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consumption and adjust the Electrical Consumption Baseline accordingly.

6.2 IMPLEMENTATION PHASE

Upon securing the Financing Agreement (Appendix 14), the ESCO shall promptly begin or arrange for the execution of the Works, including the supply and installation of all Energy Efficiency Equipment, as detailed in the Appendix 10 - *Implementation Schedule*. Any significant changes to the Implementation Schedule shall be discussed and mutually agreed upon by the Parties.

The Contracting Authority shall take all reasonable and necessary measures to facilitate the ESCO's implementation of the Energy Efficiency Solutions. Specifically, it shall designate a dedicated point of contact with the required coordination skills and decision-making authority until the Delivery Date.

The Contracting Authority shall provide the ESCO and any subcontractors with safe and unrestricted access to the Property at the agreed times and ensure that all necessary documentation and information requested by the ESCO is made available, provided that such requests are reasonable and relevant to the execution of the Works.

The ESCO shall inform the Contracting Authority in writing and with reasonable notice of any construction Works or Energy Efficiency Equipment testing that could impact activities at the Property and shall implement mitigation measures where possible to minimize disruption.

The ESCO shall perform the Works with the skill, care, and diligence that can reasonably be expected from a competent and qualified professional experienced in executing Works of a similar scope, complexity, purpose, and size. The ESCO shall remain responsible for ensuring that all Works meet the agreed performance requirements and Energy Savings Target.

Good Industry Practice shall be followed by the ESCO in supervising and managing all Works under this Contract. The ESCO will oversee all construction methods, techniques, sequences, and procedures, ensuring clear coordination and communication throughout the execution of the Works.

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The ESCO shall be responsible for all costs related to labour, materials, equipment, tools, construction machinery, transportation, storage and any other necessary services required to effectively deliver the Energy Efficiency Solutions. Any additional costs beyond the agreed budget shall be pre-approved in writing by both Parties.

Where applicable, the installation of the Energy Efficiency Equipment shall fully comply with all relevant laws and specific standards governing the nature of the Works. The ESCO shall obtain all necessary permits, certifications, and regulatory approvals before commencing the Works.

Upon completion of the Implementation Phase, the ESCO shall issue a **Notice of Completion of Works**, which shall include:

- A summary of the Works executed;
- Performance testing results;
- The **As-Built Documentation**, reflecting the final technical specifications and configuration of the installed Energy Efficiency Solutions and Energy Efficiency Equipment;
- All applicable compliance certificates, permits, and commissioning reports;
- A statement of compliance with the Contract, including the Energy Savings Target.

The Contracting Authority shall, within fifteen (15) Business Days of receiving the Notice of Completion of Works, carry out a structured review of the compliance of the Works. This review shall include verification of the As-Built Documentation, physical inspection (where applicable), and assessment of the stated conformity to Contract requirements.

If no written response or objections are provided by the Contracting Authority within this period, the Works shall be deemed unconditionally accepted, and Appendix 15 – Notice of Completion of Works shall be considered fully agreed upon by the Contracting Authority.

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In the case of identified deficiencies, the Contracting Authority shall notify the ESCO in writing within the ten (10) Business Day period, detailing specific issues or areas of non-compliance. The ESCO shall address and rectify the deficiencies within a mutually agreed timeframe, after which the Works shall be re-reviewed and formally accepted.

Minor reserves that do not materially impact operations shall not delay the commencement of the Operational Phase. In such cases, the Parties shall mutually determine a timeframe within which the ESCO shall resolve these minor reserves.

Upon completion of the Implementation Phase and as a condition for the issuance and acceptance of the Notice of Completion of Works, the ESCO shall submit a complete set of As-Built Documentation to the Contracting Authority.

As-Built Documentation refers to the comprehensive, accurate, and final collection of technical and administrative records that reflect the actual installation, configuration, and performance of the Energy Efficiency Solutions delivered under this Contract. The documentation shall account for all deviations from the original design and provide a verifiable reference for operation, maintenance, and future audits or performance reviews.

6.2.1 AS-BUILT DOCUMENTATION

The As-Built Documentation shall include, at a minimum:

- **Single Line Diagrams** for all electrical systems, including cable routing, protection devices, metering, and electrical lboards;

- **Piping and Instrumentation Diagrams (P&IDs)** for all mechanical, thermal, HVAC, and fluid systems, accurately representing installed instrumentation, control logic, valves, and equipment;

- **2D Layouts and general arrangement drawings** indicating the final location of all Energy Efficiency Equipment and their spatial relationships within the Property;

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- **Updated equipment datasheets and technical specifications**, indicating actual models, capacities, serial numbers, and performance parameters;

- **Commissioning, functional testing, and calibration reports**, with evidence of compliance with performance and control requirements;

- **A summary of all deviations** from the approved design, with explanations and references to approval records;

- **Automation schedules and system setpoints**, including the final programming of building management or energy management systems;

- **Photographic documentation** of key installations and completed Works;

- **Relevant compliance certificates, permits, and approvals** from competent authorities and regulatory bodies;

- **Operation and Maintenance (O&M) Manuals**, tailored to the installed systems and including all recommended preventive and corrective maintenance procedures;

- **User Manual / Training Guide for the Energy Efficiency Equipment**, including operating procedures and support contact details, along with a training attendance record documenting names, roles, dates, topics covered, and signed acknowledgments of receipt of the manual for all trained users.A compliance statement signed by the ESCO, certifying that the implemented Works fully conform to the contractual requirements and are capable of achieving the agreed Energy Savings Target under the Baseline Conditions.

6.2.2 LIQUIDATED DAMAGES FOR DELAY

If the ESCO fails to achieve the Notice Completion date by the date specified in the Implementation Schedule in Appendix 10, and such delay is not due to Force Majeure or Contracting Party related causes, the ESCO shall pay the Contracting Party Liquidated

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Damages for each day of delay beyond a grace period of 30 Business Days. The Liquidated Damages shall be equal to the Contracting Party's expected daily share of savings, based on the projected savings baseline agreed in the Contract. The total LDs shall not exceed [X%] of the total estimated savings over the Contract Term. Liquidated Damages shall be deducted by the Contracting Party from the first payment(s) due to the ESCO under the shared savings mechanism, until the total amount of LDs is recovered. If the total amount of LDs exceeds the ESCO's entitlement under shared savings during the first [X] months, the balance shall remain recoverable and may be offset against future payments. The Parties may also agree to a direct payment by the ESCO upon mutual agreement.

6.3 OPERATIONAL PHASE

From the date the Notice of Completion of Works is accepted, the ESCO shall be responsible for providing Maintenance Works for the Energy Efficiency Equipment at the Property, as outlined in the Appendix *Maintenance Plan*. These Maintenance Works shall be performed in accordance with all relevant laws and Good Industry Practice.

Throughout the term of this Contract, the ESCO shall solely be responsible for servicing the installed Equipment, unless otherwise specified in the Maintenance Plan. The ESCO shall ensure that maintenance activities do not cause undue disruption to the normal operations of the Property. Furthermore, the ESCO shall maintain the Energy Efficiency Equipment in a manner that consistently meets the Users' Comfort Requirements, as outlined in the Appendix 7, during operating hours.

The Contracting Authority at the Property shall use the Energy Efficiency Equipment under normal conditions and in strict accordance with the instructions provided by the ESCO, as detailed in Appendix 17 - *Instructions for Operating the Energy Efficiency Equipment*.

The Contracting Authority at the Property shall not make any change to the Energy Efficiency Equipment and their operating conditions without the prior and written approval of the ESCO.

The Contracting Authority at the Property shall assist the ESCO in identifying and analysing any changes in the operating conditions of the Energy Efficiency Equipment. If the Contracting Authority identifies any defect in the Energy Efficiency Equipment, it shall promptly inform the ESCO in writing, within two (2) Business Days of its occurrence. In such cases, the Contracting

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Authority shall cooperate with the ESCO to investigate the cause of the defect.

The Contracting Authority shall not carry out repairs itself or allow a third party to do so, except in cases of manifest urgency where there is an immediate danger to people or equipment. In such cases, the Contracting Authority shall inform the ESCO in writing immediately and no later than one (1) Business Day after the intervention.

The Contracting Authority shall not switch the Energy Efficiency Equipment from automatic to manual mode without the express approval of the ESCO, except in cases of manifest urgency where there is an immediate danger to people or equipment. In such cases, the Contracting Authority shall inform the ESCO in writing immediately and no later than one (1) Business Day after the intervention.

If the ESCO requires access to the Property for emergency Works, it shall immediately notify the Contracting Authority. If the initial notification is not in writing, the ESCO shall confirm it in writing within three (3) Business Days of the emergency event. The Contracting Authority shall not unreasonably restrict or prevent the ESCO from accessing the Property to carry out such Works.

In the event of a default and/or malfunction of the Energy Efficiency Equipment, the ESCO shall promptly register the fault and correct it within a maximum period of one (1) Business Day. If the fault cannot be resolved within this timeframe, the ESCO shall provide a corrective action plan within two (2) Business Day. The ESCO shall also maintain fault records, which shall be reconciled with the Contracting Party at least once per year.

If the Energy Efficiency Equipment exhibits a defect in design, materials, manufacture, or functioning that impacts the Property's operations or electrical consumption during the term of this Contract, the ESCO shall repair or replace the affected equipment at its own expense. In such instances, the Baseline Conditions shall remain unchanged.

If the default and/or malfunction of the Energy Efficiency Equipment results from improper operation or deviation from the instructions stipulated in the Appendix 17 – Instructions for *Operating the Energy Efficiency Equipment* by the Contracting Authority's personnel, consultants, subcontractors, agents, or employees, the Contracting Authority shall reimburse the ESCO for all costs or expenses incurred in the repair and/or replacement. Reimbursement shall also apply if the damage is caused by modifications made to the Energy Efficiency

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Equipment without the prior and express written approval of the ESCO.

If the Contracting Authority and the ESCO cannot reach a consensus on the exact cause of the problem, a third party, such as an independent consultant, shall make the final determination. The cost of this third party shall be borne by the Party found responsible for the issue. Once the cause has been identified, the responsible party shall take immediate action to resolve the issue, ensuring the repair of the failed equipment within the shortest possible timeframe and no later than five (5) Business Days, or the restoration of the pre-existing energy service within one (1) Business Day.

The ESCO shall have no liability to the Contracting Authority for any interruption to the energy supply to the Property where such interruption of supply is due to any event outside of the ESCO's reasonable control.

7. USERS' COMFORT REQUIREMENTS – REMEDIES FOR NON-COMPLIANCE

Throughout the term of this Contract, the ESCO shall be solely responsible for maintaining the installed Energy Efficiency Equipment in accordance with the Maintenance Plan and ensuring that the Energy Efficiency Equipment consistently meets the Users' Comfort Requirements, as defined in Appendix 7, during operating hours.

If the ESCO fails to remedy any non-compliance with the Users' Comfort Requirements within a period of [X] Business Day following written notice by the Contracting Authority, one of the following remedies shall apply, at the discretion of the Contracting Authority and in consultation with the ESCO:

7.1 Replacement or Repair by ESCO

The ESCO shall repair or replace the relevant Energy Efficiency Equipment or implement appropriate corrective measures to restore compliance with the Comfort Requirements within the specified period.

7.1.1 Remedial Action by the Contracting Authority with Retention

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If the ESCO fails to take corrective action within the specified period, the Contracting Authority may, after written notice, undertake the necessary repairs or replacement works at its own cost. The incurred cost shall be recoverable through retention on future payments due to the ESCO under the shared savings mechanism until full recovery of such costs.

7.1.2 Agreement to Maintain Non-Conforming Conditions with Liquidated Damages

If both Parties agree in writing that the Comfort Requirements will not be fully restored, the ESCO shall pay Liquidated Damages to the Contracting Authority. These shall be capped at [X]% of the total actual shared savings accrued over the duration of the Contract.

8. COMPETENT MANAGEMENT AGENT (CMA)

The Contracting Authority shall appoint a **Competent Management Agent (CMA)** at the date of Contract signature. The CMA shall have the necessary technical, operational, and contractual expertise to act as the primary interface with the ESCO, monitor the implementation of Energy Efficiency Measures, validate milestone achievements, support the Measurement & Verification (M&V) process, and review performance and compliance reports throughout the duration of the Contract.

8.1 Absence of a CMA

If the CMA is not effectively appointed at the date of Contract signature or becomes structurally unavailable (e.g. due to resignation, reassignment, or long-term unavailability) for more than [X] Business Days:

- (a) Deadlines related to reporting, milestone validation, or approvals requiring CMA input shall be suspended or extended accordingly;
- (b) The ESCO shall not be liable for any delays or penalties resulting from such absence.

8.2 Competence of the CMA

The Contracting Authority shall ensure that the appointed CMA remains competent to fulfil their contractual role. If the ESCO provides written notice that the CMA is not fulfilling their responsibilities—due to technical incapacity, excessive delays, or failure to understand or apply the Contract—the Contracting Authority shall investigate the matter in good faith. If the concern is validated, a suitably qualified replacement CMA shall be appointed within thirty

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(30) Business Days.

If no corrective action is taken, and the CMA's inadequate performance materially affects the execution of the Contract, the ESCO may suspend obligations directly dependent on CMA input and escalate the matter through the Dispute Resolution procedure.

8.3 Deemed Acceptance for Payment Security

In the event that the appointed CMA (i) fails to fulfil their responsibilities, including the validation of any ESCO submission required for monthly payment (such as M&V reports, milestone documentation, or invoices), or (ii) is absent as described in Clause 9.1, such submission shall be considered deemed accepted as of the applicable monthly payment date, unless the Contracting Authority has provided justified written objections prior to that date.

In such case, the ESCO shall be entitled to receive payment in accordance with the Payment Schedule, and the Contracting Authority shall not withhold or delay payment on the basis of CMA inaction or absence.

9. SAFETY

The Parties shall mutually agree on the provision and use of facilities at the Property, including but not limited to toilets, office space, waste bins, and any other necessary amenities, for the ESCO's employees during the Implementation and Operational Phases.

The ESCO shall ensure that the Contracting Authority's furniture is not used for any unintended purposes, such as standing on or removing items from walls, during the execution of the Works. If required, furniture shall be moved from the work areas and properly covered with dust sheets as directed. Upon completion of the Works, all furniture shall be cleaned and returned to its original position.

The Contracting Authority reserves the right to conduct audits and inspections at any time during the Implementation and Operational Phases to verify compliance with safety standards and contractual obligations.

The Contracting Authority may require, at its discretion, that the ESCO have some or all of its personnel security classified. The ESCO shall cooperate fully to ensure that its personnel are appropriately security classified prior to commencing Works at the Property.

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If the Contracting Authority instructs the ESCO to remove its personnel from the Property for security reasons, the ESCO shall immediately comply with the instruction. Any delays or costs resulting from such removal shall be discussed between the Parties to determine a fair resolution.

10. SUBCONTRACTING

The Contracting Authority authorizes the ESCO to subcontract the execution of any Works during the Implementation Phase required for the successful delivery of this Contract.

The ESCO shall ensure that all subcontractors meet the necessary technical, legal, and financial qualifications required to deliver the energy efficiency measures and meet the Energy Savings Target outlined in this Contract.

The ESCO remains fully responsible for the correct performance of the Contract, even if subcontracting is utilized during the Implementation Phase.

The ESCO shall be responsible for all obligations, duties and liabilities delegated to its subcontractors during the Implementation Phase, including ensuring that all Works performed by subcontractors adheres to the terms and Energy Savings goals of this Contract.

In the event of any failure, errors, omissions, or breaches by a subcontractor during the Implementation Phase, the ESCO shall indemnify and hold the Contracting Authority harmless from any judicial or extrajudicial claims arising from the subcontractor's actions.

The ESCO shall ensure that subcontractors involved in the Implementation Phase are bound by contractual provisions that are consistent with this Contract, especially concerning Energy Savings Target and performance standards.

The ESCO shall provide the Contracting Authority, upon request, with a copy of each subcontract agreement related to the Implementation Phase. The Contracting Authority may review these agreements solely for the purpose of verifying alignment with the ESCO's obligations under this Contract.

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In the event of subcontractor underperformance or failure to meet the Energy Savings goals, the ESCO shall immediately take corrective action, including but not limited to replacing the subcontractor at its own expense.

The ESCO shall require that subcontractors during the Implementation Phase maintain adequate insurance coverage to protect both the ESCO and the Contracting Authority from potential risks arising from the subcontracted Works, including but not limited to liability, property damage, and energy performance failures. The Contracting Authority may request proof of such insurance before any subcontract is executed.

Subcontracting is not permitted during the Operational Phase of this Contract. ESCO shall be solely responsible for the continued performance and maintenance of the Energy Efficiency Management Services throughout the Operational Phase and shall not subcontract any obligations in this phase without the prior written consent of the Contracting Authority.

The ESCO remains the unique interlocutor of the Contracting Authority for all matters relating to this Contract, including during the Implementation Phase. The Contracting Authority shall direct all communications, requests, and queries solely to the ESCO, who shall manage coordination with any subcontractors.

11. SOCIAL PERFORMANCE REPORTING

The Contractor shall monitor and report on the social performance outcomes of the Project, with a focus on local (provincial-level) impact. As part of its regular reporting obligations, the Contractor shall provide a quarterly summary of key social indicators, including but not limited to:

- The number of jobs created within the province, disaggregated by skill level and gender;

- The number of individuals trained as part of the project, specifying the nature, duration, and outcomes of the training;

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- The number and identity of local ESCOs and SMEs engaged in the execution of the Project, including an indication of whether they are women-led or youth-led enterprises;

- A narrative summary of actions taken to promote local (provincial) participation and socio-economic development.

The reporting shall be submitted in a format agreed upon with the Client and shall be used to assess the Contractor's contribution to inclusive and sustainable development in the host province.

12. COORDINATION AND COMMUNICATION PROTOCOL

The Parties shall implement organizational measures to promote the ongoing commitment of internal operational personnel to the Project. These measures shall facilitate regular, structured, and effective information exchange, ensuring that all involved staff are continuously informed and aligned with the Project's objectives and progress.

Each Party shall designate a primary interlocutor responsible for all formal communications, coordination, and decision-making under this Contract:

- The Contracting Authority shall designate a Competent Management Agent (CMA) in accordance with Clause 9, who shall act as the primary interface with the ESCO for all technical, contractual, and operational matters related to the Project.

- The ESCO shall designate a Project Manager, duly authorized and competent to represent the ESCO in all matters related to the design, implementation, execution, and performance monitoring of this Contract.

The CMA and the ESCO Project Manager shall be identified in writing at the time of Contract signature. Any change in designation shall be communicated promptly and in writing to the other Party without undue delay.

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Both the CMA and the ESCO Project Manager shall possess the necessary technical expertise, operational understanding, and decision-making authority to effectively represent their respective Parties and to ensure the efficient and timely implementation of agreed actions. They shall jointly facilitate the monitoring of project milestones, Energy Savings Targets, and any other critical components, and shall engage in regular progress reviews as specified in the Contract.

The Parties shall also jointly maintain, follow, and regularly update a Project Risk Register, which shall serve as a shared reference for identifying, evaluating, and mitigating project-related risks. Both Parties shall proactively engage with the Risk Register, reviewing and updating it at least once per month, or more frequently if significant changes or events occur. The CMA and the ESCO Project Manager shall be responsible for ensuring that mitigation measures are implemented in a timely manner and that emerging risks are addressed appropriately.

Wherever this Contract provides for the giving or issuing of approvals, certificates, consents, determinations, notices, and requests or the like, these communications shall be made in writing and delivered by hand against receipt, sent by registered mail or courier, or transmitted through any of the agreed electronic systems. All such communications shall be acknowledged in writing within five [5] Business Days of receipt.

The Parties shall establish a clear and mutually agreed protocol to resolve any misunderstandings or disputes related to communications under this Contract.

Designated CMA (for the Contracting Authority): [Name, Title, Contact Details]

Designated Project Manager (for the ESCO): [Name, Title, Contact Details]

13. TRAINING

The Contracting Authority responsible for using the Energy Efficiency Equipment shall possess the necessary knowledge and skills required for its proper operation. The Contracting Authority shall clearly designate the persons in charge of operating the Energy Efficiency Equipment.

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The ESCO shall carry out a comprehensive training program, which shall be completed prior to the issuance of the Notice of Completion of Works. The training program shall cover the safe, effective, and energy-efficient operation of the installed systems and equipment.

As part of the training deliverables, the ESCO shall develop and hand over a User Manual / Training Guide, tailored to the installed Energy Efficiency Equipment and adapted to the technical background of the designated users. This document shall include:

- Step-by-step operating procedures;
- Troubleshooting guidance;
- Recommended daily and periodic checks;
- Visual aids, system diagrams, and simplified schematics;
- Key "do's and don'ts" and energy-saving tips for users.

The User Manual / Training Guide shall be delivered in both digital and printed formats, in a clear and accessible language, and shall form an integral part of the training documentation.

The ESCO shall assess the knowledge and capabilities of the designated persons responsible for operating the Energy Efficiency Equipment, with a focus on their ability to understand and follow the Instructions for Operating the Equipment, as defined in Appendix 17 – Instructions for Operating the Energy Efficiency Equipment.

If any deficiencies are identified, the ESCO shall promptly issue a written Early Warning Notification to the Contracting Authority, enabling timely corrective action such as retraining or reassignment of responsibilities.

In addition, the ESCO shall provide mandatory training for building users and occupants, aimed

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at promoting energy-efficient behaviours. This training shall include:

- Awareness-raising on energy-saving opportunities;
- Encouraging the adoption of best practices;
- Fostering understanding and acceptance of the installed Energy Efficiency Solutions.

14. MONITORING AND REPORTING

The ESCO shall regularly monitor Energy Savings using real-time remote-control devices connected to Monitoring Equipment and promptly inform the Contracting Authority of any significant decreases. The Contracting Authority agrees to support the ESCO in investigating the root causes and developing corrective actions.

The ESCO shall conduct regular on-site visits to inspect the equipment and its settings. During the first six months of the Operational Phase, these visits shall occur monthly. After this initial period, the frequency might change to quarterly visits. Each visit shall be conducted in the presence of both Parties, and a report shall be issued and signed by both Parties to document the findings.

The ESCO shall assess user satisfaction regarding Users' Comfort Requirements at least once a year. Feedback shall be reviewed to ensure it meets user expectations, and corrective actions shall be implemented as needed, without incurring unreasonable additional costs.

14.1 APPOINTMENT OF M&V AGENT

In consultation with the ESCO, the Contracting Authority shall appoint an M&V Agent within two (2) months of signing the Contract through an appropriate tender process to ensure transparency. The appointment terms and the M&V Agent's responsibilities shall be defined in the *M&V Agent Agreement* and *M&V Plan* as set out in the Appendices Appendix 12 and Appendix11.

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14.2 CHANGES IN BASELINE CONDITIONS

Management changes refer to any modifications introduced by the Contracting Authority that alter the Property's electricity consumption by more than five (5) percent, whether individually or collectively.

These may include: (i) Discontinuation or scaling down of an activity within the Property, (ii) Alterations to Existing Installations, such as repairs, replacements, additions, or removals, (iii) Construction or renovation work undertaken by the Contracting Authority, (iv) Changes in equipment operating conditions, whether due to regulatory updates or internal policy shifts, (v) Any other Contracting Authority-initiated action that could significantly impact the Property's electrical consumption.

The Contracting Authority shall provide ESCO with written notice at least twenty (20) Business Days in advance, detailing the modification, except in cases of operational necessity. Regardless, the Contracting Authority shall inform ESCO of the Baseline Change Event and specify the Baseline Change Date.

From the Baseline Change Date, the ESCO shall use the Monitoring Equipment to measure electricity consumption and determine the exact Change Event Difference. The ESCO shall then adjust the Electrical Consumption Baseline accordingly and submit the revised baseline to the M&V Agent for verification, in accordance with the Article. Once verified, the Appendix 6 - *Electrical Consumption Baseline* shall be amended accordingly.

If the Contracting Authority fails to notify the ESCO in advance, the necessary adjustments shall still be made but shall apply retroactively.

14.3 MEASUREMENT AND VERIFICATION OF ENERGY SAVINGS

The ESCO shall calculate Energy Savings as the difference between Baseline Electrical Consumption and Real Consumption, with Real Consumption measured using the Monitoring Equipment. The Energy Savings will be reported monthly in kilowatt-hours (kWh), following the SABS: SANS 50010 Standard.

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The Baseline Electrical Consumption refers to the electrical consumption that would have occurred at the Property if ESCO had not implemented the Energy Efficiency Solutions. It is calculated as the electrical consumption during the Baseline Period adjusted for: (i) Natural changes in the Baseline Conditions and (ii) Management Changes in the Baseline Conditions.

The M&V Agent shall conduct the first verification three (3) months after the commencement of the Operational Phase, followed by annual verifications, unless the Parties mutually agree to a different schedule based on the Risk Register (Appendix 9).

15. ENERGY SAVINGS PAYMENT

The Contracting Authority shall make payment of the Energy Savings Payment to the ESCO for the Operational Phase in accordance with the provisions of this Article and the Appendix 13 – *Calculation of Energy Savings Payment*.

At the end of each month, the ESCO shall prepare and deliver to the Contracting Authority an invoice for the Energy Savings Payment for that month, along with an Energy Savings report for the relevant period. The report shall include the following information: (i) The Real Electrical Consumption as measured by the Monitoring Equipment, (ii) the actual cost of the Electricity Tariff as outlined in the Appendix 8 - *Electricity Tariff*,(iii) The Energy Savings achieved, the Savings Share calculated in accordance with the Article, and any Maintenance Works conducted during that month.

Other than in the event of manifest error, the Contracting Authority shall pay the ESCO the Energy Saving Payment within thirty (30) Business Days of receipt of its invoice and Energy Savings report.

Where the ESCO is required to make a payment to the Contracting Authority, the ESCO shall deduct the credit amount claimed by the Contracting Authority from the invoice for the following month.

Should the Contracting Authority owe any amounts to the ESCO, such amounts may be settled by increasing the ESCO's share of Energy Savings in future periods. The ESCO's share will be adjusted accordingly, with the increased share continuing until the owed amount is fully

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compensated

All payments to be made by a Party to the other Party under this Contract shall be: (i) Paid by 6.00 pm on the date the payment is due, (ii) In immediately available funds and without set-off, abatement, counterclaims, conditions, or deductions, unless required by law, (iii) and By way of electronic funds transfer to the bank account nominated by that Party in writing.

If there is any dispute about any amount invoiced by the ESCO, the undisputed amount of the invoice shall be paid in accordance with this Article, and the Contracting Authority shall promptly notify the ESCO of the disputed amount and the reasons for the dispute.

16. RE-ENGINEERING OPTIONS

During the term of this Contract, the ESCO may propose additional investments to enhance the Energy Efficiency Solutions provided under this Contract, aimed at increasing the Energy Savings at the Property, provided such investments do not negatively affect the operational conditions of the Property.

The Contracting Authority agrees to review and evaluate any new proposal for re-engineering made by the ESCO. This commitment to review the proposal does not obligate the Contracting Authority to enter into any new Contract.

If the Contracting Authority agrees to the proposed investments, these shall be formalized in an amendment to this Contract.

17. ONWERSHIP AND GUARANTEE ON THE EQUIPMENT

The Energy Efficiency Equipment shall remain the exclusive property of the ESCO for the term of the Contract. The list of Energy Efficiency Equipment is detailed in Appendix 3 – Energy Efficiency Equipment.

The Energy Efficiency Equipment shall become the sole and exclusive property of the Contracting Authority upon termination or expiration of this Contract, provided that the

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Contracting Authority has paid all Energy Savings Payments due to the ESCO in full.

Notwithstanding that the Energy Efficiency Equipment may be affixed to the premises of the Property, title to the Energy Efficiency Equipment shall remain with the ESCO until it passes to the Contracting Authority.

The ESCO expressly waives any right to file or enforce any lien, retention, or encumbrance over the Property or the Energy Efficiency Equipment at any time. A Lien Waiver Certificate shall be signed and submitted at the time of Contract signature and shall remain in force throughout the duration of the Contract.

The ESCO shall have the right to remove any Energy Efficiency Equipment from the Property only if:

- the Contracting Authority is in material default of its payment obligations;
- the ESCO has provided written notice of such default;
- the ESCO has exhausted all other contractual remedies, including:
    - engaging in good faith negotiation;
    - triggering the Dispute Resolution Procedure in Clause [X];
    - exercising any payment guarantees or security instruments provided under this Contract;
- and only if the dispute is formally resolved in favor of the ESCO, and the ESCO obtains written consent from the Contracting Authority.

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At the end of the Contract, the ESCO shall perform a visual inspection and function verification of the Energy Efficiency Equipment, as well as verify system test logs, in the presence of the Contracting Authority to ensure full compliance with the relevant standards. All maintenance-related documentation shall also be provided to the Contracting Authority.

Upon transfer of ownership, the Contracting Authority shall assume full responsibility for the maintenance, operation, and repair of the Energy Efficiency Equipment, unless otherwise specified in a separate warranty or post-contract service agreement.

The ESCO shall coordinate with the Contracting Authority regarding any decisions related to relocating, repurposing, or adapting the equipment, and any costs associated with such processes shall be clearly outlined and mutually agreed upon by both Parties.

18. TERMINATION CLAUSES

18.1 TERMINATION BY THE CONTRACTING AUTHORITY

The Contracting Authority's right to terminate this Contract shall be confined to exceptional circumstances where the ESCO has committed a long-term, material breach of its obligations under this Contract, resulting in a fundamental deprivation of the Contracting Authority's benefit from the Contract.

The Contracting Authority is entitled to terminate this Contract immediately by written notice to the ESCO during the Contract Term in the following circumstances:

If the ESCO commits a material breach of any term of this Contract and, after receiving a Notice of Default, fails to:

Remedy or mitigate the effects of the breach to the satisfaction of the Contracting Authority within thirty (30) Business Days of receiving the Notice of Default;

If the breach cannot be remedied or its effects cannot be mitigated within thirty (30) Business Days, provide a detailed rectification plan that is acceptable to the Contracting Authority

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within thirty (30) Business Days of receiving the Notice of Default; or

Implement the rectification plan provided in accordance with the paragraph above in all material respects and within the timeframes indicated in the plan.

If the ESCO fails to pay any outstanding undisputed sum to the Contracting Authority within thirty (30) Business Days of receiving a letter of demand for payment of the outstanding sum.

Int the event of prolonged force majeure as outlined in Article 19.4.

If the ESCO is placed into business rescue insolvency or legal proceedings are initiated for the ESCO to enter business rescue or insolvency.

18.2 TERMINATION BY THE ESCO

The ESCO shall be entitled to terminate this Contract immediately by written notice to the Contracting Authority during the Contract Term in the following cases:

If the Contracting Authority commits a material breach of any of the terms of this Contract, which fundamentally deprives the ESCO of the benefit of the Contract, and following receipt of a Notice of Default, the Contracting Authority fails to:

Remedy or overcome to the satisfaction of the ESCO the effects of such breach within thirty (30) Business Days of receipt of such Notice of Default;

In circumstances where the breach cannot be remedied, or the effects of such breach cannot be overcome, within thirty (30) Business Days, provide a detailed rectification plan acceptable to the ESCO within thirty (30) Business Days of receipt of the Notice of Default; or

Implement a rectification plan provided under paragraph above in all material respects and within the timeframes indicated in the rectification plan

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If the Contracting Authority fails to pay the ESCO an outstanding undisputed sum within thirty (30) Business Days after receiving a letter of demand requesting payment of the outstanding undisputed sum.

In the event of prolonged force majeure, as outlined in Article.

If the Contracting Authority transfers the operation of the Property to a third party without ensuring that the third party assumes the obligations of this Contract, or if the ESCO refuses to allow the third party to assume the Contract due to insufficient solvency of the buyer.

If the Contracting Authority discontinues substantial activities at the Property.

18.3 TERMINATION PRIOR NOTICE OF COMPLETION OF WORKS

In the event of early termination of this Contract by the ESCO after providing formal notice of at least sixty (60) Business Days, the ESCO shall bear, at its sole expense, the dismantling of the Energy Efficiency Equipment already installed and the reconditioning of the Property, unless the termination is due to a material breach or default by the Contracting Authority.

In the event of early termination by the Contracting Authority, following formal notice of at least sixty (60) Business Days, the Contracting Authority shall purchase the Energy Efficiency Equipment from the ESCO at a price equal to the net book value of the Energy Efficiency Equipment already installed or committed, plus a twenty percent (20%) penalty, upon presentation of supporting documentation. The Contracting Authority shall also bear the costs for dismantling the installed Energy Efficiency Equipment and reconditioning the Property, if necessary.

If the Contracting Authority decides not to purchase the Energy Efficiency Equipment, the Contracting Authority shall not be obligated to pay the net book value or the penalty for the equipment. However, the Contracting Authority shall bear the costs for dismantling the installed Energy Efficiency Equipment and reconditioning the Property, if necessary. The ESCO shall have the option to remove the Energy Efficiency Equipment at its own expense. The Contract shall be terminated once the dismantling and reconditioning, if required, are completed, and the Contracting Authority shall have no further financial obligation to the ESCO beyond any

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accrued but unpaid savings share or performance-based payments up until the termination date.

18.4 FORCE MAJEURE

The expression force majeure' shall mean any cause or condition beyond the reasonable control of the ESCO, which is not due to the ESCO's default or negligence, including, without limitation, sanctions, embargos, confiscation, strikes, lockouts, fire, flood, storm, riots, civil or military insurrection or disturbance, sabotage, acts of war, or acts of a public enemy.

The performance of all obligations undertaken by the ESCO under this Contract shall be excused and suspended to the extent hindered or prevented by force majeure. The Contracting Authority and the ESCO shall consult in good faith to mitigate the impact of force majeure and agree on any necessary adjustments, including an extension of the Contract Term equivalent to the period of force majeure.

The ESCO shall provide the Contracting Authority with written notice of any occurrence of force majeure within thirty (30) Business Days after its commencement and written notice of its conclusion within fifteen (15) Business Days thereafter.

During the force majeure period, the Contracting Authority may take reasonable protective actions to safeguard its assets, provided that such actions do not materially impair the ESCO's ability to resume performance under the Contract without prior consultation and agreement.

If force majeure continues for a period exceeding ninety (90) Business Days and materially affects the ESCO's performance, either party may, upon an additional thirty (30) Business Days' written notice, terminate this Contract. Any such termination shall be without penalty to either party, except for payments due for services already rendered.

18.5 UNFORSEEN CIRCUMSTANCES

In the event that an unforeseen and unforeseeable event occurs during the performance of this Contract—one that was not anticipated at the time of signing and causes a significant disruption to the economic or financial balance of the Contract to the detriment of either

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Party—the Parties shall promptly meet and engage in good faith negotiations to reach a mutually acceptable solution that restores the balance and ensures the continuation of the Contract.

If, after two (2) consecutive months of negotiations, the Parties have not reached an agreement to restore the economic and financial balance or uphold their respective commitments, the Parties may, by mutual written consent, terminate the Contract. In such a case, the provisions of Article shall apply.

19. APPLICABLE LAW AND DISPUTE RESOLUTION

This Contract shall be governed by the laws of the Republic of South Africa.

Should either Party deem that a dispute has arisen, that Party shall give the other Party a written notice of dissatisfaction within ten (10) Business Days from the date the Party became aware of such dispute. The notice shall specify the nature of the dispute and provide relevant documentation or evidence supporting the claim.

Both Parties shall make reasonable efforts to attempt to settle the dispute amicably, in good faith, and in a timely manner before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the 30th Business Day following the Business Day on which the notice of dissatisfaction was given, even if no attempt at amicable settlement has been made. The Parties shall engage in a minimum of one negotiation meeting, either in person or electronically, within this 30-day period to attempt to resolve the dispute.

Any dispute at any time between any of the Parties hereto about this Contract or its interpretation, rectification, breach, termination, cancellation, or any matter arising out of its interpretation, rectification, breach, termination or cancellation, shall be submitted to and decided by arbitration, in terms of the Arbitration Act, 1965, of the Republic of South Africa. The arbitration shall be conducted in an efficient manner, ensuring that the dispute is resolved in the most cost-effective and timely manner possible.

The arbitrator shall:

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(i) If the question in issue is primarily an accounting matter, be an independent chartered accountant who, failing agreement between the Parties within ten (10) Business Days of the arbitration being demanded, shall be appointed by the president for the time being of the Transvaal Society of Chartered Accountants;

(ii) If the question in issue is primarily a legal matter, be a practising advocate or attorney of not less than ten (10) years' standing, who, failing agreement between the Parties within ten (10) Business Days of the arbitration being demanded, shall be appointed by the chairperson or acting chairperson of the Gauteng Law Council;

(iii) If the question in issue is neither primarily an accounting nor primarily a legal matter, be an independent person who, failing agreement between the Parties within ten (10) Business Days of the arbitration being demanded, shall be appointed by the chairperson or acting chairperson of the Gauteng Law Council. The arbitrator shall have relevant experience in energy performance contracts and/or energy efficiency projects to ensure that the technical and commercial aspects are well understood.

If within seven (7) Business Days after the arbitration has been demanded, the Parties cannot agree on whether the question in issue falls under Sub-Article (i), (ii), or (iii), then this issue shall forthwith be referred for decision to a practising attorney of not less than ten (10) years' standing, who, failing agreement between the Parties within ten (10) Business Days of the arbitration being demanded, shall be appointed by the chairperson or acting chairperson of the Gauteng Law Council.

This arbitration Article shall not preclude a Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist. Urgent relief can be sought only if there is a real and imminent threat to the execution of the Energy Performance Contract, including but not limited to issues regarding safety, financial solvency, or immediate implementation of Energy Efficiency measures.

Notwithstanding any reference to amicable dispute resolution, arbitration, and/or court proceedings herein:

(i) The Parties shall continue to perform their respective obligations under this Contract unless they otherwise agree; and

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(ii) The Contracting Authority shall pay the ESCO any monies due to the ESCO in respect of Energy Savings Payments as prescribed in this Contract, notwithstanding the initiation of dispute resolution procedures, unless the Contracting Authority has a valid claim for withholding payments, as agreed upon in the Contract.

20. PROTECTION RIGHTS OVER THE EQUIPMENT

The Contracting Authority certifies that it is the owner of the land, buildings, or structures where the Energy Efficiency Solutions are implemented.

In cases where the Contracting Authority is not the owner, the Contracting Authority certifies that it holds a lease or other occupancy agreement that grants full control over the premises, with a term not less than the duration of this Contract. The Contracting Authority also certifies that it is authorized to install the Energy Efficiency Equipment.

The Contracting Authority authorizes the ESCO to keep the Energy Efficiency Equipment in place for the duration of this Contract and irrevocably agrees not to challenge or allow others to challenge the presence or operation of the Energy Efficiency Equipment, provided the ESCO fulfils its obligations under this Contract.

If the Contracting Authority wishes to replace the Energy Efficiency Equipment during the Contract, the Contracting Authority may exercise the early buy-out option as detailed in Article. The buy-out price shall reflect the value of the Energy Efficiency Equipment based on fair market value and depreciation terms established in the Contract.

The Energy Efficiency Equipment remains the sole and exclusive property of the ESCO, and the Contracting Authority agrees to defend the ESCO's rights to the Energy Efficiency Equipment, including protection from any potential claims or disputes.

Any attempt to seize or requisition the Energy Efficiency Equipment shall be promptly reported to the ESCO. The Contracting Authority is responsible for initiating any necessary legal or amicable actions, at its own expense, to protect the rights and interests of the ESCO as the owner of the Energy Efficiency Equipment. The Contracting Authority shall also promptly inform the ESCO of any third-party claims or actions that may affect the Energy Efficiency Equipment.

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f the Energy Efficiency Equipment is marked with the ESCO's ownership, the Contracting Authority agrees to ensure that such markings remain visible and clean and shall not attempt to alter or remove them without the prior written consent of the ESCO.

If the Contracting Authority owns the premises where the Energy Efficiency Equipment is installed, it shall secure a written confirmation from any mortgage lenders stating that the Energy Efficiency Equipment is not considered part of the real estate and is not included in any financial guarantees.

If the Contracting Authority does not own the premises, it shall obtain an explicit waiver from the property owner, confirming that the Energy Efficiency Equipment is not subject to any claims or rights by the property owner, and that the ESCO's ownership of the Energy Efficiency Equipment shall remain intact.

21. LIMITATION OF LIABILITY

The Contracting Authority agrees that the indemnity obligation imposed upon the ESCO under this Contract shall be limited to a global cap equal to the total value of the Energy Efficiency Equipment with respect to any property damage, injury, death, or property loss. The ESCO shall ensure that such liability is adequately covered by appropriate insurance policies.

The ESCO shall not be held liable for any incidents arising from or resulting from force majeure events as defined in Article, actions by third Parties, except where such third Parties are subcontractors, employees, agents, or related Parties of the ESCO, or actions by the Contracting Authority, including but not limited to the Contracting Authority's failure to fulfil its obligations under this Contract.

22. INSURANCE

The ESCO shall effect and maintain at its own cost and expense for the entire duration of the Contract the insurances set out in Appendix 18 - *Insurances* from a reputable insurance company reasonably acceptable to the Contracting Authority. This insurance shall specifically cover risks associated with Energy Efficiency Equipment, including equipment breakdown, loss, theft, damage, and any third-party liability arising from the operation of the critical Energy Efficiency Equipment.

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The Parties acknowledge that the ESCO may subrogate to its insurer any claims against the Contracting Authority for the damage or destruction of the Equipment to which it is entitled in terms of this Contract. The Contracting Authority shall be notified immediately of any claims filed under this subrogation clause, and the ESCO shall provide evidence of coverage and the claim's progress.

The ESCO shall maintain an insurance policy to cover any cash flow shortfalls caused by the breakdown of the Energy Efficiency Equipment. Any insurance proceeds received for loss or damage to the Energy Efficiency Equipment shall be used by the ESCO to repair or replace the equipment. If the insurance proceeds are insufficient to fully cover the cost of repairs, the ESCO shall restore the equipment within the agreed timeline to prevent any interruption in energy savings generation.

23. TRANSFER OF CONTRACT

This Contract shall not be transferred to a third party without the prior written approval of the other Party, with the following exceptions:

The ESCO is authorized to transfer this Contract to a subsidiary or a controlled company, provided that the Contracting Authority is informed in writing at least sixty (60) days in advance.

In the event of a contribution, sale, rental, or leasing of the Property by the Contracting Authority to a third party, this Contract shall be transferred to the Contracting Authority's successor. The Contracting Authority shall notify the ESCO in writing at least sixty (60) days prior to such transfer, and the successor shall assume all rights and obligations under this Contract.

24. CORRUPTION

The ESCO shall not engage in any form of bribery, corruption, fraudulent activities, or any other improper conduct in connection with this Contract. For the purpose of this clause, "corruption" includes any act of bribery, extortion, fraud, collusion, or abuse of power for undue advantage.

Specifically, the ESCO shall not:

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Offer, give, or agree to give any gift, payment, or other inducement to the Contracting Authority, any state organ, or any of their employees or representatives as a reward for obtaining or performing this Contract or any other contract.

Pay or agree to pay any commission in relation to this Contract unless such payment has been disclosed in writing to the Contracting Authority before entering into the contract.

Commit any offence under any anti-corruption or anti-fraud laws, including the Prevention and Combating of Corrupt Activities Act 12 of 2004.

Engage in fraudulent misrepresentation, collusion, or any conspiracy to defraud the Contracting Authority or any state entity.

The ESCO shall immediately report to the Contracting Authority any suspected corruption or unethical conduct relating to this Contract.

Any violation of these provisions may result in termination of this Contract, financial penalties, and/or legal action in accordance with applicable laws. The Contracting Authority reserves the right to seek compensation for any damages incurred due to such violations.

25. CONFIDENTIALITY

The Parties acknowledge that this Contract, its annexes, and any documents exchanged in connection with its execution and performance, as well as any information concerning either Party obtained during the execution of this Contract, shall be treated as confidential and shall not be disclosed to third Parties.

Each Party shall maintain the confidentiality of all confidential information and take all necessary measures to ensure that its employees, subcontractors, suppliers, and external agents are informed of and comply with the confidentiality obligations set forth herein

This confidentiality obligation shall remain in effect throughout the term of this Contract and

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shall survive its expiration or termination for a period of five (5) years, regardless of the reason for termination.

The confidentiality obligation shall not apply to information that:

(a) Was in the possession of either Party prior to the signature of this Contract, provided that such possession can be substantiated and was lawfully obtained from a third party not bound by confidentiality obligations;

(b) Becomes publicly available during the performance of the Contract, unless such disclosure results from a breach by one of the Parties or its employees, subcontractors, or suppliers; or

(c) Is required to be disclosed by order of a court, arbitral tribunal, or governmental authority.

26. ADVERSTISING AND MARKETING

The ESCO may reference the Contracting Authority and the Project in its marketing and communication materials only with the prior written authorization of the Contracting Authority.

The scope of permitted marketing materials shall include, but not be limited to, the ESCO's:

- Official website
- Corporate brochures and capability statements
- Social media accounts

East London Industrial Development Zone SOC Ltd, **Reg No:** 2003/012647/30, **VAT No.** 4900213598
Directors: Mr A Kanana (Chairperson), Mr T. Zweni (CEO - Ex officio), Dr Z. Dweba, Cllr T Tempi, Mr S. Gqalangile, Ms N. Penxa, Ms N. Sonjani, Ms P. Dhlamini, Ms N. Mnconywa, Mr M. Mlota

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- Press releases and public presentations

- Case studies, white papers, or technical articles

Any such use shall be factually accurate and must not misrepresent the nature or scope of the Contracting Authority's involvement. The ESCO shall not imply any form of endorsement, certification, or partnership beyond what is explicitly stated in this Contract.

The ESCO shall submit a written request for each intended use, clearly identifying the content, media format, and intended audience. Such requests shall be submitted to the [Contracting Authority's Communications Manager / Designated Representative], who shall respond within ten (10) Business Days of receipt.

The Contracting Authority reserves the right to approve, conditionally approve, or reject the request at its sole discretion. No marketing use may proceed without formal written approval.

Any use of the Contracting Authority's logo, photographs of the Property, employee images, testimonials, or performance data must also comply with applicable data protection and privacy laws, including but not limited to the Protection of Personal Information Act (POPI Act) and any internal communication or branding policies of the Contracting Authority.

27. TAXATION

Each Party shall bear the costs of any taxes under its responsibility in accordance with applicable legislation and in the light of its contractual position.

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