

**APPENDIX G: Energy Performance Exhibits (for use with owner’s own contract form)**

**In 2008, the Building Owners and Managers Association (BOMA) International and the Clinton Climate Initiative (CCI) partnered to develop the BOMA Energy Performance Contracting (BEPC) model, a groundbreaking model contract and supporting documents that allow building owners and operators to execute comprehensive performance-based energy efficiency retrofits to existing buildings. In 2015, BOMA updated and re-launched BEPC to add more options for executing larger retrofits and to reflect the state of the retrofit industry. With the new BEPC model and exhibits, real estate owners can use their own standard contract forms and attach BEPC model exhibits with appropriate modifications to align with the owner’s forms and the particular requirements of the project.**

*Owners must recognize that the attached Exhibits are model templates that may or may not be suitable for a particular project; the Exhibits are intended as a guide. Parties using this document are advised to consult with legal counsel with expertise in energy efficiency retrofits.*

All "standard" terms included in any contract involving design and construction activities should sufficiently protect the owner's business expectations and account for the unique aspects of energy performance contracting. In particular, owners should consider how the following terms may need modification to account for an energy performance contract:

1. Schedule for Completion. The contract needs to include a construction schedule relating to the entire project and for each energy conservation measure (ECM). If the completion of the ECMs by a specified date is critical to the owner's business operations (for example, the ECMs need to be completed prior to occupancy by a new tenant), the owner should also consider including a liquidated damages provision protecting against late completion. In addition, the owner should consider specifying an outside fixed date by which the performance guarantee will commence, even if the ECMs have not been completed, to ensure the Service Provider Service Provider has a sufficient contractual motivation to complete the ECMs on schedule.
2. Achieving Substantial Completion and Final Acceptance. The contract needs to clearly define the Service Provider's obligations for achieving substantial completion and final acceptance. Many ECMs will require commissioning to verify that the systems are installed, calibrated, and perform according to the owner’s project requirements, basis of design, and construction documents. If appropriate, commissioning should be a prerequisite for achieving substantial completion, and the contract documents should identify the commissioning agent or a process for selecting a commissioning agent. In addition, the contract should ensure that the determination of substantial completion is a joint decision by the owner and Service Provider.
3. Payment Schedule. If payments are made to the Service Provider during the course of the installation of the ECMs, the contract needs to clearly define the process for payments, including the schedule for payments (e.g., upon achievement of certain milestones, pursuant to a schedule of values, etc.), the process for approving the work related to an invoice, lien waivers, withholding of payments, and retainage. Depending on the business arrangement, the contract may provide for final payment for each ECM upon completion of that ECM (as opposed to final payment for the entire project upon completion of all work).
4. Permits and Approvals. The contract should clearly assign responsibility for obtaining all permits and approvals for the project. An “owner-friendly” provision would require the Service Provider to secure and pay for all necessary permits and approvals, except for any permits/approvals explicitly made the owner’s responsibility under the contract.
5. Safety/Coordination with Other Building Occupants*.* ECMs will typically be implemented while the building remains occupied, and the contract needs to ensure the installation of the ECMs does not disrupt operations.
6. Key Personnel. If the owner considers certain Service Provider personnel critical to the delivery and installation of the project, the owner should consider adding a “key personnel” provision that identifies these personnel (e.g., on an Exhibit) and requires owner approval for removal or replacement of key personnel.
7. Warranty*.* The Service Provider's warranty for the work in an EPC may extend for a longer period than a "typical" construction contract. The contract should also address the Service Provider’s responsibilities for furnishing manufacturers’ warranties completed in favor of the owner.
8. Default and Termination*.* All events of default and remedies in case of default need to be clearly specified. The owner should have the right to terminate only a portion of the work (for example, relating only to one ECM) and complete the work using other contractors.
9. Intellectual Property Rights*.* The owner needs to ensure it obtains sufficient intellectual property rights in the drawings and specifications prepared by the Service Provider and its subcontractors to complete the work if the Service Provider's services are terminated, and to perform ongoing maintenance and repair activities.
10. Environmental Remediation*.* The contract needs to clearly address the handling of any regulated environmental materials that may be encountered during the installation of the ECMs, such as Asbestos Containing Material (ACM).
11. Assignability*.*  The owner needs to ensure it can assign the contract to a new owner or related corporate entity without invalidating the performance guarantee.

**BOMA Energy Performance Contracting Model Exhibits**

1. **Project Description**
2. **Performance Guarantee**
3. **Methodology and Baseline**
4. **Performance Tracking Services**
5. **Performance Tracking Payment Schedule**
6. **Required Maintenance.**

**EXHIBIT A**

**PROJECT DESCRIPTION**

**Section I. Overview Description of the Project.**

[*Insert a general overview description of the project. Also detail any of the Service Provider's related obligations, such as helping the Customer to achieve an Energy Star rating/certification or LEED-EBOM certification for the building*.]

**Section II. Description of ECMs by Facility**

[*This Section should be used for projects involving multiple building locations. Include chart identifying ECMs at each Facility, e.g. the following example.*]

|  |  |  |
| --- | --- | --- |
| **ECM #** | ***Location(s)*** | ***ECM Description*** |
| *1* |  |  |
|  |  |  |
| *2* |  |  |
|  |  |  |
| *3* |  |  |

**Section III. Detailed Description of ECMs**

[*For each, describe:*

* *Specifications relating to type of product used, number of units, etc.*
* *Training and other support provided to Customer prior to final acceptance date.*
* *Warranty Period [warranty periods for any ECMs that extend beyond the general warranty period identified in the Contract.*
* *Commissioning requirements.*]

**EXHIBIT B**

**PERFORMANCE GUARANTEE**

**Section I. Definitions.**

All capitalized terms used in this Exhibit B shall have the meaning set forth below.

A. Causes for Adjustment: The causes for adjustment to the energy savings calculations set forth in Section VI of Exhibit C.

B. Closing Stub Year: This term is defined in Section III of this Exhibit B.

C. Contract: The agreement between the Service Provider and Customer for the Project to which this Exhibit is attached and incorporated into.

D. ECMs: The energy conservation measures and related services described in Exhibit A.

E. Environmental Incentives. All rights, credits (including tax and carbon credits), rebates, grants, benefits, reductions, offsets, allowances, incentive programs, and entitlements of any kind, howsoever entitled or named, whether arising under federal, state or local law, international treaty, trade association membership, utility services, nongovernmental programs, or otherwise, arising from the development or installation of the ECMs and the Project and the reduction of energy usage or demand at the Facilities described in Exhibit A.

F. Guarantee Term: The period running from and after the Savings Guarantee Commencement Date for a period of [\_\_\_\_\_\_\_\_\_\_][[1]](#footnote-1) years, unless earlier terminated pursuant to Section II.B of this Exhibit.

G. Guaranteed Annual Savings Amount: [$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_][[2]](#footnote-2), calculated for each Performance Guarantee Year as set forth in the following table. However, if the Performance Guarantee Year is an Opening Stub Year or Closing Stub Year, the Guaranteed Annual Savings Amount applicable to such Performance Guarantee year shall be [$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_][[3]](#footnote-3) multiplied by a fraction, the numerator of which is the number of days in such Performance Guarantee Year and the denominator of which is the number of days in the calendar year during which the Performance Guarantee Year occurs (i.e., 365 or 366 days).

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Performance Guarantee Year[[4]](#footnote-4) | Guaranteed Energy Savings | | | Operation and Maintenance Savings | Utility Savings | Guaranteed Annual Savings Amount |
| kWh | Therms | kGal |
| 1 |  |  |  |  |  |  |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 |  |  |  |
| 5 |  |  |  |
| 6 |  |  |  |
| 7 |  |  |  |
| TOTAL |  |  |  |  |  |  |

H. Guaranteed Project Savings Amount: [$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_][[5]](#footnote-5)

I. Installation Period Savings: The savings generated during the period from the Date of Commencement to the Savings Guarantee Commencement Date for the categories of savings included within the Measured Savings Amount calculations.

J. Measured Savings Amount: Savings to the Customer resulting from the implementation of the Project, measured and calculated in accordance with Exhibit C, Section III, multiplied by the rates for each energy savings category set forth in Exhibit C, Section IV.B.

K. Non-measured Savings Amount: Savings to the Customer resulting from the implementation of the Project in the amounts stipulated in Exhibit C, Section III.C.

L. Opening Stub Year: This term is defined in Section III of this Exhibit B.

M. Performance Guarantee Payment: This term is defined in Section II of this Exhibit B.

N. Performance Guarantee Year: Each period during which energy savings are measured, as specified in Section III of this Exhibit B.

O. Performance Tracking Services: Those services to be provided by the Service Provider to measure and verify the performance of the ECMs described in Exhibit D.

P. Prior Year Calculations: This term is defined in Section IV of this Exhibit B.

Q. Project: The building analysis, design, engineering, installation, repairs, retrofit, performance monitoring, and training services described in Exhibit A.

R. Project Savings Amount: The Measured Savings Amount and the Non-measured Savings Amount.

S. Savings Guarantee Commencement Date: The first day of the first utility billing period following the earlier to occur of: (1) the month in which substantial completion of the entire Project occurs in accordance with the Contract; or (2) the final acceptance date set forth in the Contract.

**Section II. Performance Guarantee and Guarantee Term.**

A. Performance Guarantee. The Service Provider guarantees that the Project Savings Amount over the Guarantee Term will equal or exceed the Guaranteed Project Savings Amount. For each Performance Guarantee Year, the Service Provider guarantees that the Project Savings Amount will equal or exceed the Guaranteed Annual Savings Amount. During the Guarantee Term, in the event the Project Savings Amount in any Performance Guarantee Year is less than the Guaranteed Annual Savings Amount, the Service Provider will pay the Customer the difference between the Guaranteed Annual Savings Amount and the Project Savings Amount ("Performance Guarantee Payment").

B. Termination of Guarantee Term.

1. Customer may terminate the Guarantee Term at any time upon written notice to Service Provider. In the event of any such notification, the Guarantee Term shall terminate as of the last day of the current Performance Guarantee Year, provided Customer has made the required payment for Performance Tracking Services for such year in accordance with Exhibit E.

2. In the event Customer fails to make payment for the Performance Tracking Services by the payment due date, Service Provider shall notify Customer of such failure. If payment is not made within an additional twenty (20) days after notification to Customer, the Guarantee Term shall automatically terminate without further action by the Parties.

[C. Insurance for Performance Guarantee.[[6]](#footnote-6) As further assurance of the Service Provider’s Performance Guarantee Payment obligations set forth in this Section, the Service Provider shall maintain in full force and effect throughout the Guarantee Term a contractual liability insurance policy that insures that for each Performance Guarantee Year, the Project will produce a Project Savings Amount at least equal to the Guaranteed Annual Savings Amount. Such insurance policy shall be issued by an insurance company and include such coverage terms as are reasonably acceptable to Customer, and be issued in an amount not less than the Guaranteed Annual Savings Amount.]

**Section III. Performance Guarantee Year.**

The Customer seeks to align the Performance Guarantee Year with the [calendar year] for budgeting purposes, and therefore each of the following periods shall serve as a "Performance Guarantee Year":

i. the period from the Savings Guarantee Commencement Date through the next December 31 (such initial period referred to herein as the "Opening Stub Year")[[7]](#footnote-7);

ii. [ ][[8]](#footnote-8) 12-calendar month periods, each running from January 1 through the next December 31, with the first such period including the first January 1 following the Savings Guarantee Commencement Date and continuing through the next December 31; and

iii. the period running from the January 1 following conclusion of the fourteenth (14th) 12-month period described in subparagraph (ii) immediately preceding and continuing through and including the fifteenth (15th) anniversary of the Savings Guarantee Commencement Date (such final period referred to herein as the "Closing Stub Year").

As set forth in Exhibit C, the formulas for calculating the Project Savings Amount are designed to accommodate and yield accurate results for Performance Guarantee Years of varying lengths, including both periods exceeding 12 months in length and any stub years.

**Section IV. Calculation of Project Savings Amount.**

Throughout the Guarantee Term, the Customer will provide the Service Provider with all utility bills pertinent to the energy performance calculations described in this Contract within thirty (30) days of receipt. The Customer may provide the Service Provider with copies of bills, or access to invoices via an on-line system. Within sixty (60) days of the Service Provider's receipt of all pertinent utility bills with meter-reading ending dates falling within a Performance Guarantee Year (including the Opening Stub Year or Closing Stub Year), the Service Provider will prepare and provide to the Customer its proposed calculation of the Project Savings Amount (as calculated pursuant to Exhibit C) and, if applicable, the amount of the Performance Guarantee Payment for the immediately-preceding Performance Guarantee Year (the "Prior Year Calculations"). The Service Provider must account for all Causes for Adjustment to the energy performance calculations permitted by Exhibit C arising during the preceding Performance Guarantee Year within the Prior Year Calculations, and the Service Provider waives the right to make any claim for Causes for Adjustments not specified within the Prior Year Calculations. Within thirty (30) days of the Customer's receipt of the Prior Year Calculations, the Customer will notify the Service Provider of (1) the Customer's approval of all or any portion of the Prior Year Calculations; and/or (2) the Customer's disapproval of all or any portion of the Prior Year Calculations, including the basis for the disapproval. Within thirty (30) days of receiving notification of the Customer's approval of all or any portion of the Prior Year Calculations, the Service Provider will pay to the Customer the Performance Guarantee Payment, if any, due to the Customer on account of the approved portion of the Prior Year Calculations. If the Customer disapproves all or any portion of the Prior Year Calculations, the Parties will use good faith efforts to resolve such dispute within thirty (30) days of notification to the Service Provider. If the Parties are unable to resolve the matter within a thirty (30) day period, the dispute shall be resolved in accordance with Section IX of this Exhibit.

**Section V. Installation Period Savings; Excess Savings.**

Installation Period Savings will belong exclusively to the Customer and will not be added to the Project Savings Amount for the Opening Stub Year or any other Performance Guarantee Year. In the event that the Project Savings Amount exceeds the Guaranteed Annual Savings Amount in any Performance Guarantee Year, the excess savings shall belong and accrue to the Customer and shall not reduce the Service Provider’s liability for achieving the Project Savings Amount in any other Performance Guarantee Year.

**Section VI. Additional Terms Applicable to the ECMs and Performance Guarantee.**

1. Customer Maintenance. Throughout the Guarantee Term, the Customer agrees to perform, or cause to be performed, the maintenance specified in Exhibit F with allowance for normal wear and tear.
2. ECM Malfunction. The Service Provider agrees to compensate the Customer for business expenses, damages to real or personal property, lost profits, or lost revenues incurred by the Customer resulting from ECM malfunction to the extent caused by nonperformance or error by the Service Provider or its subcontractors.

1. Repair and Replacement of ECMs. If the Service Provider or the Customer find that an ECM requires repair or replacement, the other Party must be notified and the Service Provider will repair or replace the ECM if required to do so pursuant to its obligation to correct the work or its warranty obligations under the Contract. If the Service Provider is not required to repair or replace the ECM and the manufacturers' warranties apply to the ECM requiring repair or replacement, the Customer will cause the repair or replacement of the ECM in accordance with the manufacturers' warranties. If the Service Provider is not required to repair or replace the ECM and the manufacturers' warranties do not apply, the Customer may elect to either repair or replace the ECM at the Customer’s expense, or the Customer may elect to not repair or replace the ECM and adjust the energy performance calculations accordingly. If the Customer elects to repair or replace the ECM, the Service Provider and Customer will agree to a schedule that establishes reasonable timeframes for the engineering, procurement, and construction and installation associated with such work. The Parties will use good faith efforts to agree to any necessary adjustments to the energy performance calculations that account for the energy savings attributable to the period of time needed to repair or replace the ECM. However, any such adjustments to the energy performance calculations are subject to the terms and provisions of Section VI of Exhibit C, which require the Service Provider to notify the Customer within sixty (60) days of the Service Provider becoming aware of a possible Cause for Adjustment, and to specify all Causes for Adjustment in the annual guaranteed savings reconciliation process.
2. Environmental Incentives. The Customer owns, and may assign or sell in its sole discretion, all right, title, and interest associated with Environmental Incentives. Environmental Incentives will not be included within any calculation of savings or otherwise reduce the Service Provider’s responsibility for achieving the Guaranteed Annual Savings Amount. Service Provider will provide reasonable support to Customer for its pursuit of Environmental Incentives, including providing information on the installation and performance of the ECMs and the Project necessary for the completion of related applications and reports.
3. Performance Tracking Services. Commencing upon the final acceptance of each ECM and continuing throughout the Guarantee Term, the Service Provider will perform the Performance Tracking Services. During the Guarantee Term, the Customer will make annual payments to the Service Provider for the Performance Tracking Services in the amounts set forth in Exhibit E.

**Section VII. Termination of Guarantee Term.**

The Guarantee Term shall continue through the last day of the Closing Stub Year, unless early terminated in accordance with Exhibit E as the result of the Customer’s notification of termination or the Customer’s failure to make a required payment.

**Section VIII. Project Modifications to Maximize the Project Savings Amount.**

The mutual goal of the Parties is to maximize the Project Savings Amount. Therefore, the Service Provider will have the right, at all times during the Guarantee Term, subject to the Customer's prior written approval, to modify the scope of the Project, to modify or replace any of the ECMs or install additional ECMs and to revise any procedures for the operation of the ECMs or implement other procedures at the Facilities provided that: (i) such actions by the Service Provider do not result in modifying the standards of comfort and service set forth in Exhibit C without the express prior written approval of the Customer; (ii) such actions do not detrimentally affect site operations or use and occupancy of the Facilities; (iii) such actions are necessary to enable the Service Provider to achieve the Guaranteed Annual Savings Amount; and (iv) any costs incurred relative to such modifications, additions or replacements of the ECMs, or operational changes or new procedures or additional maintenance necessitated by the ECMs, shall be the sole responsibility of the Service Provider. All modifications, additions, or replacements of the ECMs or revisions to operating or other procedures will be described in a supplemental schedule(s) to be provided to the Customer for approval, which will not be unreasonably withheld or delayed, and incorporated into this Contract through a change order, and the work related to such modifications, additions, or replacements shall be carried out in accordance with all of the terms and provisions of the Contract applicable to the performance of the work. Any replacement ECM shall be new and have equal or better potential to reduce energy consumption at the Facility than the ECM being replaced. As part of any Project scope modifications, the Service Provider shall update any and all software during the implementation necessary for the operation of the ECMs. All replacements of and alterations or additions to the ECMs shall become part of the ECMs described in Exhibit A and shall become the property of the Customer.

**Section IX. Disputes Regarding Energy Performance Calculations.**

Any disputes concerning the calculation of the Prior Year Calculations, Causes for Adjustment, or other energy or consumption calculations described in Exhibit C shall be resolved as follows:

1. First, the Parties will use good faith efforts to resolve such dispute within twenty (20) days of written notification from the other Party of the dispute.

2. If the Parties are unable to resolve the matter within a twenty (20) day period, the dispute shall be submitted to a third party professional engineering firm reasonably acceptable to both the Service Provider and the Customer. The determination of the engineering firm will be final and binding upon both the Customer and the Service Provider. The Service Provider and the Customer will each be responsible for half of the fees of the engineering firm.

The disputed calculation shall not take effect until there is a final adjudication or resolution of the dispute in accordance with this Section IX.

**Section X. Examples.**

Attachment 2 of Exhibit C sets forth examples of calculations of energy savings for illustrative purposes. The Parties intend for the calculation of the Prior Year Calculations to conform to these examples.

**EXHIBIT C**

## **METHODOLOGY AND BASELINE**

**I. OVERVIEW**

This Exhibit describes the measurement and verification ("***M&V***") methodology that will be applied to the Project, and each separate ECM included within the Project. The Parties intend that the M&V methodology will be used to determine whether the Project described in Exhibit A achieves the Guaranteed Annual Savings Amount set forth in Exhibit B for each Performance Guarantee Year.

The M&V methodology to be employed for the Project is consistent with the U.S. Department of Energy ("***DOE***") and International Performance Monitoring and Verification Protocol ("***IPMVP***"), Option [\_\_\_\_\_], [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

[*Specifically describe M&V methodology, including charts/graphics as appropriate.*]

**II. Baseline**

The baseline is that set of parameters that describes both the energy consumed in the base year calculation for each type of energy consumed ("***Base Year***")and the conditions that caused that consumption to occur, including utility consumption, facilities use information, weather data, and other information as may be necessary to describe the Base Year conditions (collectively, the "***Baseline***").For electricity, the Base Year is calculated as a twelve-month average of the electricity consumed between [\_\_\_\_\_\_\_\_\_\_] and [\_\_\_\_\_\_\_\_\_\_\_\_]; and for natural gas the Base Year is calculated as a twelve-month average based on natural gas consumed between January [\_\_\_\_\_\_\_\_\_\_] and [\_\_\_\_\_\_\_\_\_\_\_\_]. Field collected data and inputs and outputs used in the Baseline calculations are summarized in the "Baseline Assumptions" set forth on Attachment 1 to this Exhibit C. The Baseline is further described in Sections IV and V of this Exhibit C. For each Performance Guarantee Year, the Parties will determine any Causes for Adjustment pursuant to Section VI of this Exhibit to establish certain adjustments to the Baseline used to measure energy use at the Facilities for that Performance Guarantee Year ("***Adjusted Baseline***").

**III. DETERMINATION OF PROJECT SAVINGS AMOUNT**

**A. Project Savings Amount**

For purposes of the performance guarantee described in Exhibit B, the Project Savings Amount will be determined as follows:

$ = $M + $N

Where:

$ = Project Savings Amount

$M = Measured Savings Amount, calculated as set forth in Subsection 3.B below.

$N = Non-measured Savings Amount, stipulated as set forth in Subsection 3.C below.

**B. Measured Savings Amount**

The Measured Savings Amount for any Performance Guarantee Year will be the sum of the "Measured Energy Savings" for all savings categories (*i.e*., kWh, Therms, or kGals). The Measured Energy Savings for each savings category will be determined as follows:

$O = EO \* $/Unit

EO = EMB – EMG

Where:

$O = Measured Energy Savings

EO = Measured Energy Units Saved (including partially measured and stipulated, as further described in this Exhibit C)

$/Unit = Cost of Energy per Unit Measured, as specified in this Exhibit C, Subsection IV.B

EMB = Measured Base Year Consumption or Demand

EMG = Measured Guarantee Year Consumption or Demand

The process for calculating Measured Energy Units Saved for each ECM is set forth below.

[*Specify the M&V Plan for each ECM, including, as appropriate:*

*1.0 Overview of Measurement and Verification ("M&V") Plan*

*2.0 Verified Savings Calculation Methodology*

*3.0 Baseline M&V Activities*

*4.0 Post-Installation M&V Activities*

*5.0 Performance Period M&V Activities*]

**C. Non-measured Savings Amount**

As a result of implementing certain ECMs, additional non-energy savings may accrue which the Parties have agreed should be stipulated. The following savings amounts shall be included in each annual calculation of the Project Savings Amount:

[*Specify and describe type of savings and annual stipulated savings amount in $$.*]

**IV. WEATHER SOURCE AND Energy Rates**

**A. Weather Source**

Data for weather-related calculations used in this Contract will be daily high-low temperatures obtained from the National Weather Service Station [in closest proximity to the Facilities][[9]](#footnote-9). If the data source becomes unavailable or a superior source is identified, the Parties will mutually agree upon an alternative data source. Actual weather data for Performance Guarantee Years will be used for Measured Savings Amount calculations during the Guarantee Term.

**B. Energy Rates**

The rates set forth in this Subsection will be used to determine the Measured Savings Amount. The rates set forth below will be escalated by [\_\_\_%] each Performance Guarantee Year, commencing with the second Performance Guarantee Year.

| **Service** | **Cost** | **Unit** |
| --- | --- | --- |
| Electric | $ | kWh |
| Natural Gas | $ | Therm |
| [*other*] |  |  |

**V. Building Schedule and Operations**

**A. Calendars and Schedules**

Except for the Additional Occupancies described below and as otherwise authorized by this Section V, the Customer will operate the conditioned spaces in the Facilities within the date/times and occupancy schedules set forth below.

[*Provide occupancy schedule for all Facility types*]

The Service Provider acknowledges that the Customer conducts certain occasional activities outside of the Occupancy Schedule, including [*describe occupancies that do not comply with standard schedule*] ("***Additional Occupancies***"). The Service Provider acknowledges that it has evaluated the Additional Occupancies as part of its audit and analysis for the Project, and that the Additional Occupancies are factored into the calculation of the Baseline. Additional Occupancies shall not constitute a Cause for Adjustment to the energy savings calculations.

***Holidays:*** The Facilities will be unoccupied on the dates the following holidays are observed:

[*Specify days Facilities will be unoccupied*.]

These occupancy schedules will not apply in any instance where the Service Provider or its representatives direct or approve the running of equipment outside of the occupancy schedules in order to improve the efficiency of the ECMs and related equipment.

**B. Standards of Service and Comfort**

The Customer will operate the conditioned spaces in the Facilities within the temperature ranges scheduled in the Temperature Control Table below. Operating conditions outside the range specified in this table shall constitute a Cause for Adjustment under this Contract. However, the Service Provider acknowledges that adjustments to the temperature ranges within spaces of less than [*2000*] square feet to accommodate tenant comfort and use of the space do not constitute a Cause for Adjustment, provided spaces with adjustments outside of the temperature ranges do not exceed [*5% of the total gross area*] of a particular Facility.

**Temperature Control Table**

|  |  |  |
| --- | --- | --- |
|  | Heating  Set-point  Range | Cooling  Set-point  Range |
| Occupied |  |  |
| Unoccupied |  | Off |

**VI. CAUSES FOR ADJUSTMENT**

Adjustments to the Baseline to establish an Adjusted Baseline, as described in Section II, are intended to adjust for any operations or conditions that differ from those assumptions made when the guaranteed savings were calculated. Each of the causes described in the table below shall constitute a "Cause for Adjustment" to the Baseline used to calculate the Measured Savings Amount. Any disputes regarding a Cause for Adjustment shall be addressed pursuant to Section IX of Exhibit B.

|  |  |
| --- | --- |
| Cause | Action |
| Renovation/ Addition to Building w/ Independent Utility Metering and HVAC Service | 1. None required. Site is independently metered. No effect on savings tracking of other buildings. |
| New Energy User on Existing Utility or HVAC Service | 1. The Customer will notify the Service Provider when additions are planned. 2. The Service Provider will review the addition plans and determine if the addition is likely to increase energy use above the threshold limits.\* 3. If the addition is expected to exceed any of the threshold limits then all incoming utilities (consumption and demand) and HVAC service for the addition will be accounted for in updated savings calculations at the request and expense of the Customer. 4. If the addition is below all of the threshold limits, the addition’s energy consumption will be estimated from computerized building simulation, manual calculations or as a ratio of the main building’s energy consumption, obtained either from sub-meter data (if available) and/or energy simulations. |
| Renovation / Modification of Building on Existing Utility or HVAC Service (including additional plug load or other equipment) | 1. The Customer will notify the Service Provider when building renovations are planned. 2. The Service Provider will review the renovation plans and determine if the renovations are likely to cause a change in energy use that would exceed the threshold limits.\* 3. If the renovations are expected to raise or lower energy consumption more than the threshold limits, the renovation's impact on energy use will be accounted for in updated savings calculations at the request and expense of the Customer. 4. If the expected changes are less than the threshold limits, the effect on energy may be estimated, or, at the Customer’s option, ignored. |
| Abandonment of a portion of the Building on Existing Utility or HVAC Service | 1. The Customer will notify the Service Provider when an abandonment is planned. 2. The Service Provider will determine if the abandonment is likely to decrease energy use more than the threshold limits.\* 3. If the expected decrease is more then the threshold limits, the abandonment's impact on energy use will be accounted for in updated savings calculations at the request and expense of the Customer. 4. If the expected changes are less than the threshold limits, the effect on energy may be estimated, or, at the Customer’s option, ignored. |
| Change in Occupancy, Occupancy Hours, Calendar or Set-points | 1. The Customer will maintain records of its Occupancy Schedule and apprise the Service Provider of the latest figures at least annually. 2. Changes in the Occupancy Schedule will be annually accounted for in the savings calculations at the request and expense of the Customer, provided such changes exceed the threshold limits.\* |
| Customer-Initiated ECMs | 1. If a Customer-initiated ECM is estimated to save less than 5% of the Guaranteed Annual Savings Amount, no adjustment will be made to the savings measured under this Contract. For purposes of this Cause for Adjustment, multiple Customer-initiated ECMs obtained through a single procurement or contract will be considered as one ECM for purposes of calculating the percentage of the Guaranteed Annual Savings Amount. 2. To measure savings from a Customer-initiated ECM, Customer will develop a separate M&V plan to track the ECM’s savings. The resulting savings from the Customer initiated ECM will be subtracted from this Contract’s savings. 3. In no event will the Measured Savings Amount during the year in which the Customer-initiated ECM is installed be reduced below the immediately preceding year’s Measured Savings Amount due solely to a Customer-initiated ECM. |
| Failure to perform Customer responsibilities | Customer fails to perform a duty or responsibility specified in Exhibit G (Required Maintenance). |
| Other Causes | The Parties may mutually agree to other Causes for Adjustment to address changes in certain Baseline conditions. |

In the event the Service Provider has reason to believe that any action or failure to act by the Customer or a measurable deviation from the Baseline may constitute a Cause for Adjustment to the energy performance calculations set forth in this Contract, the Service Provider must notify the Customer of a possible Cause for Adjustment within sixty (60) days of becoming aware of such action, failure to act, or measurable deviation. If the Service Provider fails to notify the Customer within such sixty (60) day period, the Service Provider thereafter waives the right to present any claim for an adjustment to the energy performance calculations on account of such action or failure to act.

Notwithstanding the provisions of this Section, the Service Provider is not required to present any claim for a Cause of Adjustment if the Service Provider determines that an action, failure to act, or measurable deviation will have no impact on the Measured Savings Amount. In all instances, the Service Provider must account for all Causes for Adjustment to the energy performance calculations arising during the preceding Performance Guarantee Year within the Prior Year Calculations (as defined in Exhibit B), and the Service Provider waives the right to present any Causes for Adjustments not specified within the Prior Year Calculations.

\* Threshold Limits Per Fuel-type/Category:

Area – 3% of square footage of Site area as of the Date of Commencement.

Electricity – 3% of highest annual peak demand

Natural Gas – 3% of installed Base Year gas-heating capacity

Air Conditioning – 3% of installed Base Year air-conditioning capacity

**7. Examples**

Examples of energy savings calculations for the Project are set forth in Attachment 2 to this Exhibit.

**Attachment 1**

**Savings Calculation Model Assumptions**

**Attachment 2**

**Examples of Energy Savings Calculations**

**EXHIBIT D**

**PERFORMANCE TRACKING SERVICES**

[*In addition to the M&V activities described in Exhibit C, describing the meeting, reporting, and other services to be provided by the Service Provider during each Performance Guarantee Year as well as the additional cost for such services. Consider requiring quarterly reports, separate from the “Prior Year Calculations” specified in Exhibit B, to ensure both Customer and Service Provider are aware of and can address any deficiencies in Project performance.*]

These services might include:

* Maintenance or monitoring of ECMs above what is required in the performance guarantee, including technical support, and identification or opportunities to further enhance performance or install energy conservation measures
* Installation and use of proprietary performance tracking, diagnostic and controls systems (dashboards, cloud-based systems, etc.
* Onsite or remote performance optimization services such as ongoing, real-time or continuous commissioning
* Analysis and reporting beyond what is required for the performance guarantee
* Management and maintenance of energy or environmental labels or certificates
* Tenant energy management and/or metering

**EXHIBIT E**

**PERFORMANCE TRACKING SERVICES PAYMENTS**

Subject to Section II.B of Exhibit B, the Service Provider will be paid the amounts specified in the below table for Performance Tracking Services. Payments will be due from the Customer within thirty (30) days following commencement of the Performance Guarantee for which such payment is due. "Performance Guarantee Year 1" in the following table refers to the first 12-month Performance Guarantee Year, as defined in Exhibit B. No payment shall be required for any Opening Stub Year, as defined in Exhibit B.

|  |  |
| --- | --- |
| **Performance Guarantee Year[[10]](#footnote-10)** | **Payment for Performance Tracking Services** |
| 1 |  |
| 2 |  |
| 3 |  |
| 4 |  |
| 5 |  |
| 6 |  |
| 7 |  |

**EXHIBIT F**

**REQUIRED MAINTENANCE**

[*Include detailed checklist specifying all required maintenance of the ECMs the Customer must perform during the Guarantee Term. The Customer should not accept vague descriptions of its maintenance obligations using terms such as "industry accepted standards."* ]

1. Insert number of years of the performance guarantee. [↑](#footnote-ref-1)
2. Insert currency equivalency of guarantee amount. [↑](#footnote-ref-2)
3. Insert same number from earlier in this definition. [↑](#footnote-ref-3)
4. Adjust table for number of years in the performance guarantee. [↑](#footnote-ref-4)
5. Insert amount equal to Guaranteed Annual Savings Amount multiplied by years in the Guarantee Term. [↑](#footnote-ref-5)
6. Optional – Customer should consider the need for insurance or other security in light of the creditworthiness of the Service Provider. [↑](#footnote-ref-6)
7. The Opening Stub Year and Closing Stub Year can also be used to align the Performance Guarantee Year to a Customer fiscal year with appropriate adjustments. If the Customer does not wish to align the Performance Guarantee to a particular 12-month period, the provisions relating to the Opening Stub Year and Closing Stub Year can be deleted. [↑](#footnote-ref-7)
8. Adjust based on the number of Performance Guarantee Years – the number in this provision should be one less than the number of Performance Guarantee Years in the table in Section I.E. [↑](#footnote-ref-8)
9. Alternatively, specify a location, such as a Station at an airport. [↑](#footnote-ref-9)
10. Adjust based on number of Performance Guarantee Years. [↑](#footnote-ref-10)