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ENERGY SAVINGS PERFORMANCE CONTRACT

between

THE CITY [] / MUNICIPALITY []

and

[ESCO COMPANY]

At [place], [day] [month] 2014

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Pursuant to (i) Article 26 in relation to Article 27 of the Energy Efficiency Act (Official Gazette, number 127/2014) (hereinafter: "ZUKE"), (ii) the Regulation on contracting and implementation of energy services in the public sector (Official gazette of the Republic of Croatia Narodne novine 69/2012) (hereinafter: "Regulation") and after the completion of the open public procurement procedure.

The City [] / Municipality [] seated at [], PIN (OIB) [], represented by M/Ms [], mayor / M/Ms [], head of municipality – (hereinafter: "Contracting authority")

and

[ESCO Co] company registered for the provision of energy services, registered with the Commercial Court in [], under Company registration number (MBS) [], PIN (OIB) [], with its registered seat at [], represented by [], member of the Board (hereinafter: "Provider")

enter this Energy Savings Performance Contract on [day] [month] 2014

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INTRODUCTORY PROVISIONS

The Contracting authority has prepared the Tender documentation nr. ____ dated ____ 2014, pursuant to which the open procedure for the public procurement of energy services was conducted in the manner prescribed by ZUKE, by the Regulation and by the Tender documentation, with the purpose of realising savings on Operating costs of the Public lighting system of the Contracting authority, which is subject of this Energy savings performance contract, as prescribed by the Tender documentation.

Whereas the Contracting authority, which contracts the energy service, is the owner and user of the Public lighting system, which is subject of this Energy savings performance contract.

Whereas the Provider is a company performing the activity of providing energy services and is ready to provide the service of energy efficiency improvement with the purpose of realizing energy savings in the Public lighting system which is subject of this Energy savings performance contract.

Whereas the bid nr. _____ dated ____ 2014 of the Energy services Provider was selected by the Decision on selection nr. _____ as the most economically advantageous bid in accordance with the ZUKE.

Whereas the selected bid nr. _____ dated ____ 2014 of the energy services Provider became enforceable on ____ 2014.

Whereas the Provider confirms that his bid nr. _____ dated ____ 2014 is mandatory and final for the Provider.

Whereas the Provider inspected the Public lighting system which is subject of the Energy savings performance contract (field inspection), as well as the documentation of the Contract authority available in the Tender documentation concerning the Public lighting system which is subject of the Energy savings performance contract, and the Provider had no objections and/or complaints against data and information presented by the Contracting authority to the Provider in relation to the Public lighting system which is subject of this Energy savings performance contract.

Whereas the Provider disposes with necessary knowledge, and human, technical and financial resources for the execution of the Project task and good performance of this Energy savings performance contract within the contractual deadlines.

Whereas, by the conclusion of this Contract, the Contracting authority intends to achieve savings on Operating costs of the Contracting authority's Public lighting system which is subject of this Energy savings performance contract.

Whereas the Provider guarantees to the Contracting authority that he shall regularly fulfil his obligations in accordance with this contract and that he shall deliver to the Contracting authority a Performance bond as indicated in Article 12.1 of this Energy savings performance contract

Whereas the Contracting authority shall pay to the Provider a Compensation under the condition that he should achieve the guaranteed savings in the Period of guaranteed savings as indicated in the bid.

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The Contracting authority and the Provider hereby agree as follows:

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DEFINITIONS OF TERMS

The terms in this Energy savings performance contract have the following meanings:

- 1) **Tender documentation** means tender documentation published in the public procurement procedure number ___ dated ___ 2014, on http://___.
- 2) **Annual compensation** equals the amount of the Guaranteed annual savings.
- 3) **Annual savings** mean achieved Savings as established in the verified Energy savings monitoring, measurement and verification report (hereinafter: “M&V report”) for a given period of measurement during the Period of guaranteed savings.
- 4) **Energy** means electric energy.
- 5) **Report** during the Period of refurbishment is the report by which the Provider keeps the record on monthly basis of his activities during the Period of refurbishment of the Public lighting system, which the Contracting authority shall approve on monthly basis by his signature.
- 6) **Measurement, monitoring and verification (M&V)** mean activities and procedures of monitoring, measurement and verification performed for the purpose of reliably ascertaining actual energy savings attributed to implemented energy efficiency improvement measures.
- 7) **Measures of refurbishment of the Public lighting system** or **Measures of refurbishment** mean all activities the Provider is liable for pursuant to this contract and which are annotated in the Report during the Period of refurbishment including, among others, the construction, expansion, adaptation and refurbishment as well as mounting/installation and commissioning of installations, parts of installations, or equipment and/or software in the Public lighting system which is subject of the Energy savings performance contract, and in relation with the implementation of Energy efficiency improvement measures.
- 8) **Energy efficiency improvement measures** mean energetic activities described in the ZUKE, the Regulation, the Tender documentation, the Bid and this Contract, and which are aimed at reducing Operating costs of the Public lighting system which is subject of this Energy savings performance contract.
- 9) **Compensation** means the contractual amount of the compensation in money which the Contracting authority undertakes to pay to the Provider under the condition that the Provider achieves Guaranteed savings within the Period of guaranteed savings.
- 10) **Contracting authority** means public-law person who is the owner and user of the Public lighting system which is subject of the Energy savings performance contract.
- 11) **Accounting period** means a period of 12 months during which energy savings, achieved in the Period of guaranteed savings, are calculated.

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- 12) **Operating costs** means costs of Energy consumption and maintenance of the Public lighting system which is subject of the Energy savings performance contract.
- 13) **Distribution system operator** means a legal person performing the transfer/distribution/transport or sales of the electric energy in the area where the Public lighting system, which is subject of this Energy savings performance contract, is situated.
- 14) **Energy supplier** means an energy business entity performing the activity of power supply in the area where the Public lighting system, which is subject of this Energy savings performance contract, is situated.
- 15) **Authorized representatives** means representatives of the parties authorized to take actions in the name and on behalf of the parties. These persons must be authorized by law, an internal document or a representation document or hold some other authorization/power of attorney pursuant to which they can act in the name and on behalf of the parties.
- 16) **Monitoring, measurement and verification plan (M&V Plan)** means a document forming an integral part of the tender documentation, and containing the list of previously contracted activities and procedures which need to be performed so as to establish the M&V activities of implemented Energy efficiency measures, and prescribing the method for the monitoring, measurement and verification of Energy savings in accordance with the International Performance Measurement and Verification Protocol (IPMVP).
- 17) **Subcontractor** means any person which the Provider contracted to perform a part of Energy efficiency improvement measures from this contract, and for the work of which the Provider shall be held liable in the equal manner as if the Provider performed it himself.
- 18) **Bid** means the bid of the Provider nr. [enter bid number] dated [enter date] which was selected in the public procurement procedure nr. [enter tender documentation number] dated [enter date], and pursuant to which the parties entered into this contract (attached to the contract as Annex 3)
- 19) **Project task** means project task from Annex 2 hereof, based on which the Provider undertakes to realize the Energy efficiency increase project.
- 20) **Provider** means a legal person which provides the services of energy efficiency whose bid was selected in the public procurement procedure as the most economically advantageous bid, and who executes this contract with the Contracting authority.
- 21) **Energy efficiency increase project** is a written document which the Provider undertakes to elaborate in accordance with the professional rules and rules regulating the design and construction, and by which the Provider must encompass and develop all investments aimed at achieving Savings.
- 22) **Period of refurbishment** means the period of implementation of the Measures of refurbishment which shall commence on the date of Contract authority's approval from Article 6.3.3 for the Energy efficiency increase project, and shall last up to a maximum of

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___ months, and shall end when the Contracting authority signs the Handover record from Article 7.7 hereof.

- 23) **Period of guaranteed savings** means the period which commences with the date on which the Contracting authority signs the Handover record, and the Provider submits to him the annexes from Article 7.7.3, and the maximum duration of which is ___ years.
- 24) **Reference energy price** means the net energy price determined in the Tender documentation and confirmed in this contract for the Energy sources determined in the Tender documentation, including all compensations and other costs which are included in the calculation of energy price by the Distribution system operator, where the only variable component is the VAT.
- 25) **Reference energy consumption** means the Energy consumption of the Public lighting system, which is subject of the Energy savings performance contract, as described in the Tender documentation.
- 26) **Reference operating cost** is the Reference energy consumption multiplied with the Reference energy price increased by Reference maintenance cost.
- 27) **Reference conditions of use** means the conditions of use of the Public lighting system, which is subject of the Energy savings performance contract, which shall be affected by the introduction of Energy efficiency improvement measures such as described in the Report on energetic inspection which forms an integral part of the Tender documentation.
- 28) **Reference maintenance cost** means the net cost determined in the Tender documentation for the maintenance of certain parts of the Public lighting system, which is subject of the Energy savings performance contract, which shall be affected by the introduction of Energy efficiency improvement measures, including all compensations and other costs, except the VAT.
- 29) **Public lighting system**, which is subject of the Energy savings performance contract, is the public lighting defined and described in Annex 1 hereof, which is owned and used by the Contracting authority, and to which shall apply the Energy efficiency improvement measures, and which may consist of several sectors of the lighting grid delimited by an exchange point, or another physical or operational boundary with the corresponding parts.
- 30) **Parties** mean the Contracting authority and the energy services Provider.
- 31) **Contractual period** means the period from the execution until the termination of the contract.
- 32) **Savings** mean the reduction in Operating costs of the Public lighting system, which is subject of the Energy savings performance contract, which occurs as the result of the implementation of Energy efficiency improvement measures calculated in relation to the Reference operating cost.
- 33) **Guaranteed annual savings** is equal to the amount of Guaranteed savings divided by the number of years of the Period of guaranteed savings.

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- 34) **Guaranteed savings** mean the total amount of contracted Savings within the Period of guaranteed savings, as the result of the implementation of Energy efficiency improvement measures.
- 35) **Handover record** is a written document signed by the Contracting authority and the Provider, the form and the content of which are set forth in Annex 6, and by which are performed the inspection and handover of all Measures of refurbishment implemented by the Provider based on the contract (including Annexes) so as to confirm that they were implemented in accordance with the positive regulations of the Republic of Croatia, this contract, professional rules and applicable standards.

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1 SUBJECT OF THE CONTRACT

1.1 Energy service

1.1.1 By this contract, the Contracting authority contracts, and the Provider undertakes to provide to the Contracting authority, energy service for the purpose of improvement of the energetic properties of the Public lighting system. The Energy service means achieving provable savings on Operating costs for the Contract authority, which shall be achieved by implementing Energy efficiency improvement measures consisting of:

- (i) elaboration and implementation of Energy efficiency increase project;
- (ii) implementation of Measures of refurbishment which comprise the execution of all works, installation of equipment and materials foreseen by the Energy efficiency increase project;
- (iii) professional supervision over the implementation of the Measures of refurbishment;
- (iv) energetic inspection after the Period of refurbishment;
- (v) monitoring and verification of savings pursuant to the Plan on monitoring, measurement and verification of Energy savings in accordance with the International Performance Measurement and Verification Protocol.

1.1.2 The Provider is responsible for implementing Energy efficiency improvement measures in accordance with the Bid and this contract with the purpose of achieving Guaranteed savings in the manner described in the Bid.

1.2 Compensation for the energy service

1.2.1 The Contracting authority shall pay to the Provider, for the service of energy efficiency, the Compensation agreed upon in this contract under the condition that the amount of the Savings reaches the amount of the Guaranteed savings.

1.2.2 The Parties agree that besides the costs which are explicitly foreseen in this contract, the Contracting authority shall have no other additional costs and that no additional obligation shall imposed upon the Contract authority besides the obligations ensuing from the contract and/or out-of-contract civil law liability.

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2 AUTHORIZED REPRESENTATIVES OF THE PARTIES

2.1 Authorized representative

- 2.1.1 Within three days from the execution of this contract, the Contracting authority and the Provider shall name their Authorized representatives, indicating their contact details in full, in accordance with the list presented in Annex 8 (Authorized representatives).
- 2.1.2 The Authorized representatives of the parties must be authorized to take action in the name and on behalf of the Contract authority or the Provider, that is, they must have the authority to act in the name of the Contract authority or the Provider in all legal and operational activities related to this contract.
- 2.1.3 Unless otherwise established by this contract, the statements of the Parties relating to the Contract shall produce legal effect from the date they were received by the other Party, under the condition that they were delivered to the addresses of the Authorized representatives. Their delivery to any other address of the Parties shall produce no legal effect.

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3 BID

3.1 Bid price for the energy service

- 3.1.1 The Bid price for the energy service contracted by this contract represents the sum of all compensations and amounts to a total of: HRK _____ (in words: Croatian kunas).
- 3.1.2 The 25% VAT amounts to HRK _____ (in words: Croatian kunas).
- 3.1.3 The total Bid price for the energy service contracted by this contract, including VAT, amounts to HRK _____ (in words: Croatian kunas).

3.2 Guaranteed savings

- 3.2.1 By implementing Energy efficiency improvement measures, the Provider undertakes to achieve:
- a) The Annual savings in the amount of HRK _____ (in words: Croatian kunas); 25% VAT which amounts to HRK _____ (in words: Croatian kunas). The total annual savings (including 25% VAT) amount to HRK _____ (in words: Croatian kunas).
 - b) The annual Energy consumption after the Period of refurbishment amounting to ___ kWh or less;
 - c) The annual reduction in CO2 emissions of ___ or more;
 - d) [*partially or totally / without automation*] automation of the measurement of consumption.

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4 VALUE OF CONTRACTUAL INVESTMENTS

4.1 Value of contractual investments

4.1.1 The value of contractual investments indicated in the Bid consists of (a) investment costs during the Period of refurbishment, and (b) investment costs during the Period of guaranteed savings.

In total (a) and (b) amount to HRK _____ (in words: Croatian kunas) including 25% VAT of HRK _____ (in words: Croatian kunas).

4.2 Value of contractual investments during the Period of refurbishment

4.2.1 The value of contractual investments during the Period of refurbishment comprises the following costs:

- (i) Costs of elaboration of the Energy efficiency increase project in the amount of HRK _____ (in words: Croatian kunas);
- (ii) Costs of control of the Energy efficiency increase project by the authorized design company in the amount of HRK _____ (in words: Croatian kunas);
- (iii) Costs of implementation of Measures of refurbishment which consist of the execution of all works, installation of equipment and materials foreseen by the Energy efficiency increase project in the amount of HRK _____ (in words: Croatian kunas);
- (iv) Costs of professional supervision of works over the Measures of refurbishment in the amount of HRK _____ (in words: Croatian kunas);
- (v) Costs of energetic inspection after the Period of refurbishment in the amount of HRK _____ (in words: Croatian kunas);
- (vi) Costs of insurance against risk in the amount of HRK _____ (in words: Croatian kunas);
- (vii) Costs of financing in the amount of HRK _____ (in words: Croatian kunas);
- (viii) [please enter].

4.2.2 Value-added tax (VAT) has been added to all the sums mentioned above.

4.3 Value of contractual investments during the Period of guaranteed savings

4.3.1 The value of contractual investments during the Period of guaranteed savings is composed of the following expenses:

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- (i) The expenses of monitoring, measurement and verification of energy savings in the amount of HRK _____ (in words: Croatian kunas);
- (ii) The expenses of training the personnel of the Contract authority on the methods of use of installed systems in order to achieve the guaranteed savings;
- (iii) [*please enter*].

4.3.2 Value-added tax (VAT) has been added to all the sums mentioned above.

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5 DURATION OF THE CONTRACT AND CONTRACTUAL PHASES

5.1 Duration of the contract

5.1.1 Energy savings performance contract is concluded for a period of ___ years from the date of signature of the Contract.

5.2 Contractual phases

5.2.1 The contract has three periods: (i) Period of development of the Energy efficiency increase project, (ii) Period of refurbishment, and (iii) Period of guaranteed savings.

5.2.2 The provider is obliged to develop the Energy efficiency increase project within ___ days from the day of signing of this Contract.

5.2.3 Period of refurbishment is the period of performing different activities to implement Energy efficiency improvement measures that are encompassed within the Refurbishment measures. The Period of refurbishment shall start on the day of issuance of approval by the Contract authority from Article 6.3.3 on Energy efficiency increase project and will last at most ___ months. The successful termination of the Period of refurbishment shall be approved by the Contracting authority by signature of the Handover record from Article 7.7 of this contract.

5.2.4 Period of guaranteed savings is the period of exploiting the potential of energy savings. The Period of guaranteed savings shall start on the day when the Contracting authority shall sign the Handover record, and when the Provider shall submit the annexes from Article 7.7.3. This period shall last at most ___ years.

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6 ENERGY EFFICIENCY INCREASE PROJECT

6.1 Elaboration of Energy efficiency increase project

6.1.1 The Provider undertakes to elaborate the Energy efficiency increase project within ___ days from the day of signature of this contract in accordance with professional standards contained in the regulation in force. The Project must be developed by an authorised project design office and certified by an authorised main project designer.

6.2 Content of Energy efficiency increase project

6.2.1 The Energy efficiency increase project must encompass and elaborate all the contractual investments by means of which the Provider undertakes to achieve the Guaranteed savings, including a scheduled plan of measure implementation containing the structure and dynamics of planned investment, technical specifications for the installed equipment, a detailed quantitative-value calculation for the suggested energy efficiency improvement measures, surveillance plan, measurement and verification of energy savings, bill of quantities containing a detailed and elaborated value of contractual investments, including all foreseen works and services, equipment and material, the costs of development of investment, project and technical documentation, the costs of financing, the costs of risk insurance, and the aggregate value of contractual investments, with value-added tax added.

6.2.2 While verifying the savings, the effects concerning the service life of equipment and material, which have been foreseen by the Energy efficiency increase project, shall also be taken into consideration.

6.3 Verification of Energy efficiency increase project

6.3.1 After the submission of the Energy efficiency increase project, the Contracting authority is obliged to conduct monitoring and verification of the Project to determine whether the measures elaborated in the Project meet the technical conditions for energetic refurbishment in accordance with the tender documentation.

6.3.2 Should the Contracting authority establish that the Energy efficiency increase project contains minor remediable shortcomings, it will call for the Provider to remedy these shortcomings during the consequently approved period of 15 calendar days. Should these shortcomings not be remedied or should the Contracting authority consider that the

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Project contains irremediable or major shortcomings, either the Contracting authority or the Provider may forward the dispute for resolution pursuant to Article 20.1 of this contract.

6.3.3 Contracting authority shall approve the Energy efficiency increase project by written decision (henceforth herein: the Approval). The Period of refurbishment shall start from the date of issuance of the Approval, and the Project shall become an integral part of this contract within Annex 5.

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7 PERIOD OF REFURBISHMENT

7.1 Procedures and activities during the Period of refurbishment

7.1.1 The Provider is obliged to assemble a monthly report on conducted activities during the Period of refurbishment demonstrating execution of the Refurbishment measures in line with the timetable the Provider has committed to in the Bid as presented in Annex 3 to this contract.

7.1.2 The monthly reports during the Period of refurbishment must remain available to all Authorised representatives of the Contracting parties during the entire Contractual period, and the Contracting authority has the right to inspect and monitor the implementation of Refurbishment measures.

7.1.3 The authorized representative of the Contract authority shall affirm the successful execution of Refurbishment measures during the Period of refurbishment by signing the monthly report of the Provider, not later than the 15th day of the month, with respect to works and activities conducted during the previous month.

7.1.4 Should it be prescribed by the positive regulation of the Republic of Croatia, the Contracting authority shall oblige to obtain, at its own expense, all the necessary permits on behalf of the Provider, and secure the documentation, permits and permissions for the execution of Refurbishment measures.

7.2 Content of the monthly report

7.2.1 The report during the Period of refurbishment shall contain all the activities of the Provider that present as Measures of refurbishment, in particular those with respect to:

- 1) works, installation of material and/or equipment in the Public lighting system, maintenance and replacement of installation and their parts, orderly disposal of malfunctioning and/or replaced installations, their parts and equipment, professional surveillance of the works and technical inspection of the works;
- 2) [*project design, installation, testing and ordering of software – optional, applicable if considered necessary with respect to Tender documentation and/or Bid*];
- 3) [*introduction of operative procedures and maintenance procedures – optional, applicable if considered necessary with respect to Tender documentation and/or Bid*];
- 4) [*training of Contract authority personnel to operate and work with new equipment and installations/devices – optional, applicable if considered necessary with respect to Tender documentation and/or Bid*];

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- 5) *all activities pertaining to the implementation of the M&V Plan;*
- 6) *technical acquiring of works and activities necessary for the Contracting authority to obtain a permanent operational licence, should the same be required by the applicable regulation, and other obligations necessary for the implementation of Refurbishment measures.*

7.3 Characteristics of Measures of refurbishment

7.3.1 The contracting authority shall commit to undertake Measures of refurbishment with the following characteristics:

- a. Measures of refurbishment are to be in accordance with positive regulation of the Republic of Croatia, professional standards and applicable standards;
- b. Measures of refurbishment are to be functionally adjusted to operate with existing installations/devices/equipment;
- c. Measures of refurbishment are to be functionally compatible with the technical conditions of the distribution system operator and/or _____;
- d. Measures of refurbishment are to be adjusted to the investments foreseen in the Bid;
- e. Measures of refurbishment are to be executed in a way that will guarantee quality and regular functioning of the implemented energy efficiency improvement measures without hidden shortcomings/flaws;
- f. Complete the various Measures of refurbishment according to the timetable set out in Annex 3 and
- g. the execution of technical activities will take place in a way that the users of the Public lighting system shall not meet limitations when using the latter more than their basic needs require.

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7.4 Inability to carry out Measures of refurbishment

- 7.4.1 The Provider shall not be held responsible for circumstances preventing the implementation of the Measures of refurbishment which were not presented in the Tender Documentation or during the public procurement procedure i.e. the Provider shall not be held responsible for the circumstances of which he was not or could not have been aware of nor will the Provider held responsible for the circumstances not caused by the Provider and which are beyond Provider's control and for which the Provider is not answerable.
- 7.4.2 If the circumstances from the previous article appear, the Contracting authority undertakes to eliminate them at their expense, without delay, where the deadline for the Period of refurbishment shall be suspended for the Provider until such circumstances are eliminated and preconditions for implementation of Measures of refurbishment are achieved.
- 7.4.3 The Contracting authority is answerable to the Provider for the damages caused to the Provider due to the occurrence of circumstances from Article 7.4.1 hereof under the Principle of Guilt.

7.5 Disposal of faulty and/or replaced equipment and Compliance with the Policies

- 7.5.1 The Provider shall take care of the disposal of equipment, its parts and all types of materials which are faulty/damaged or replaced during the Period of refurbishment (*and/or during maintenance – optional only if ESCO is responsible for maintenance*) in accordance with applicable regulations on the disposal of municipal, hazardous and other types of waste and it shall comply with all environmental policies which are in force at the Contracting authority and which the Contracting authority has brought to the Provider's attention.
- 7.5.2 The Provider shall comply with all internal policies which are in force at the Contracting authority including but not being limited to any code of conduct policy, environmental or employment policy as far as these policy directly concern execution of the Provider's obligations under this contract.

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7.6 Training of the Contracting authority's Personnel

[This article shall be applied only if the training of the Contracting authority's personnel is envisaged in a special case]

7.6.1 The Provider undertakes to carry out the training of the personnel of the Contracting authority on how to use installed systems before the Contracting authority confirms the Handover records in accordance with Article 7.7. Should there be changes on how to use installed systems in the period between the Handover records have been confirmed and the completion of the Contract, the Provider undertakes to carry out an additional training of the personnel of the Contracting authority on how to use installed systems during the last month of the contract Term.

7.6.2 The Provider undertakes to carry out the training of the Contracting authority's personnel in the period from ____ to ____ in the duration of at least ____ hours and, subject to the condition in the previous clause, the additional training in the period from ____ to ____ in the duration of at least ____ hours.

7.7 Handover record

7.7.1 After the completion of all Measures of refurbishment the Parties shall, without delay, carry out a joint inspection and handover of all Measures of refurbishment which the Provider carried out pursuant to the contract (including the schedules to the contract) in order to confirm that the implementation of such measures is in accordance with the positive regulations of the Republic of Croatia, this contract, professional regulations and applicable standards.

7.7.2 Parties shall prepare and sign a Handover record as proof that the handover was carried out.

7.7.3 Handover record shall be drafted in the form and content shown in Schedule 6 hereof. The Provider shall enclose the following to the Handover records: (i) positive opinion of the engineer responsible for supervising the implementation of the Energy efficiency improvement measures and (ii) copies of all attests (certificates) and evidence on installed equipment.

7.7.4 By signing the Handover record the Contracting authority certifies that the Provider performed its contractual obligations with regard to the implementation of the Measures of refurbishment in accordance with the approved Energy efficiency increase project, and that the prerequisites for realising the savings have been realised.

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7.7.5 Period of Guaranteed savings commences on the date of the signing of the Handover record and delivery of the schedules from previous article to the Contracting authority.

7.7.6 Should the contract be terminated by a Party before the completion of all Measures of refurbishment or should the Provider abandon the contract during the completion of Measures of refurbishment, the Parties shall prepare and sign a Handover record demonstrating Measures of refurbishment executed until the termination date or until the date on which the Provider has left the contract. The Handover record shall be drafted in the form and content shown in Schedule 6 hereof. The Provider shall enclose with the Handover record originals of all attestations (certificates), information and data on supplied, delivered and/or installed equipment as well as any documentation accompanying such equipment including but not limited to the manufacturers' warranties, manuals, instructions, and guidelines in relation to such equipment.

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8 PERIOD OF GUARANTEED SAVINGS

8.1 SAVINGS

8.1.1 Pursuant to this contract, the savings shall be reductions of the Public lighting system operating costs achieved under Reference conditions of use which are the result of the implementation of the Energy efficiency improvement measures calculated against the Reference operating costs.

8.1.2 Value of the saving shall be calculated as a projected percentage of Public lighting system operating cost reduction from the Bid against The Reference operating cost, by applying Reference conditions of use and Reference energy cost.

8.1.3 Reference energy consumption for the calculation of Reference operating cost amounts to HRK ___ per year i.e. ___ kWh of Energy per year, in accordance to the values published in the Tender documentation.

8.1.4 Reference energy price as stated in the Tender documentation shall be fixed during the Period of Guaranteed savings. In this way the changes to the Energy prices during the Period of Guaranteed savings shall not have any effect on the calculation of performance or on its compensation. Changes to variable elements of Reference energy price (such as applicable taxes, with the exception of VAT) regarding the consumption of electrical energy, shall not affect the Reference energy price defined in the Tender documentation provided that they are listed in the Tender documentation.

8.1.5 The Provider undertakes to achieve Guaranteed savings by Energy efficiency improvement measures in accordance with the values given in the Bid. The Provider demonstrates the Savings with the Energy efficiency increase project, and it proves its realisation by monitoring, measurements and verification in accordance with the Monitoring, measurement and verification plan.

8.1.6 Value of Guaranteed savings from the Bid for the entire Period of guaranteed savings amounts to:

HRK _____ [Croatian kunas]

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8.2 Monitoring, Measurement and Verification

- 8.2.1 The Provider shall perform monitoring, measurement and verification activities in accordance with the Monitoring, measurement and verification plan, while adhering to the provisions of the Ordinance on Methodology for Monitoring, Measurement and Verification of the energy savings in direct consumption (official gazette of the Republic of Croatia “Narodne novine” no. 77/12), International Protocol for Performance Measurement and Verification and Guidelines for monitoring energy savings from Schedule 7 hereof.
- 8.2.2 The Provider undertakes to perform a visual inspection of the Public lighting system at least once in three months. The Contracting authority undertakes to make all information regarding Energy consumption necessary for fulfilling this requirement available to the Provider and to enable access to the Public lighting system in the scope necessary for carrying out monitoring, measurement and verification activities.
- 8.2.3 The Provider undertakes to prepare a report on the results of monitoring, measurement and verification on a monthly level and on the last day of the month for that month and deliver it to the Contracting authority for approval.
- 8.2.4 Within the subsequent deadline of 10 calendar days from the day of the delivery of the report the Contracting authority shall review that report and approve it. If the Contracting authority has an objection to the report it must inform the Provider on the objection within 10 calendar days from the receipt of the report and provide reasons for such objection. The Provider shall, within the subsequent deadline of 15 calendar days from the receipt of the Contracting authority’s objection, carry out necessary corrections and send a corrected report to the Contracting authority for approval. If the Contracting authority does not approve the subsequent corrected report due to an objective and justified reasons, either the Contracting authority or the Provider may forward the dispute for resolution to third independent party pursuant to Article 20.1 hereof.

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8.2.5 By approving the report indicated by the signature of the Contracting authority on the report, the Contracting authority confirms that the Savings from this contract have been achieved.

8.2.6 A party shall make its best efforts to provide all support reasonably necessary, and take all reasonable action, to cooperate with the other party in achieving the Guaranteed savings. A party shall refrain from any action which unreasonably hinders or may unreasonably hinder achievement of the Guaranteed savings. The Contracting authority undertakes to make available to the Provider all information reasonably at its disposal that is necessary or useful for achieving the Guaranteed savings as well as to provide access to the Public lighting system reasonably necessary for performance of the Provider's rights and obligations under this contract.

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9 CLAIMS BASED ON THE EQUIPMENT AND INSTALLATION WARRANTY

- 9.1 The Provider warrants to the Contracting authority that all equipment and installations, as well as their parts which were installed in the Public lighting system which is the subject of the Energy savings performance contract in the course of implementation of Energy efficiency improvement measures are suitable for its standard purpose in accordance with the regulations of the Bidder and the Bid, are free from any defects in workmanship and materials as well as free of any defects in title rights.
- 9.2 Warranty period starts from the moment of installation in the Public lighting system which is the subject of the Energy savings performance contract and continues until the expiry of the Contractual Period. Should there be a manufacturer's warranty that continues to run after the Contractual Period, the Provider shall assign rights and benefits of any such warranty to the Contracting authority by executing an assignment of such warranty latest by the last day of the Contractual Period.
- 9.3 Latest by the last day of Contractual Period, the Provider shall hand over to the Contracting authority originals of originals of all attestations (certificates) as well as any documentation accompanying delivered and/or installed equipment including but not limited to the user manuals and guidelines, instructions and performance tests regarding the installed equipment.

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10 FAILURE TO ACHIEVE GUARANTEED SAVINGS

10.1 Failure to Achieve Guaranteed savings due to Reasons which are Attributable to the Contracting authority.

10.1.1 The Provider shall not be responsible to the Contracting authority for unattained Guaranteed savings if the reasons for failing to achieve such Guaranteed savings can be attributed to the Contracting authority and/or are under supervision/control of the Contracting authority.

10.1.2 The following circumstances, without limitation, represent the aforementioned reasons:

- a. Harmful action, failure, breach or delay in execution of this contract by the Contracting authority and especially being late in obtainment of permits, documentation and approvals necessary for carrying out the Measures of refurbishment, if the obligation of their obtainment was undertaken by the Contracting authority;
- b. Delays pursuant to which the Provider is entitled to the extension of the deadlines;
- c. Removal or unauthorised modifications of the Energy efficiency improvement measures by the Contracting authority;
- d. Significant changes or damage to the Public lighting system which is the subject of the Energy savings performance contract or equipment or systems belonging to the Contracting authority resulting in a decrease of Savings by more than 3% of the Guaranteed annual savings ; such circumstances shall be resolved in the following manner:

10.1.3 Should the circumstances from paragraph 10.1.2 of this Article occur, result of which is the temporary loss of Savings (less than 90 consecutive days), the Savings shall be based on the estimated Savings which would have been achieved if such case hadn't happened and the Contracting authority undertakes to pay the Provider Compensation pursuant to such estimate.

10.1.4 Should the circumstances from Paragraph 10.1.2 of this Article occur, result of which is a material loss of Savings (more than 90 consecutive days), the Provider shall be entitled to either calculate the Savings based on the Savings estimate which would be achieved if such an event hadn't occurred or to terminate this contract without having to pay liquidated damages and/or compensation for damages to the Contracting authority.

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10.2 Failure to Achieve Guaranteed savings Due to Reasons Attributable to the Provider

10.2.1 The Contracting authority shall be authorised to suspend payment of a monthly compensation (i.e. 1/12 of the Annual compensation stated in the Bid tables) if a monthly monitoring, measurement and verification report indicates that there is a negative difference between Savings achieved in that month and 1/12 of the Guaranteed annual savings, which was not caused by circumstances in Article 10.1.

10.2.2 If the negative difference from the previous paragraph occurs, the contract shall continue to run irrespective of the negative difference and the suspended payment as stipulated above. Latest by 15 December of a Calculation Period, the Provider shall submit to the Contracting authority an Annual monitoring, measurement and verification report on the achieved annual Savings. Should the Annual monitoring, measurement and verification report indicate that the achieved annual Savings equal at minimum the Guaranteed annual savings, the Contracting authority shall pay to the Provider latest by 15 January of the immediately following Calculation period any monthly compensation which has been suspended in any month during the Calculation Period. Should the Annual monitoring, measurement and verification report indicate that the achieved annual Savings do not meet the Guaranteed annual savings, the Contracting authority shall have the right to collect against the warranty provided under Article 12 for normal performance of the contract from the Provider in the form of debentures.

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11 COMPENSATION FOR ENERGY SERVICE

11.1 Start of energy service compensation payment

11.1.1 The Contracting authority undertakes to pay the Provider the Compensation in accordance with the following provisions from the day of signing the Handover record from Article 7.7 hereof, provided that the Savings in the Calculation Period are equal to the Guaranteed Annual Savings, as is shown by applying the Monitoring, measurement and verification plan.

11.2 Energy Service Compensation Payment Schedule

11.2.1 The Contracting authority undertakes to pay the Compensation monthly based on attained and verified savings shown in the report on the monitoring, measurement and verification results. Monthly compensation shall amount to 1/12 of the annual compensation stated in the Bid tables (table "payment plant", column "Energy service compensation" for the payment years under the item "Payment plant after the refurbishment completion").

11.2.2 Value added tax shall be charged to the monthly compensation amount from the previous paragraph in accordance with the Value Added Tax Act in force on the day of issuance of the invoice for the Compensation.

11.2.3 Increase or decrease of Energy price shall not affect the Savings calculation. Change of the regime of use of the Public lighting system with regard to the Reference terms of use shall not affect the compensation payment obligation.

11.2.4 The Contracting authority undertakes to pay the Compensation for realised energy service, which means that the payments for each period shall be based on the savings realised in the previous period.

11.2.5 The Provider shall issue an invoice for the energy service to the Contracting authority monthly, which the Contracting authority undertakes to pay by the 20th day of the month

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for the previous month. The Provider shall issue an invoice for any monthly compensation suspended under Article 10.2.1 in accordance with Article 10.2.2.

11.2.6 Statutory default interest shall be charged on an outstanding, but due and uncontested invoice.

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12 WARRANTIES

12.1 Warranties by the Provider

12.1.1 The Provider undertakes to deliver to the Contracting authority a **bank guarantee** for the performance of contractual obligations in the amount of (10%) of the total value of the Guaranteed savings within 10 (ten) days from the signing of this contract. The bank guarantee shall be unconditional, irrevocable and payable at first request and shall be valid from the day of the signing hereof until the end of the Refurbishment period.

12.1.2 The Provider undertakes to deliver to the Contracting authority a performance guarantee in the form of a **debenture**, with a value of ____ HRK, within 10 (ten) calendar days from the day of the signing of this contract. The aforementioned debenture shall be valid until the expiry of this contract.

12.2 Warranties by the Contracting authority

12.2.1 The Contracting authority undertakes to deliver to the Provider a performance guarantee, especially the obligation to pay the Compensation, in the form of a **debenture** with a value of HRK. The aforementioned debenture shall be valid until the expiry of this contract.

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13 LIQUIDATED DAMAGES

13.1 Liquidated Damages for the Breach of the Contract Provisions by the Provider

13.1.1 The Provider shall be obliged to pay the Contracting authority the liquidated damages for delays in the implementation of Energy efficiency improvement measures, if such delays were caused by the circumstances at the side of the Provider for which the Provider is responsible, in the amount of 2 (two) per-mille of the total amount of the Compensation for every calendar day of delay but in any case not more than 10% of the Guaranteed savings

13.1.2 If the Contracting authority collects the guarantee issued by the Provider pursuant to Article 12.1., the Contracting authority shall have the right to claim the liquidated damages only if the amount of damages exceeds the amount realised by collecting the guarantee/guarantees.

13.1.3 Total aggregate civil liability of a Party under this Contract shall be limited to twice the value of the Compensation the Provider has received from the Contracting authority under this Contract. Liability for non-gross negligence of a Party is explicitly excluded.

13.2 Provider's right to compensation in case of Contracting authority's non-compliance with the provisions of the Contract

13.2.1 If the Contracting authority commits a breach of the provisions of the contract or the warranties from Article 12.2. which were given by the Contracting authority prove to be inaccurate or incomplete or if the information presented to the Provider by the Contracting authority in the Tender Documentation or during the term of this contract prove to be inaccurate or incomplete, the Contracting authority shall be obliged to:

- a. Indemnify the Provider for all the damages incurred as a consequence of the abovementioned actions;
- b. Pay the performed Energy efficiency improvement measures which are recorded by the monthly reports during the Refurbishment period and
- c. Pay all compensations for implemented Energy efficiency improvement measures.

13.2.2 Liability of the Contracting authority under Clause 13.2.1 shall be limited in the same way and to the same extent as liability of the Provider is limited under Clause 13.1.3.

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14 ASSUMPTION OF RISK

14.1 Contracting authority's Risk

14.1.1 The Contracting authority shall bear the entire risk of changes to the Public lighting system operating regime with regard to Reference terms of use unless the changes to the Public lighting system result in a difference (alone or cumulatively) of less than 3% of the annual achieved Savings.

14.2 Provider's risk

14.2.1 The Provider shall bear the entire financial, technical, commercial and economic risk associated with the implementation of this contract.

14.2.2 Assumption of financial risk means that the Provider shall bear all the costs of the Energy efficiency improvement measures including the insurance expenses for the assets in which the Provider invested their funds.

14.2.3 Assumption of technical risk shall mean that the Provider is solely responsible for technical characteristics of the implemented Energy efficiency improvement measures.

14.2.4 Assumption of commercial risk shall mean the obligation and guarantee by the Provider to implement the Energy efficiency improvement measures in accordance with this contract, where the expenses incurred by the Provider shall not affect the payments of the Compensation to the Contracting authority pursuant to this contract. Therefore, no investment or other costs linked to the implementation and carrying out of measurements shall be created for the Contracting authority, except for the usual cost of regular maintenance.

14.2.5 Assumption of economic risk shall mean that the Provider assumes the risk for the effect of the Energy efficiency improvement measures, which represent a warranty that the Energy efficiency improvement measures shall result in Savings pursuant to this contract.

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15 INSURANCE

15.1 Insurance Policies

- 15.1.1 The Provider shall, during the term of the Contractual period, take out insurance against:
- a) Fire for Energy efficiency improvement measures in the amount of the aforementioned Energy efficiency improvement measures;
 - b) Insurance toward the third parties for death and physical injury up to the maximum insured amount of [enter] Croatian kunas per harmful event;
 - c) Property damages to the Public lighting system with a maximum insured amount of (enter) Croatian kunas per harmful event;
 - d) Adverse weather, namely: lighting strikes, short circuits and [\\].

and deliver such policies to the Contracting authority no later than 30 (thirty) calendar days from the day of the signing of the contract.

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16 CESSION

- 16.1 At the written request of the Provider, the Contracting authority shall initiate the conclusion of legal transactions by which a part of the Compensation or entire Compensation shall be paid directly to the financial institution or body which provides credit support to the Provider.

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17 TRANSFER OF OWNERSHIP RIGHTS

- 17.1 Ownership rights over installations, their parts, equipment and materials which the Provider shall install or otherwise integrate into the Public lighting system which is the subject of the Energy savings performance contract during the course of the performance of Energy efficiency improvement measures, shall be transferred to the Contracting authority after the Contracting authority pays the Provider the total amount of the Compensation to which the Provider is entitled to.
- 17.2 Subject to Article 17.3, the Provider warrants that all intellectual and industrial property rights in the Energy efficiency improvement measures and any equipment, materials, systems, software or any other thing or document supplied by the Provider to the Contracting Authority under this contract are owned by the Provider or licensed (with the right to sublicense) to the Provider. Unless provided otherwise in writing, the parties agree that such rights remain with the Provider.
- 17.3 All drawings, designs, specifications or other documents prepared specifically for this contract by the Provider (the "Project Documentation") or its Subcontractors will become the property of the Contracting Authority on payment to the Provider of one Euro. The Provider grants the Contracting Authority a perpetual, irrevocable non-exclusive royalty free licence (with a right to sub-licence) to use any other drawings, designs, specifications or other documents supplied by the Provider to the Contracting Authority necessary or convenient in connection with the use of the Energy efficiency improvement measures (the "Documents").
- 17.4 Subject to the specific provisions of any licence accompanying software forming a part of the Energy efficiency improvement measures, the Provider grants to the Contracting Authority a licence (with a right to sub-licence) to use the software forming part of the Energy efficiency improvement measures for the purpose for which the software is supplied to the Contracting Authority, and not otherwise.
- Unless allowed by applicable law, the Contracting Authority must not modify, copy or reverse engineer the software or merge it with any other software.
- During the term of the contract, the Provider will provide to the Contracting Authority user manuals, technical information and all updates and revisions to the software.
- 17.5 The Provider indemnifies the Contracting Authority against any claims which the Contracting Authority is legally liable for, in respect of any infringement of third party intellectual property rights relating to any part of the Project Documentation and Documents supplied by the Provider or its Subcontractors ("the Infringing Part"). The Provider's obligation to indemnify the Contracting Authority against claims is subject to the Contracting Authority:
- (a) giving the Provider prompt written notice of the claim;
 - (b) not making any admission or prejudicing the Provider's defence of the claim or the Provider's ability to negotiate a satisfactory settlement;

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- (c) allowing the Provider the opportunity to control at the Provider's expense the conduct of the defence and any negotiations for the settlement of the claim; and
- (d) giving the Provider (at the Provider's expense) such assistance and information as may reasonably be required by the Provider to assist the Provider with the conduct of the defence and any negotiations for the settlement of the claim.

The Provider shall, at its option, either replace or modify the Infringing Part with a non-infringing part or procure for the Contracting Authority the right to use such infringing part. [The remedies set out in this clause shall be the sole and exclusive remedy of the Contracting Authority for infringement of intellectual property rights.]

17.6 Upon termination of this contract for the Provider's default or insolvency, the Provider grants the Contracting Authority an irrevocable, royalty-free, non-exclusive licence (including a right to sub-licence) to use the Documents and Project Documentation in connection with the use of the Energy efficiency improvement measures including for the purpose of:

- (a) completing the design, manufacture, testing, commissioning and delivery of the Energy efficiency improvement measures works, following termination of the Agreement by the Contracting Authority for default; and
- (b) testing, operating, maintaining, repairing, upgrading and modifying the Energy efficiency improvement measures works.

17.7 The rights and obligations set out in this Clause 17 survive the expiry or earlier termination of the contract.

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18 FORCE MAJEURE

- 18.1 Inability of any party to fulfil the terms and conditions of this contract shall not entitle the one party to a claim of performance toward the other party nor will it be considered a breach of this contract if such inability is caused by force majeure.
- 18.2 Force majeure, in terms of Paragraph 1 of this Article, includes all unforeseen and unavoidable events which are beyond the parties' control. In any event, force majeure includes any extraordinary event, circumstance or combination of events and circumstances, beyond the control of the party to the contract which arose on or after the day of the execution of this contract and which affect the rights and obligations which arise from this contract and whose influence could not have been foreseen, prevented, reduced or mitigated, even with due care of the parties.
- 18.3 Party affected by the event of the force majeure shall notify the other party to the contract, in writing, on the events and/or circumstances of the force majeure, as defined by this Article, as soon as possible after the occurrence of aforementioned events and/or circumstances, where the affected party shall notify the second party on obligations which it is unable to perform while these events/circumstances exist. After the delivery of the aforementioned notice to the other party, the affected party shall continue to promptly inform the other party in writing on all subsequent developments of the events and/or circumstances of force majeure, and it shall inform the other party on the time period in which it can be reasonably expected that the other party shall be able to continue with the performance of undertaken obligations.
- 18.4 In the case of occurrence of the event or circumstance of force majeure in accordance with this Article, the Contractual period shall be temporarily suspended. Also, obligations which arise from this contract shall be temporary suspended until the circumstances or events of force majeure exist. Parties undertake to make maximum joint efforts in order to eliminate the effects of force majeure.
- 18.5 After the force majeure has passed, the term to which this contract was entered into shall be extended by the duration of the force majeure.
- 18.6 If the events/circumstances of force majeure continue for more than 180 consecutive days, both parties shall be authorised to unilaterally terminate this contract, with immediate effect.

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19 TERMINATION OF THE CONTRACT

19.1 Expiry and Termination of the Contract

19.1.1 The contract shall expire on the last day (24 hours) of the Contractual period..

19.1.2 The Party shall be authorised to unilaterally terminate the contract before the expiry of the contract only in the event of a breach of the provisions of the contract, as defined in Articles 19.2 and 19.3.

19.1.3 Termination of the contract shall not affect other legal remedies available to the parties.

19.2 Breach of the provisions of the contract by the Provider

19.2.1 The Provider shall be entitled to unilaterally terminate the contract if:

- (i) The Provider fails to perform the Energy efficiency improvement measures in accordance with the Tender Documentation, Bid, Project, provisions of this contract and professional standard (deficiency in the performance) even after a subsequent reasonable term for correction of observed deficiencies;
- (ii) The Provider fails to perform the Energy efficiency improvement measures in due time (late performance) even after it was allowed a subsequent reasonable term for correction of observed deficiencies;
- (iii) The Guaranteed savings were not achieved due to the circumstances attributable to the Provider, which are under Provider's control and for which the Provider is responsible;
- (iv) If the Provider fails to provide the guarantee for normal performance of contractual obligations pursuant to Article 12.1. of this contract;
- (v) If the Provider enters bankruptcy, or is in the process of pre-bankruptcy settlement or is in the process of voluntary liquidation or bankruptcy.

19.2.2 In cases mentioned under (i), (ii) and (iii), the Contracting authority shall give the Provider an additional reasonable deadline in order to enable the Provider to rectify the breach of contract. If the Provider fails to rectify the breach of contract within such subsequent reasonable deadline, the Contracting authority shall be entitled to terminate the contract by sending a written notice on termination of the contract to the Provider by registered mail with return receipt. The contract shall be considered to be terminated after the period of 15 calendar days from the day the contract termination notice was sent.

19.2.3 If the contract is terminated pursuant to previous Paragraph, the Provider undertakes to complete all obligations which are on-going at the time of termination and/or which will become due before or on the day of the termination, with the purpose to enable the another service provider, selected by the Contracting authority, to take over the

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performance of this contract. The Provider shall actively cooperate with the Contracting authority, and comply with all reasonable requests for transfer of obligations under the Contract to another service provider, or to the Contracting authority.

19.3 Breach of the provisions of the contract by the Contracting authority

19.3.1 The Provider shall be entitled to unilaterally terminate the contract if the Contracting authority:

- a) breaches any material obligation stipulated by this contract;
- b) if it fails to pay the Compensation for more than 3 (three) consecutive months.

19.3.2 The Provider shall be entitled to terminate the contract by sending a written notice on termination of the contract to the Contracting authority by registered mail with return receipt. The contract shall be considered to be terminated after the period of 15 calendar days from the day the contract termination notice was sent.

19.4 Compensation in the event of unilateral termination

19.4.1 In case of contract termination by the Contracting authority, due to a violation of contractual provisions, as stipulated by Article 19.2, the Contracting authority shall be entitled to: (i) encash the bond stipulated by Article 12.1, (ii) charge the contractual penalty stipulated by Article 13., if the breach of the contract consists in a delay in the implementation of Measures which has not been remedied in the subsequently given deadline.

19.4.2 Rights indicated under (i) and (ii) can be realised cumulatively only up to the amount of actual damages suffered by the Contracting authority.

19.4.3 In the event of the termination of the contract by the Provider due to a breach of the provisions of the contract as stipulated by Article 19.3 of this contract, the Provider shall be entitled to activate the guarantee stipulated by Article 12.2 of this contract.

19.4.4 In the event that one party unilaterally terminates the contract without due cause and contrary to the provisions of Article 19.2 and 19.3, which define the unilateral termination of the contract, the other party shall be entitled to compensation for the

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damages which occurred as a consequence of unfounded unilateral termination of the contract.

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20 DISPUTE RESOLUTION AND APPLICABLE LAW

20.1 Resolution of Technical Disputes

- 20.1.1 In the event of the technical disputes between the parties stipulated by provisions of Article 6.3.2 and/or Article 8.2.4 of this contract, the dispute shall be forwarded to third party for resolution, or, where applicable, to the authorised body. The third party or the authorised body shall be jointly appointed by the Provider and the Contracting authority by their unanimous decision within 15 calendar days from the day of the occurrence of subject dispute. Should the Parties fail to agree on a person or an authorised body which shall resolve the dispute, the Parties agree that such role shall be taken by the President (at the relevant time) of the Croatian Association of Civil Engineers in Zagreb, Croatia. The third party, appointed in the aforementioned manner, shall resolve the dispute within 30 calendar days from the day on which the Provider or Contracting authority have submitted the claim for dispute resolution to the aforementioned third party. Should the dispute not be resolved within 30 calendar days, the Parties shall agree on an extension of such period. Should the Parties fail to agree on the extension or should the dispute not be resolved either during the initial 30-day period or the extended period, a Party shall have the right to forward the dispute for resolution pursuant to Article 20.2.3.
- 20.1.2 Decision of the aforementioned third party shall be final and binding for the parties and compensation for the work performed by the third party in the resolution of the technical disputes shall be borne by the party who lost the dispute and every party shall bear its expenses of legal representation as well as other expenses which do not constitute expenses for compensation for the work provided by the third party. For avoidance of doubt, the Parties agree that the third party or the authorised body appointed in the manner of Article 20.1.1 shall have the right to resolve the technical dispute under Article 6.3.2 and/or Article 8.2.4 only. A claim for breach of any civil right a Party shall forward for resolution pursuant to Article 20.2.3.
- 20.1.3 For the period, starting from the day the Provider and/or Contracting authority forwarded the request for technical dispute resolution to the third party stipulated in Paragraph 20.1.1 of this Article to the time the third party rendered its decision, performance of obligations arising from this contract shall continue to run for both Parties. Should the third party, or the authorised body, fail to resolve the dispute with the result of a Party forwarding such technical dispute for resolution pursuant to Article 20.2.3, performance of obligations arising from this contract may, at the option of the relevant party (the claimant), be temporarily suspended for the relevant party (the claimant) as of the day the dispute has been forwarded for resolution pursuant to Article 20.2.3 unless a Party has already terminated this contract.

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- 20.1.4 Should the decision of the third party under Article 20.1.2 in resolution of the technical dispute under Article 8.2.4 be rendered in favor of Provider (i.e. the savings have been achieved), the Contracting authority shall pay to the Provider any amount of the compensation for energy service which was previously disputed, statutory default interest accrued on any such amount as well as damages the Provider has sustained.
- 20.1.5 Should the decision of the third party under Clause 20.1.2 in resolution of the technical dispute under Article 8.2.4 be rendered in favor of Contracting Authority (i.e. the savings have not been achieved), the Contracting Authority shall have no obligation to pay to the Provider any amount of the compensation for energy service which was previously disputed.
- 20.1.6 Should the decision of the third party under Clause 20.1.2 in resolution of the technical dispute under Article 6.3.2 be rendered in favour of the Contracting authority, the Contracting authority shall call the Provider to remedy defects of the Energy increase project identified by the decision of the of the third party under Clause 20.1.2 during the consequently approved period of 15 calendar days, or any longer period the Contracting authority deems reasonably appropriate. Should these defects not be remedied during the cure period, the Contracting authority shall have the right to cancel the Contract unilaterally and charge the warranty for regular fulfilment of contractual obligations in Article 12.1.
- 20.1.7 Should the decision of the third party under Clause 20.1.2 in resolution of the technical dispute under Article 6.3.2 be rendered in favour of the Provider, the Contracting authority shall without further delay approve the Energy efficiency increase project as stipulated in Clause 6.3.6 and shall compensate to the Provider any damage the Provider has sustained due to the Energy efficiency increase project being disputed by the Contracting authority.

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20.2 **Applicable law and Jurisdiction**

- 20.2.1 This contract was composed in accordance with and is subject to legal regulations of the Republic of Croatia.
- 20.2.2 Parties shall endeavour to resolve all disputes, differences or claims arising under or relating to this contract by mutual agreement.
- 20.2.3 If an amicable resolution of the disputes, differences or claims arising under or relating to this contract is not possible, such disputes, differences or claims shall be resolved before the court of subject matter jurisdiction of the Republic of Croatia [seat of the court].

[*Alternatively*]

This contract was composed in accordance with and is subject to legal regulations of the Republic of Croatia.

Parties shall endeavour to resolve all disputes, differences or claims arising under or relating to this contract by mutual agreement.

All disputes arising out of or relating to this contract, including such relating to its breach, termination or invalidity, and any legal consequence thereof, shall be finally settled by arbitration in accordance with the Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy as in force (“the Zagreb Rules”).

The number of arbitrators shall be 3 (three). The substantive law of the Republic of Croatia shall be applicable. The language to be used in the arbitral proceeding shall be Croatian. The place of arbitration shall be Zagreb, Croatia. Each Party shall appoint (1) arbitrator from the List of Arbitrators constituted at the Croatian Chamber of Economy. The third and presiding arbitrator shall be appointed by the two arbitrators appointed by the Parties. If the two Party appointed arbitrators do not appoint the presiding third arbitrator within 30 days of the appointment of the last of the Party appointed arbitrators, the Chairman at the relevant time of the Permanent Arbitration Court at the Croatian Chamber of Economy shall appoint the third presiding arbitrator.

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21 FINAL PROVISIONS

21.1 Schedules

21.1.1 Schedules attached to this contract are an integral part thereof, as follows:

Schedule 1: Public lightning system and description of the Public lighting system

Schedule 2: Project assignment

Schedule 3: The Bid

Schedule 4: Bid Tables

Schedule 5: Project

Schedule 6: Handover record

Schedule 7: Guidelines for monitoring savings

Schedule 8: Authorised representatives

21.2 Number of Copies

21.2.1 This contract has been drafted in [*enter the number of copies*] identical copies, of which each party shall retain [*enter the number of copies*]

[enter the place and date of the signing]

For the Contracting authority:

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(stamp and signature of the Authorised representative)

For the Provider:

(stamp and signature of the Authorised representative)

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Schedules:

Schedule 1: Public lightning system and description of the Public lighting system

Schedule 2: Project Assignment

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