

Contracts+ Document Submittal Requirements

Important Note: Delete this page from the Main Document prior to submitting the contract to the Internal Review Round.

Design Contract Award

REMINDER: The following documents must be submitted as PDF for the PSC before contract review can begin. After document reviews are completed by UOCP, an Award posting on the Procurement Bulletin will be requested. A reminder that CEI Review and PPB Waiver will be issued no sooner than on the 15th calendar day after the Award has been published on the Bulletin.

- IPG Form A, Form B, or the submitted CPO Financial Disclosure Affidavit
- Required Procurement Posting Information
- BEP Utilization – All Submissions
- Conflict of Interest Review & Acceptance, if applicable
- PSP: Initial Evaluation Composite Form
- PSP: Professional Services Approval Request Form
- PSP: Approval Form to Negotiate with Recommended PSC From Discussion Meeting (Retainer Only)

Energy Audit Agreement

This Energy Audit Agreement (EAA) is made and entered into in the City of [[Agreement Location]], State of Illinois, as of the date of the last signature of the parties hereto by and between THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, a body corporate and politic of the State of Illinois, hereinafter referred to as "Owner," and

[[Name (Primary Second Party)]]
[[Street Line 1 (Primary Second Party)]]
[[City/Town (Primary Second Party)]], [[State/Province (Primary Second Party)]], [[Postal Code (Primary Second Party)]]

a [[ESCO - Legal Structure]], existing under the laws of the State of [[ESCO - Laws of the State of]], hereinafter referred to as "ESCO" whose registered agent in Illinois is

[[ESCO - Registered Agent Name]]
[[ESCO - Registered Agent Address]]
[[ESCO - Registered Agent City]], [[ESCO - Registered Agent State Code]], [[ESCO - Registered Agent Zip Code]]

The Owner and the ESCO are referred to herein as the "Parties".

Whereas, the Owner has issued a Request for Proposals (RFP) to identify a qualified provider for a Guaranteed Energy Savings Agreement (Reference RFP #[[Energy Services RFP Number]]);

Whereas, the ESCO submitted a response to the RFP and participated in a competitive evaluation procedure designed to identify a qualified provider;

Whereas, the Owner has selected the ESCO as a qualified provider;

Whereas, the Owner is responsible for the operation, management and maintenance of the **#FACILITY NAME AND DESCRIPTION#** (the "Facility");

Whereas, a comprehensive energy use and savings analysis (the "Energy Audit" and "Report") must be performed at the Facility in order to determine the feasibility of entering into a Guaranteed Energy Savings Agreement to provide for the installation and implementation of Energy Conservation Measures (ECMs) at the Facility;

Whereas, Energy Performance Contracting (EPC) is a generic term used to refer to a Guaranteed Energy Savings Agreement;

Whereas, Energy Services Agreement (ESA) means a Guaranteed Energy Savings Agreement;

Whereas, if the ECMs are demonstrated to be feasible, and if the amount of energy savings can be reasonably ascertained and guaranteed in an amount sufficient to cover all costs as described in the RFP associated with an energy performance contracting project at the Facility, the Parties intend to negotiate an ESA under which the ESCO shall design, procure, install, implement, maintain and monitor such ECMs at the Facility;

Now, therefore, the Parties agree as follows:

ARTICLE 1: SCOPE OF ENERGY AUDIT (attached applicable Schedule A Scope of Work and Schedule B Project Implementation Schedule incorporated herein)

The ESCO shall perform the Energy Audit and prepare a detailed engineering and economic report (the "Report") which specifically identifies the energy improvements and operational changes which are recommended to be installed or implemented at the Facility. The Report shall contain detailed projections of energy and cost savings to be obtained at the Facility as a result of the installation of the recommended ECMs. The savings calculations must utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings for the Facility, including, but not limited to, accurate marginal cost for each unit of savings at the time the audit is performed; documented material and labor costs actually avoided; adjustments to the baseline to reflect current conditions at the Facility, compared to the historic base period; calculations which

account for the interactive effects of the recommended ECMs; etc. The Report shall clearly describe how utility tariffs and commodity rates were used to calculate savings for all ECMs. The Report shall describe the ESCO's plan for installing or implementing the measures in the Facility, including detailed design specifications and drawings and all anticipated costs associated with such installation and implementation. The primary purpose of the Report is to provide an engineering and economic basis for negotiating an ESA between the Owner and the ESCO; however, the Owner shall be under no obligation to negotiate such an Agreement.

It is expected that the Investment Grade Audit and completion of the EAA would result in an accurate overall project scope and cost options, broken down by Divisions of Work and high level schedule of values along with a comprehensive schedule in order to draft and finalize an ESA (100% design). The ESCO shall have all ECM's designed per Owner Design Facility Standards <https://fs.illinois.edu/facilities-standards> unless a variance is ultimately granted per the variance process. All deliverables shall be created and delivered in accordance with the University's Project Submittal Process at : <https://fs.illinois.edu/project-submittal-process/> and the University's Project Submittal Requirements at: <https://docs.fs.illinois.edu/wp-content/uploads/2023/04/projectsubmittalrequirements.pdf>.

The expectation is that all Divisions of Work will be competitively bid out in order to provide firm construction costs and ultimately the ESA contract value. This will also allow the Owner to be better equipped to determine which ECM's to implement during the ESA. After ESA execution, the Owner would expect completion of design and commence construction. The ESCO shall perform the following tasks in performing the Energy Audit and preparing the Report:

1.1 COLLECT GENERAL FACILITY INFORMATION

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

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

Information on the Facility can be found at <https://uofi.app.box.com>

1.2 INVENTORY EXISTING SYSTEMS AND EQUIPMENT

The ESCO shall compile an inventory based on a physical inspection of the major electrical and mechanical systems at the Facility, which may include but is not limited to:

- Cooling systems and related equipment;
- Heating and heat distribution systems;
- Automatic temperature control systems and equipment;
- Air distribution systems and equipment;
- Outdoor ventilation systems and equipment;
- Kitchen and associated dining room equipment,
- Exhaust systems and equipment;

- Hot water or Steam systems;
- Electric motors 5 HP and above, transmission and drive systems;
- Interior and exterior lighting;
- Laundry equipment;
- Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.; and
- Any additional energy or utility systems which may provide savings relative to a potential energy performance improvement project.

1.3 THE INVENTORY SHALL ADDRESS THE FOLLOWING CONSIDERATIONS:

- The loads, proper sizing, efficiencies or hours of operation for each system; (Where measurement costs, facility operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings appropriate measurements are required unless waived by the Owner);
- Current operating condition for each system;
- Remaining useful life of each system;
- Feasible replacement systems; and
- Hazardous materials and other environmental concerns.

The ESCO shall collect data to determine system operation through use of appropriate means which may include data loggers and conduct interviews with Facility operation and maintenance staff regarding the Facility's systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

1.4 ESTABLISH BASE YEAR CONSUMPTION AND RECONCILE WITH END USE CONSUMPTION ESTIMATES

The ESCO shall examine the most recent 36 months of utility bills and establish Base Year consumption for electricity, fossil fuels and water by averaging; or selecting the most representative contiguous 12 months.

The ESCO shall consult with Facility staff and account for any unusual or anomalous utility bills which may skew Base Year consumption from a reasonable representation.

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

- Coal;
- Steam;
- Natural gas;
- Diesel fuel;
- Water;
- Lighting;
- Heating;
- Cooling;
- HVAC motors (fans and pumps);
- Plug load;
- Kitchen equipment;
- Other equipment; and
- Miscellaneous

Where loading and/or usage are highly uncertain, the ESCO shall employ spot measurement and/or short term monitoring at its discretion, or at the request of the Owner. Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment. The annual end use estimated consumption shall be reconciled with the annual Base Year consumption to

within 5% for electricity (kWh), fossil fuels and water. The contribution to electric peak demand for each end use shall also be reconciled to within 5% of the annual Base Year peak. The “miscellaneous” category shall not be more than 5%. The purpose of this exercise is to place reasonable limits on potential savings.

1.5 DEVELOP LIST OF POTENTIAL ECMS/SCOPE OF WORK

- 1.5.1** Identify and propose potential ECMs for installation or implementation at the facility, including water conservation measures;
- 1.5.2** Estimate the cost, savings and life expectancy of each proposed ECM;
- 1.5.3** Specify Facility operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs;
- 1.5.4** Provide analysis methodology, supporting calculations and assumptions used to estimate savings. Manual calculations should disclose essential data, assumptions, formulas, etc. so that a reviewer could replicate the calculations based on the data provided;
- 1.5.5** For savings estimates using computer simulations, the ESCO shall provide access to the program and all inputs and assumptions used, if requested by the Owner;
- 1.5.6** Provide a savings measurement and verification plan for each of proposed ECMs;
- 1.5.7** Provide a preliminary commissioning plan for the proposed ECMs;
- 1.5.8** Provide detailed calculations for any rate savings Proposals;
- 1.5.9** Provide detailed supporting calculations for any proposed operations and/or maintenance savings; if used as payback calculations;
- 1.5.10** Estimate any environmental costs or benefits of the proposed ECMs (e.g. disposal costs, avoided emissions, water conservation, etc.).
- 1.5.11** Provide appropriate design documents, including detailed specification and drawings in accordance with the submittal requirements, necessary to establish comprehensive final scope of work for agreed upon ECMs and project cost guarantees; and
- 1.5.12** Bid all trades for implementation of agreed upon ECMs.

This list/scope of work shall be compiled and submitted to the Owner within XXX calendar days of the execution of this EAA.

Note: ECMs that the Facility is particularly interested in are specified in <https://uofi.app.box.com>, and should be addressed in the Report. That list of ECMs is not intended to be exhaustive nor limit the ESCO’s evaluation and development of a comprehensive list of potential ECMs.

1.6 SELECT FINAL RECOMMENDED ECMS

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

1.7 COST AND FEE ESTIMATES

The ESCO shall provide detailed estimates of all costs and fees associated with the installation and implementation of the ECMs including:

- Engineering/Design costs (ESCO and Non-ESCO separately);
- ESCO/Vendor estimates for ECMs (labor, materials, and equipment);
- Construction/Project management fees;
- Commissioning costs;
- Permit costs;

- Performance/Payment bond costs;
- Insurance costs;
- Contingencies (identify all);
- Other costs/Fees;
- ESCO overhead/profit;
- Maintenance fees;
- Measurement and Verification (Monitoring) fees; and
- Training fees.

In addition, project cost data must be provided in the format to be determined by the Owner.

It is expected that all cost estimates shall be within +/-10% of the final costs in the ESA. Differences shall be clearly justified and, if in the opinion of the Owner, there is not sufficient justification, or the final costs impact project payback performance significantly, the contract may be terminated at no cost to the Owner.

1.8 SAVINGS ESTIMATES

The Owner has endeavored to provide the ESCO with sufficient general and specific guidance in this Article 1 to develop the savings estimates for the Report. In the event that questions arise as to the calculation of savings or whether certain items will be allowed as savings, the ESCO shall seek written guidance from the Owner. Owner's rejection of certain calculations of savings or rejection of certain items as allowable savings in the Report shall be at the risk of the ESCO.

The following items will not be allowed as savings or in the development of savings, including, but not limited to:

- Owner in-house labor cost;
- Owner deferred maintenance cost; and
- Offset of future Owner capital cost.

1.9 REPORT FORMAT

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

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

The Report and associated design documents as referred to in sections 1.5 and 1.9 shall be completed within XXX calendar days of the date of execution of this EAA.

1.10 DELIVERABLES

All deliverables shall be created and delivered in accordance with the Owner's Project Submittal Requirements and Campus Standards, but these requirements may be reduced as directed by the Owner, which can be found at:

http://www.uic.edu/depts/ocp/design_std/design_std.html.

All Project Documents which are required to be prepared by the ESCO shall be in accord with all applicable codes, standards and regulations and shall be prepared by qualified personnel. Where required by Illinois law, Project Documents shall bear the stamp or seal of architects or engineers licensed in the state of Illinois.

The Owner shall make available for the ESCO's review, inspection, and duplication at ESCO's expense, such Project Documents as it may possess which relate to any work being performed by other companies at the Facility under separate Agreements with the Owner unrelated to the ESCO's performance of the work under this Agreement, including but not limited to drawings, specifications, surveys and as-built drawings. The furnishing of such Project Documents by the Owner shall not constitute a warranty as to the accuracy or completeness of such Project Documents.

The Owner shall have the right to review, comment and approve all design and construction documents, including specifications and drawings, developed for the project by the ESCO. Formal reviews shall be held at completion of Schematic Design, Design Development, 50% Construction Documents and appropriate level of Construction Documents to ensure ECM scopes are comprehensive enough for bidding to determine total project costs. The Owner shall require a minimum of two (2) weeks for each review cycle.

ARTICLE 2: ESA

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

In addition to the above requirements, ESCO shall provide actual documented expenditures for work/deliverables on a monthly basis, including ESCO and ESCO subconsultant(s)/subcontractor(s) costs for Owner review/approval. (NOTE: "subcontractor" is understood to be interchangeable with the term "subconsultant" throughout this agreement with the exception of Prevailing Wage references.)

ARTICLE 3: PAYMENT

<Alternate Clause: EAA - ESCO Pay Clause Alt. This yes/no clause modifies the contract language depending on whether or not the ESCO is getting paid throughout the course of the EAA or all at once at the end.>

<Yes Option: 'EAA - ESCO Pay Clause – Yes'>

Payment to the ESCO for services performed in connection with the Energy Audit and preparation of the Report shall be made by Owner only in accordance with the provisions of Articles 3 and 4 herein. The ESCO shall receive as compensation, subject to additions and deductions provided for herein, for professional services required herein, including services performed by professional subconsultants, a fee for actual documented expenditures not to exceed \$[[Energy Audit Agreement Total Amount]]

Monthly Progress Payments. ESCO shall submit invoices to the Owner for monthly progress payments to ESCO based upon the percentage of the professional services completed at the end of each month (the "Monthly Completion Percentage"), so that ESCO is paid the percentage of the Contract Price that is commensurate with the Monthly Completion Percentage. The Owner shall make payment to ESCO, within thirty (60) calendar days after the proper submission / approval of each such invoice. The Owner shall not unreasonably withhold, condition or delay the payment of any invoice.

Price Disclosure. Upon request by the Owner, the ESCO shall be required to fully disclose all costs and fees associated with this project, and shall follow industry standards for open book pricing, including audit, design, engineering, overhead, profit, etc.

<End: 'EAA - ESCO Pay Clause – Yes'>

<No Option: 'EAA - ESCO Pay Clause – No'>

Payment to the ESCO for services performed in connection with the Energy Audit and preparation of the Report shall be made by Owner only in accordance with the provisions of Article 4 herein. The ESCO shall receive as compensation, subject to additions and deductions provided for herein, for professional services required herein, including services performed by professional subconsultants, a fee for actual documented expenditures not to exceed \$[[Energy Audit Agreement Total Amount]].

Price Disclosure. Upon request by the Owner, the ESCO shall be required to fully disclose all costs and fees associated with this project, and shall follow industry standards for open book pricing, including audit, design, engineering, overhead, profit, etc.

<End: 'EAA - ESCO Pay Clause – No'>

ARTICLE 4: TERMINATION

4.1 BY ESCO:

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

4.1.1 It determines that it cannot guarantee a sufficient amount of savings in energy costs which can be applied to the cost of constructing the proposed Project through the implementation of a 20-year term energy performance contracting project at the Facility. The amount of savings deemed sufficient shall be determined by the Owner after consideration of the ESCO's proposed approach to the project, and consideration of the balance of the proposed ECMs recommended by the ESCO.

In the event the ESCO terminates the Agreement pursuant to Article 4, Section 4.1, the Owner shall not be obligated to pay any amount to the ESCO for services performed or expenses incurred by the ESCO in performing the Energy Audit and Report required under this Agreement. The ESCO shall provide the Facility with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.

Termination under this Section shall be effective upon Owner's receipt of written notification from the ESCO stating the reason for the termination and all documents which support termination pursuant to Article 4, Section 4.1

4.2 BY OWNER:

Owner may terminate this Agreement:

4.2.1 If the ESCO fails to complete the Energy Audit and deliver the Report to the Owner by the date established in Article 1, above; or fails to obtain a written extension of that date from the Owner, termination under this subsection shall be effective upon the ESCO's receipt of written notification from the Owner that the deadline for submission of the Report has past. In this event, the Owner shall not be obligated to pay any amount to the ESCO for services performed or expenses incurred by the ESCO in performing the Energy Audit and preparing the Report required under this Agreement. The ESCO shall provide the Owner with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.

4.2.2 If, prior or subsequent to the completion of the Energy Audit, the ESCO notifies the Owner in writing that it is unable to guarantee a sufficient level of savings pursuant

to Article 4, Section 4.1 above, termination under this Section shall be effective upon the ESCO's receipt of written notification from the Owner. In this event, the Owner shall not be obligated to pay any amount to the ESCO for services performed or expenses incurred by the ESCO in performing the Energy Audit and preparation of the Report required under this Agreement. The ESCO shall provide the Facility with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.

- 4.2.3** If, prior or subsequent to the completion of the Energy Audit and Report, the Owner notifies the ESCO in writing that it has elected to terminate this Agreement and not enter into an ESA, the Owner shall reimburse the ESCO for either the actual expenses incurred or percent of the Audit and Report completed as of the effective date of the termination, the amount being determined as fair and equitable by the ESCO in development of the Audit as of the effective date of the termination. Termination under this subsection shall be effective upon the ESCO's receipt of written notification from the Owner.

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

<Alternate Clause: EAA - ESCO Termination Clause Alt. This yes/no clause modifies the contract language depending on whether or not the ESCO is getting paid throughout the course of the EAA or all at once at the end.>

<Yes Option: 'EAA - ESCO Termination Clause – Yes'>

- 4.2.4** If after completion and acceptance of the Energy Audit and Report, the Owner does not enter into an ESA with the ESCO within 120 calendar days after written acceptance of the Energy Audit and Report, the Owner agrees to compensate the ESCO for the remaining negotiated cost of the audit. Termination under this subsection shall be effective upon the ESCO's receipt of written notification from the Owner. The Energy Audit Report and 100% Design / Issued for Construction drawings shall become the property of the Owner.

The Owner shall own any resulting report, for which payment has been received, and may use the report as it deems appropriate. To the extent permitting by law, ESCO shall have no responsibility to the Owner or others for any use of the reports, documents, information or services provided by the ESCO unless it is implemented through a subsequently-executed ESA with ESCO. ESCO makes no representation or warranty regarding any financial projections, data or information provided, except as may be expressly set forth in a sequential definitive ESA Agreement.

<End: 'EAA - ESCO Termination Clause – Yes'>

<No Option: 'EAA - ESCO Termination Clause – No'>

- 4.2.4** If after completion and acceptance of the Energy Audit and Report, the Owner does not enter into an ESA with the ESCO within 120 calendar days after written acceptance of the Energy Audit and Report, the Owner agrees to compensate the ESCO for negotiated cost of the audit. Termination under this subsection shall be effective upon the ESCO's receipt of written notification from the Owner. The Energy Audit Report and 100% Design / Issued for Construction drawings shall become the property of the Owner.

It is clearly understood by both parties hereto that, if the Parties successfully negotiate and execute an ESA, no payment shall be due for the Energy Audit or Report under the terms of this Agreement. This Agreement shall

automatically terminate upon the execution of an ESA by the ESCO and the Owner for an Energy Performance Contracting Project at the Facility. It is further understood that provision for payment for the Energy Audit shall be incorporated into the ESA.

The Owner shall own any resulting report, for which payment has been received, and may use the report as it deems appropriate. To the extent permitting by law, ESCO shall have no responsibility to the Owner or others for any use of the reports, documents, information or services provided by the ESCO unless it is implemented through a subsequently-executed ESA with ESCO. ESCO makes no representation or warranty regarding any financial projections, data or information provided, except as may be expressly set forth in a sequential definitive ESA Agreement.

<End: 'EAA - ESCO Termination Clause – No'>

ARTICLE 5: STANDARD TERMS AND CONDITIONS

5.1 AGREEMENT TERM

The Agreement term shall commence on the date the Agreement is executed by the Owner and end ninety (90) calendar days later, unless earlier terminated pursuant to the provisions of Article 4. Notwithstanding, the ESCO shall adhere to the deadlines set forth in Article 1 regarding the completion and submittal of the list of ECMs and the Report.

5.2 APPROPRIATIONS

Obligations of the Owner shall cease immediately without penalty or further payment being required if in any fiscal year covered by the Agreement term, the Owner fails to appropriate, reappropriate or otherwise make available funds for this Agreement. Owner shall provide written notification to the ESCO of any impending change in the status of appropriations which may affect this Agreement of which it has notice.

5.3 MATERIALS, EQUIPMENT AND SUPPLIES

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

5.4 SUBCONSULTANT DISCLOSURE

5.4.1 As of the execution date of this Agreement, the following subconsultants are expected to perform work pursuant to this Agreement and to be paid with funds provided hereunder:

[[Custom Contract Field: EAA - ESCO Subcontractor Disclosure Alt]]

<Alternate Clause: EAA - ESCO Subcontractor Disclosure Alt. This clause allows the display of 1 to 8 ESCO Subcontractors.>

<3 Option: 'EAA - ESCO Subcontractor Disclosure – 3'>

Name/Address	Service(s) Provided (see note 1)	Approximate Contract Amount	Percentage (%) of EAA	CEI BEP Diversity Status (MBE, WBE, WMBE, VOSB, SDVOSB, PBE or N/A)
[[ESCO Subconsultant 1 - Name]] [[ESCO Subconsultant 1 - Address]] [[ESCO Subconsultant 1 - City]] [[ESCO Subconsultant 1 - State Code]]	[[ESCO Subconsultant 1 - Service Provided]]	[[ESCO Subconsultant 1 - Contract Amount]]	[[ESCO Subconsultant 1 - Percentage of EAA]]	[[ESCO Subconsultant 1 - Diversity Category]]

Subconsultant 1 - Zip Code]]				
[[ESCO Subconsultant 2 - Name]] [[ESCO Subconsultant 2 - Address]] [[ESCO Subconsultant 2 - City]] [[ESCO Subconsultant 2 - State Code]] [[ESCO Subconsultant 2 - Zip Code]]	[[ESCO Subconsultant 2 - Service Provided]]	[[ESCO Subconsultant 2 - Contract Amount]]	[[ESCO Subconsultant 2 - Percentage of EAA]]	[[ESCO Subconsultant 2 - Diversity Category]]
[[ESCO Subconsultant 3 - Name]] [[ESCO Subconsultant 3 - Address]] [[ESCO Subconsultant 3 - City]] [[ESCO Subconsultant 3 - State Code]] [[ESCO Subconsultant 3 - Zip Code]]	[[ESCO Subconsultant 3 - Service Provided]]	[[ESCO Subconsultant 3 - Contract Amount]]	[[ESCO Subconsultant 3 - Percentage of EAA]]	[[ESCO Subconsultant 3 - Diversity Category]]
	TOTALS	\$ [[ESCO Total Contract Value of all ESCO Subs]]	[[ESCO Total Percentage of all ESCO Subs]]	

<End: 'EAA - ESCO Subcontractor Disclosure – 3'>

Note 1: ESCO and Subconsultant(s) shall be entered separately and all applicable services for each firm identified. This will require the ESCO/Subconsultant name listed once for each firm, but list multiple services if participating in more than one service.

If, during the term of this Agreement, the ESCO retains subcontractors-to be paid with funds provided by this Agreement who were not disclosed, the ESCO shall so notify the Owner and the Parties shall file an amendment to the Agreement with the Comptroller stating the names and addresses of and anticipated amount of payment to each subcontractor. ESCO shall meet a diversity goal of at least 30% MBE/WBE/PBE participation and 3% VOSB/SDVOSB for professional services and a target goal of at least 30% MBE/WBE/PBE participation and 3% VOSB/SDVOSB for construction contractor work based on the total value of finalized agreed upon scope of work. Utilization of WMBE certified vendors must designate full participation as either a MBE or WBE when split goals are identified for purposes of meeting diversity goals. WMBE value may not be split between MBE and WBE. A firm cannot be designated as more than one business enterprise between MBE/WBE/PBE and VOSB/SDVOSB.

- 5.4.2** The documents and information for the ESCO and subconsultants listed in Table 1 or added in the future during the term of this Agreement and as described below must be provided by the Owner to the Chief Procurement Officer for Higher Education.

Table 1: Contracts and Level Descriptions MBE/WBE

Contract Type	Level	Contract	Dollar Amount
Energy Audit Agreement	1	With Owner	All

Subconsultant	2	With Level 1	> \$50,000
Subconsultants' Subconsultants*	2	With Level 2 and below	> \$50,000

* Certifications are required for >\$50,000 and Financial Disclosures are required for >\$100,000.

Level 1 ESCO

1. The Form A, Form B Certifications and Disclosures, or the submitted CPO Financial Disclosure Affidavit submitted by the Level 1 ESCO with the bid documents are hereby made a part of this Agreement.
2. The Supplemental University of Illinois Certifications identified in the Statutory Certifications section on the Agreement in addition to the Form A, Form B Certifications and Disclosures, or CPO Financial Disclosure Affidavit are incorporated into this contract. By executing this Agreement, the Level 1 ESCO acknowledges and agrees that it is in compliance with the requirements of Article 50 of the Illinois Procurement Code (30 ILCS 500/50). These requirements remain in effect for the term of the Agreement. The Level 1 ESCO certifies compliance and is under a continuing obligation to remain in compliance and to immediately report any non-compliance.

It is the responsibility of the Level 1 ESCO to provide the following with respect to each Level subcontracts* which exceed \$50,000. The forms shall be completed and signed by each Level subcontractor.

- subcontractor(s) name(s)
- address(es)
- subcontract value(s)
- general type(s) of work to be performed
- Form A, Form B, or CPO Financial Disclosure Affidavit
 - Certifications are required for greater than \$50,000.
 - Financial Disclosures are required for greater than \$100,000.

Note: Filling out Form A or Form B will satisfy the above certifications and financial disclosure requirements. However, in circumstances where the contractor has an active contract with the owner and has already vetted their financial disclosures and potential conflicts of interest from that active contract within the last 12 months from the date of contract award on the Illinois Procurement Bulletin, the contractor may submit a signed CPO Financial Disclosure Affidavit attesting that the original submission of its financial disclosures and potential conflicts of interest have not been altered or changed. This affidavit may be used, under the circumstances referenced in 30 ILCS 500/50-35(j), in place of the full Financial Disclosures and Conflicts of Interest form otherwise required by the Procurement Code and will satisfy the certification requirements referenced above.

The Supplemental University of Illinois Certifications identified in the Statutory Certifications section below are to be implemented into all subconsultant contracts on this project.

The documents submitted to the Owner shall be in electronic pdf format and follow the Owner's file naming convention. The forms and file naming convention can be found at: https://www.uocpres.uillinois.edu/contracts_forms_for_contractors. These documents shall be provided to the Owner within 15 calendar days after the execution of the Contract or after execution of the subcontract, whichever is later.

The Level 1 ESCO must provide the above information for any subconsultants added or changed which results in a contract value exceeding \$50K during the term of the contract.

5.5 PATENT AND COPYRIGHT RESPONSIBILITY

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

5.6 OWNER ACCESS TO RECORDS

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

5.7 INSURANCE AND INDEMNIFICATION

A. The ESCO has procured beginning as of the date of this Agreement, and shall maintain during the term of this Agreement, and as long as necessary thereafter to cover claims with respect to its performance under this Agreement, professional liability insurance in an amount not less than Five Million Dollars (\$5,000,000.00), and with a self-insured retention amount of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00), with an insurance carrier and policy terms approved by the Owner, which approval shall not be unreasonably withheld. The professional liability insurance policy shall provide that the insurer will pay on behalf of the ESCO, all amounts and damages which the ESCO shall become legally obligated to pay to any person or entity (including, but not limited to, the Owner), and their officers, trustees, directors, agents, and employees, arising out of the performance of professional services by the ESCO, and if such legal liability is caused by an error, omission, or negligent act. The ESCO shall pay any amounts and damages not paid by the insurer for any reason, including, but not limited to by reason of the aforesaid deductible amount or for any amounts and damages in excess of the policy limits, and any other costs which may have been incurred by the Owner as approved by a court. Such policy shall also provide that at least thirty (30) calendar days' prior written notice shall be given to the Owner of the cancellation of such policy, except for ten (10) calendar days notice of cancellation due to non-payment. The ESCO shall furnish to the Owner a certificate or memorandum of insurance from the insurer respecting such policy. The ESCO shall be obligated to provide a certificate of proof of such a policy from time to time, upon Owner's request. The insurance carrier shall have a policyholder's rating not lower than "A-" and a financial rating not lower than "VI" in the current edition of Best's Key Rating Guide. Failure of the Owner to request any insurance certificate(s), or new or renewal certificate(s), shall not be deemed a waiver by the Owner and shall not relieve the ESCO of the contractual obligation to provide the insurance coverages set forth above. The receipt of any insurance certificate does not constitute an admission by the Owner that insurance requirements have been met. The ESCOs' failure to comply with any insurance requirements set forth herein shall be deemed a material breach of the contract terms. Any subconsultants must comply with the same professional liability insurance coverage requirements as the ESCO, except as otherwise agreed to in writing by the Owner, and shall submit the required Certificate of Insurance to the ESCO.

B. In addition to the professional liability insurance referenced above, the ESCO agrees to maintain the following insurance coverage for the duration of the project

or the term for which services will be rendered, and as long as necessary thereafter to cover claims with respect to its performance under this Agreement.

The ESCO shall cause a Certificate of Insurance to be issued showing the following required coverage in no less than the minimum coverage limits listed below. The insurance companies providing coverage must have a policyholder's rating not lower than "A-" and a financial rating not lower than "VI" in the current edition of Best's Key Rating Guide for property/casualty insurance companies.

A. Worker's Compensation and Occupational Diseases	Illinois Statutory Limits
Employer's Liability (Part B)	1,000,000 per occurrence
B. Commercial General Liability (occurrence coverage)	1,000,000 each occurrence
General Aggregate	2,000,000
Products – Completed Operation Aggregate	2,000,000
Personal and Advertising Injury	1,000,000
Fire Damage	100,000
C. Commercial Auto Liability	
Combined Single Limit	1,000,000 per occurrence
OR	
Bodily Injury	1,000,000 per occurrence
Property Damage	1,000,000 per occurrence

Umbrella liability insurance may be used to meet the general liability coverage limit requirements.

Evidence of waiver of subrogation must be expressly stated on the certificate of insurance form.

Subconsultants must comply with the same insurance coverage requirements as ESCO. Subconsultants shall submit the required Certificate of Insurance to the primary ESCO.

With respect to the required Commercial General Liability insurance, the Certificate of Insurance should include Additional Insured wording that conveys the following: "The Board of Trustees of the University of Illinois is an additional insured on a primary and non-contributory basis for any liability incurred arising from the activities of ESCO and/or Subconsultant performing work on behalf of ESCO."

The ESCO shall furnish any original Certificate(s) of Insurance evidencing the required coverage to be in force on the date of this Agreement, and any renewal Certificate(s) of Insurance if coverage has an expiration or renewal date occurring during the term of this Agreement to the appropriate University of Illinois campus project contact person as designated under section 5.14 herein. The receipt of any certificate does not constitute and admission by the Owner that insurance requirements have been met. The ESCO's failure to obtain certificates or other insurance evidence from the vendor/consultant shall not be deemed a waiver by the Owner. Failure to comply with any insurance requirements may be regarded as a material breach of contract terms.

- C. ESCO expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit its responsibilities or liabilities or serve as a limit in recovery for any and all losses, demands, obligations, costs, damages, liabilities, suits, actions, judgments, claims and expenses, including, but not limited to, attorneys', consultants', and experts' fees and expenses, and including both litigation and pre-litigation expenses.
- D. To the fullest extent permitted by law the ESCO agrees to pay and reimburse and indemnify, keep and hold harmless the Owner, its Trustees, officials, agents, employees, servants and their respective heirs, executors, administrators, officers,

directors, successors and assigns from and against any and all losses, demands, obligations, costs, damages, liabilities, suits, actions, judgments, claims (including, but not limited to, claims for the infringement of any patents, copyrights, licenses or other intellectual property rights) and expenses, including, but not limited to, attorneys' consultants', and experts' fees and expenses, and including both litigation and pre-litigation expenses, arising out of or connected with: (a) any injury to or death of persons or damage to or loss of destruction of property (other than the Work itself) to the extent caused by or attributable to errors or omissions or negligent acts, or willful acts of the ESCO, its sub-consultants, sub-contractors, officers, agents, representatives, or employees; (b) any error, omission, or negligent act; (c) any breach by the ESCO or its sub-consultants, sub-contractors, officers, agents, representatives, or employees under this Agreement. The ESCO expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit its responsibilities or liabilities or serve as a limit in recovery.

5.8 PERSONNEL

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

5.9 WAIVERS

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

5.10 ASSIGNMENT(S)

This Agreement may not be assigned by the ESCO without the prior written consent of the Owner.

5.11 CAPACITY TO CONTRACT

By signing this Agreement, the ESCO signifies agreement with and acceptance of all the terms, conditions and specifications shown in this Agreement. The person signing the agreement represents and warrants that he/she has authority to bind his/her ESCO.

5.12 GOVERNING LAW

This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Illinois, including but not limited to The Public University Energy Conservation Act, 110 ILCS 62.

5.13 AGREEMENT

The following non-inclusive list of documents are incorporated in, and made a part of, this Agreement:

- Owner's Request for Proposal A20002;
- Respondent's response to the Request for Proposal A20002 for [[Project Location]] [[Project Name (FCPWeb Name Preferred)]];
- Any Amendments/Addendums in regards to Request for Proposal A200028 for [[Agreement Location]]; and
- All written correspondence regarding Request for Proposal A20002 between Respondent and Owner for [[Project Location]] [[Project Name (FCPWeb Name Preferred)]].

5.14 PROJECT MANAGEMENT

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

For University:

Campus Contact Person: [[Capital Organization - Name]]
[[Capital Organization - Address]]
[[Capital Organization - City]], [[Capital
Organization - State Code]] [[Capital Organization - Zip Code]]
Attention: [[Capital Project Manager Name]]

UA Contact Person: Chris Rogan
807 S. Wright St, Ste 340
Champaign, IL 61820
(217) 333-5688

For ESCO:

ESCO Contact Person: [[ESCO - Name]]
[[ESCO - Address]]
[[ESCO - City]], [[ESCO - State Code]] [[ESCO
- Zip Code]]
Attention: [[ESCO - Contact Name]]

5.15 AMENDMENTS

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

5.16 APPLICABLE LAWS

The ESCO will comply with all laws, statutes, regulations, ordinances, rulings or enactments of any governmental authority that are applicable to the work or which in any way pertain to the Project, including, but not limited to, the following Illinois statutes. All limits or standards to be observed in the performance required under the Agreement are minimum requirements and shall not affect the application of more restrictive federal, state or local standards.

- A. The Employment of Illinois Workers on Public Works Act: "AN ACT concerning the distribution of certain federal grants and the employment of Illinois workers." (30 ILCS 570/0.01 et. seq. (2002)). This Act requires the employment of only Illinois laborers on all public works projects or improvements or for the clean-up and on-site disposal of hazardous waste whenever there is a period of excessive unemployment in Illinois, except when Illinois laborers are unavailable or incapable of performing the particular type of work involved. The term "Illinois laborer" is defined therein as any person who has resided in Illinois for at least thirty (30) calendar days and intends to become or remain an Illinois resident. An exception to the above requirement is permitted by the statute in that the contractor may place up to three (3) of his regularly employed non-resident executive and technical experts on the job (up to six (6) in some specific instances), even though they do not qualify as Illinois laborers.
- B. The Veterans Preference Act: "AN ACT to give preference to veterans of the United States military and naval service in appointments and employment upon public works by, or for the use of, the State or its political subdivisions." (330 ILCS 55/0.01 et. seq. (2002)). This Act requires that preference in employment on public works projects be given to qualified veterans under certain conditions.

- C. The Public Works Employment Discrimination Act: Contractor shall comply with all applicable provisions of The Public Works Employment Discrimination Act (775 ILCS 10). The purpose of this Act is to ensure that no person shall be refused or denied employment in any capacity on the ground of unlawful discrimination, as that term is defined in the Illinois Human Rights Act (775 ILCS 5), nor be subjected to unlawful discrimination in any manner, in connection with the contracting for or the performance of any work or service of any kind, by, for, on behalf of, or for the benefit of this State, or of any department, bureau, commission, board, or other political subdivision or agency thereof.
- D. The Prevailing Wage Act:
1. "An Act regulating wages of laborers, mechanics, and other workers employed in any public works by the State, county, city or any public body or any political subdivision or by any one under contract for public works." (820 ILCS 130/0.01 et. seq. (2000)). Pursuant to this Act, all contractors and subcontractors performing public work shall pay no less than the most current general prevailing rate of hourly wages in the locality in which the work is to be performed, for each craft or type of worker or mechanic needed to execute the contract. The prevailing rate of wages means "the hourly cash wages plus fringe benefits for training and apprenticeship programs approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training, health and welfare, insurance, vacations and pensions paid generally, in the locality in which the work is being performed, to employees engaged in work of a similar character on public works." The parties stipulate that not less than the prevailing rate of wages as found by the public body, or Department of Labor or determined by a court on review shall be paid to all laborers, workers and mechanics performing work under the Agreement. If the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid by the Owner, the revised rate shall apply to this Agreement. The prevailing rate of hourly wages is revised by the Illinois Department of Labor and is available on the Illinois Department of Labor's official website.
 2. The Contractor shall submit monthly to the Owner a certified payroll consisting of a complete copy of the records required under section 130/5(a)(1) of the Act. The certified payroll shall include records of all laborers, mechanics, and other workers employed by the Contractor and its Subcontractors, including Assigned Subcontractors, for services performed under this Agreement. The records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, hourly wages paid in each pay period, number of hours worked each day, and the starting and ending times of each work day. The certified payroll shall be accompanied by a statement signed by the Contractor and statements signed by each Subcontractor where appropriate which aver that: (1) such records are true and accurate, (2) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required under the Act; and (3) the Contractor or Subcontractor acknowledges that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.
- E. The Health and Safety Act: "AN ACT relating to the health and safety of persons employed, vesting in the Director of Labor power to make reasonable rules relating thereto; providing for the enforcement thereof; and repealing certain Acts herein named." (820 ILCS 225/0.01 et. seq. (2002)). It is the duty of every employer under the Act to provide reasonable protection to the lives, health and safety and to furnish to each of his employees employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. The Act further requires that occupational health and safety standards be complied with.

- F. The Federal (Copeland) Anti-Kickback Act and Regulations: The successful proposer will be expected to comply with the Federal (Copeland) Anti-Kickback Act (18 USC Section 874 (2002); 40 USC Section 276c (2002)) and Regulations of the Secretary of Labor (29 CFR, Part 3) which are herein incorporated by reference.
- G. Non-Discrimination and Equal Employment Opportunity. The ESCO shall comply with applicable provisions of the Illinois Human Rights Act (775 ILCS 5), the U.S. Civil Rights Act, the Americans with Disabilities Act, Section 504 of the U.S. Rehabilitation Act and the rules applicable to each. The equal opportunity clause of Section 750.10 of the Illinois Department of Human Rights Rules is specifically incorporated herein. The Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by U.S. Department of Labor regulations (41 C.F.R. Chapter 60). The ESCO agrees to incorporate this clause into all Subcontracts under this Agreement.
- H. Record Retention and Audits. 30 ILCS 500/20-65 requires the ESCO (and any Subcontractors) to maintain, for a period of three (3) years after the later of the date of completion of this Agreement or the date of final payment under the Agreement, all books and records relating to the performance of the Agreement and necessary to support amounts charged to the Owner under the Agreement. The Agreement and all books and records related to the Agreement shall be available for review and audit by the Owner and the Illinois Auditor General. If this Agreement is funded from contract/grant funds provided by the U.S. Government, the Agreement, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency. The ESCO agrees to cooperate fully with any audit and to provide full access to all relevant materials. Failure to maintain the required books and records shall establish a presumption in favor of the Owner for the recovery of any funds paid by the Owner under this Agreement for which adequate books and records are not available
- I. ESCO's Failure to Comply with Statutory and Regulatory Requirements. The above explanations of these Acts are condensed and not intended to be a complete detailed account of all duties and obligations imposed thereby, and hence by this article of The General Conditions, upon the ESCO. The ESCO, and its subcontractors, shall comply with all laws, rules, regulations and codes applicable to performance of the work and the maintenance, monitoring and training services to be performed. Except where expressly required by applicable laws and regulations, the Owner shall not be responsible for monitoring the ESCO's compliance with any laws or regulations. When the ESCO observes conflicting regulatory requirements, it shall notify the Owner in writing immediately. If the ESCO performs any of the work or other services required by this Agreement knowing or having reason to know that the work or such services are contrary to such laws, rules and regulations, the ESCO shall pay all costs arising therefrom
- J. Compliance: The ESCO shall be responsible for compliance with applicable provisions of this article by all Subcontractors it employs in connection with the Agreement and will be expected to promptly notify the Owner and the Illinois Department of Human Rights in the event any Subcontractor fails or refuses to comply therewith. In addition, the ESCO shall not utilize any Subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions.

5.17 STATUTORY CERTIFICATIONS

In accordance with applicable laws and subject to applicable penalties for false or misleading statements, the following certifications are made in connection with this Agreement:

- A. ESCO certifies that it has completed a Form A, Form B Certifications and Disclosures or CPO Financial Disclosure Affidavit available at https://www.uocpres.uillinois.edu/contracts_forms/for_contractors which are hereby made part of this agreement. Additionally, Supplemental University of Illinois Certifications identified below are incorporated into the contract which are hereby made a part of this agreement. By executing this Agreement, the ESCO acknowledges and agrees that it is in compliance with the requirements of Article 50 of the Illinois Procurement Code (30 ILCS 500/50). These requirements remain in effect for the term of the Agreement. The ESCO certifies compliance, and is under a continuing obligation to remain in compliance and to immediately report any non-compliance.

At the time of ESA, the ESCO shall provide an electronic copy of each subcontract with an annual value of more than \$50,000, issued pursuant to the ESA to the Owner within 15 calendar days after the execution of the ESA or after execution of the subcontract, whichever is later. The copies shall be in electronic pdf format and follow the Owner's file naming conventions, found at: https://www.uocpres.uillinois.edu/contracts_forms/for_contractors.

At the time of ESA, All subcontractor's contracts must include the Form A, Form B Certifications and Disclosures, or CPO Financial Disclosure Affidavit completed and signed by each subcontractor. The Supplemental University of Illinois Certifications identified in the Statutory Certifications section below are to be implemented into all subcontracts on this project. The documents submitted to the University shall be scanned electronic pdf format of the original signed document and follow the University's file naming conventions, found at: https://www.uocpres.uillinois.edu/contracts_forms/for_contractors

If at any time during the term of the ESA, the ESCO adds or changes any subcontractors, the ESCO will be required to promptly notify the Owner via revised ESCO Schedule of Values, of the firm(s) name(s) and address(es) and the expected amount of money that each new or replaced subcontractor will receive pursuant to the contract. The ESCO will provide all documentation required by Public Act 096-795 and the contract for each new or replaced subcontractor.

Any subcontracts entered into prior to receiving a fully executed copy of the ESA are done at the ESCO and subcontractors own risk.

- B. The ESCO certifies that it is authorized to practice the professional services specified in this Agreement under the applicable Illinois licensing and registration statutes.
- C. The ESCO certifies that [[ESCO - Federal Tax Identification Number]] is its Federal Taxpayer Identification Number and that it is doing business as a [[ESCO - Legal Structure]].
- D. Pursuant to the Prevailing Wage Act, ESCO shall pay a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, to all laborers, workers and mechanics, pursuant to definitions, guidelines and procedures set forth in 820 ILCS 130/0.01 et. seq. If the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid by the Owner, the revised rate shall apply to this contract. The prevailing rate of hourly wages is revised by the Illinois Department of Labor and is available on the Illinois Department of Labor's official website.

The ESCO shall submit monthly to Owner a certified copy of the records required under section 130/5(a)(1) of the Act. The certified payroll shall include records of all laborers, mechanics, and other workers employed by the ESCO, including assigned subcontractors, for services performed. The records shall include each worker's name, address, telephone number when available, social security

number, classification or classifications, hourly wages paid in each pay period, number of hours worked each day, and the starting and ending times of each work day. The certified payroll shall be accompanied by a statement signed by the ESCO and statements signed by each subcontractor where appropriate which aver that: (1) such records are true and accurate, (2) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required under the Act; and (3) the ESCO acknowledges that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.

E. Supplemental University of Illinois Certifications

- a. Vendor is required under 30 ILCS 500/20-65 to maintain, for a period of three (3) years after the later of the date of completion of this Contract or the date of final payment under the Contract, all books and records relating to the performance of the Contract and necessary to support amounts charged to the Owner under the Contract. The Contract and all books and records related to the Contract shall be available for review and audit by the Owner and the Illinois Auditor General. If this Contract is funded from contract/grant funds provided by the U.S. Government, the Contract, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency. The Vendor agrees to cooperate fully with any audit and to provide full access to all relevant materials. Failure to maintain the required books and records shall establish a presumption in favor of the Owner for the recovery of any funds paid by the Owner under this Contract for which adequate books and records are not available.
- b. Vendor certifies that it has not retained a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. Vendor further certifies that it has not and will not, pursuant to this subcontract or otherwise, bill or otherwise cause the State of Illinois to pay for any of the lobbyist's costs, fees, compensation, reimbursement or other remuneration (30 ILCS 500/50-38).
- c. This applies only if procuring Owner receives Medicare or Medicaid funding. Vendor certifies that neither it nor any of its directors, officers, employees, agents or subVendors who may provide services pursuant to this Contract (collectively "Agents") is presently debarred, suspended, proposed for debarment, declared ineligible or otherwise excluded from transactions with the U.S. Government or by any federal government agency. Vendor shall provide University immediate written notice if Vendor learns that this certification was erroneous when made or if Vendor or any of its Agents hereafter becomes debarred, suspended, proposed for debarment, declared ineligible or otherwise excluded from transactions with the U.S. Government or by any Federal agency.
- d. Vendor further certifies that neither it nor any of its Agents is presently subject to an investigation or proceeding to exclude it as a provider under Medicare or Medicaid or under any other federal or state health care program or under any third party insurance program, nor is currently excluded or debarred from submitting claims to Medicare or Medicaid or to any other federal or state health care program or to any third party insurer.
- e. The following certification is applicable for professional services consultants and subconsultants only. Vendor shall comply with the Copeland "Anti Kickback" Act, as codified in 18 USC 874 (2010), and comply with the payment provisions and obligations detailed by the Office of the Secretary of Labor in 29 CFR, Part 3 (2010).

- f. The following certification is applicable for professional services consultants and subVendors and this applies only if procuring Owner receives Medicare or Medicaid funding. Vendor agrees to make available, upon written request, to the Secretary of Health and Human Services, the Comptroller General of the United States, or any of their duly authorized representatives, this contract and any books, documents and records necessary to verify the costs of services rendered under this agreement. Vendor further agrees to make said contract and any books, documents and necessary records available until the expiration of four years after the completion of the agreement. In the event Vendor subcontracts any and all of its duties under this contract to another party and said subcontract has a value or cost of \$10,000 or more over a twelve (12) month period, Vendor agrees that the subcontract shall contain a clause requiring the subVendor to make available, upon written request, to the Secretary of Health and Human Services, the Comptroller General of the United States or any of their duly authorized representatives, the subcontract and any books, documents and records of the subVendor that are necessary to verify the nature of the costs under the subcontract. Vendor agrees to indemnify and hold harmless the Owner in the event that any of its Medicare reimbursement is denied or disallowed due to the failure of Vendor or any of its subVendors to comply with the requirements of this provision. Such indemnity shall include but not be limited to the amount of reimbursement denied or disallowed, plus any interest, penalties and fees.
- g. The following certification is applicable for contractors and subcontractors only. Pursuant to the Prevailing Wage Act, Vendor shall pay a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, to all laborers, workers and mechanics, pursuant to definitions, guidelines and procedures set forth in 820 ILCS 130/0.01 et. seq. (2010).
- h. The vendor shall submit monthly to Owner a certified copy of the records required under section 130/5(a)(1) of the Act. The certified payroll shall include records of all laborers, mechanics, and other workers employed by the vendor, including assigned subcontractors, for services performed. The records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, hourly wages paid in each pay period, number of hours worked each day, and the starting and ending times of each work day. The certified payroll shall be accompanied by a statement signed by the vendor and statements signed by each subcontractor where appropriate which aver that: (1) such records are true and accurate, (2) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required under the Act; and (3) the vendor acknowledges that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.
- i. Pursuant to the Veterans Preference Act, Vendor shall give preference to veterans of the United States military and naval service in appointments and employment upon public works by, or for the use of, the State or its political subdivisions, pursuant to the guidelines in 330 ILCS 55/0.01 et. seq. (2010)
- j. The following certification is applicable for contractors only. Affidavit to Maintain a Primary Place of Employment in Illinois. By his/her signature, the officer of Vendor signing these certifications makes the following affirmation on behalf of Vendor as required by 30 ILCS 500/30-22(8): If awarded a Contract, Vendor will maintain an Illinois office as the primary place of employment for persons employed in the construction authorized by the Contract throughout the term of the Contract.

5.18 ERRORS AND OMISSIONS

ESCO shall be responsible for correcting any design errors or omissions in any design documents prepared by ESCO and any corresponding costs incurred by ESCO in the construction of improvements attributable to those design errors or omissions. In the event that said errors and any corresponding work are not corrected by ESCO, Owner reserves the right to recover from the ESCO all or a portion of the costs incurred by Owner associated with change orders, and/or additional work by others if not incorporated as a contract change order, issued to correct errors or work omitted in the construction documents prepared by the ESCO.

Within the Owner's Error and Omission Policy, "Errors, Omissions and Exceptions" are defined as follows:

- A. Error is defined as a change in buildings/systems design, detailing, or documentation in the contract documents that requires repurchase of materials, reconstruction of work in place, or revisions during the construction/warranty process to make the project work properly and that is the result from incorrect information or a lack of information.
- B. Omission is defined as a change or that portion of a change in buildings/systems design that could/should have been included initially in the contract documents and that does not require repurchase of materials or reconstruction of work in place and that is the result from incorrect information or a lack of information.
- C. Exception: Costs due to programmatic changes made after completion of the bid documents, user changes, staff changes scope, or unforeseeable conditions are not considered an error or omission. Costs to comply with codes or standards that changed after issuance of the bid documents are not considered an error or omission. Delivery or schedule changes are not considered an error or omission except when they result from an error or omission.
- D. Prior to incurring any costs, for any of the items described in this Section 5.18 (A) through (C), Owner shall provide written notice to ESCO of the issue that has arisen and thirty (30) days for ESCO to correct the same at ESCO's cost

5.19 OWNER'S WEB-BASED PROJECT MANAGEMENT SYSTEM

ESCO SHALL USE THE Owner's web-based Project Management System to access and exchange project information with team members throughout the Project's life. This includes processing payment applications, schedule, change requests/clarifications, project related submittals, information sharing and other services as identified in this Agreement. Training on this system is available and is required to be taken by ESCO representative(s).

5.20 COUNTERPARTS/FACSIMILE SIGNATURE

This Agreement may be signed in counterparts. Facsimile signatures constitute original signatures for all purposes.

(signature page immediately following)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as and of the day and year first hereinabove set forth.

<p style="text-align: center; font-size: 2em; color: lightgray;">University of Illinois Signature Block</p> <hr/> <p>Comptroller Delegate Signature</p> <hr/> <p>Signature Date</p>	<p>[[Name (Primary Second Party)]]</p> <p>By: _____</p> <p>Printed: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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