Appendix G

SAMPLE

ENERGY SERVICES AGREEMENT
ENERGY SERVICES AGREEMENT

This Energy Services Agreement, referred to herein as "Agreement" or "ESA", dated as of __________., 201__ by and between ______________________ (referred to herein as the "COMPANY") and ____________________(referred to hereafter as the "INSTITUTION") for the purpose of providing energy conservation measures (ECMs), consisting of services, systems and facilities designed to reduce energy consumption and costs in buildings owned and operated by the INSTITUTION which are referred to herein as the "Premises." The INSTITUTION and the COMPANY are also referred to herein as the "Party" or "Parties" as appropriate.

RECITALS

WHEREAS, the COMPANY was selected by the INSTITUTION as a qualified provider to provide professional services which will result in decreased energy consumption and costs, and which services may include but are not limited to the following: energy-use analyses, the design and delivery of ECMs which consist of systems and devices to be installed and maintained on the Premises, guaranteed energy savings, the training of designated INSTITUTION employees, and the maintenance and monitoring of the ECMs as provided herein and measurement, verification and reporting of energy savings; and

WHEREAS, under separate agreement with the INSTITUTION, the COMPANY has performed a comprehensive Energy Audit and has prepared an Energy Audit Report which has been approved and accepted by the INSTITUTION as evidenced by the Energy Audit Report and INSTITUTION’s Acceptance Certification as set forth in Exhibit I; and

WHEREAS, the COMPANY has agreed to guarantee a level of energy savings to be achieved as the result of the professional services to be provided under this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the INSTITUTION and the COMPANY hereby covenant and agree as follows:

ARTICLE 1: THE COMPANY’S RIGHTS AND RESPONSIBILITIES

1.1 Independent Company Status. The COMPANY is an independent Company and in providing its services under this Agreement, shall not represent to any third party that its authority is greater than that granted to it under the terms of this Agreement.

1.2 Legal Responsibility. The COMPANY shall perform or cause to be performed the Work and all other services required by this Agreement. The COMPANY shall assure that all of the Work is accomplished in a workmanlike manner and that all services which require the exercise of professional skills or judgment shall be accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed in the State of Alabama, if required by law. All Project Documents which are required to be prepared by the COMPANY shall be in accord with all applicable codes, standards and regulations and shall be prepared by qualified personnel. Where required by Alabama law, Project Documents shall bear the stamp or seal of architects or engineers licensed in the State of Alabama. The COMPANY shall remain responsible for all services performed, whether by the COMPANY or its subcontractors or others on its behalf, throughout the term of this Agreement.

If the COMPANY fails to comply with the foregoing standards, the COMPANY shall perform again, at its own expense, any and all Work required to be re-performed as a direct or indirect result of such failure. Any review, approval, acceptance or payment for any and all of the COMPANY’s performance by the INSTITUTION shall not relieve the COMPANY of its responsibility for the services performed. This provision in no way limits the INSTITUTION’S rights against the COMPANY either under this Agreement in law or in equity.
1.3 **Insurance.** The **COMPANY** shall purchase, maintain and provide evidence of insurance coverage of the types, in the amounts and for the periods specified in Schedule Q. Subsequent to the Commencement Date described in paragraph 5.1 hereof, the **INSTITUTION** shall be responsible for providing insurance coverage on the ECMs.

The **COMPANY** may not commence performance of the Work or other services under this Agreement until all required insurance is obtained and evidence of it is received and approved by the **INSTITUTION** as described in paragraph 2.1, but the failure of the **INSTITUTION** to obtain such evidence from the **COMPANY** before permitting the **COMPANY** to commence the Work shall not be deemed to be a waiver by the **INSTITUTION**, and the **COMPANY** shall remain under a continuing obligation to obtain and maintain the required coverage and to supply evidence of coverage in accordance with Schedule Q.

The **COMPANY**'s failure to obtain or keep such insurance in force shall constitute an Event of Default under this Agreement within the meaning of Article 11, and in addition to the remedies provided therein, the **INSTITUTION** reserves the right to stop the Work until evidence of the requisite coverage is provided. The **COMPANY** shall require all subcontractors performing any portion of the Work to carry the insurance required in Schedule Q and the **COMPANY** may, at its option, provide the coverage for any or all subcontractors, and, if so, the evidence of insurance submitted shall so stipulate. The **COMPANY** and each of its subcontractors agree that each insurer shall waive its rights of subrogation against the **INSTITUTION**.

The **COMPANY** shall timely renew the required insurance as necessary to keep such coverage in effect for the periods specified in Schedule Q and shall supply the **INSTITUTION**, not less than thirty (30) days prior to any expiration or renewal dates for such insurance policies, with evidence of all required insurance including updated replacement Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage, as was provided by the Certificates of Insurance, amendatory riders or endorsements originally supplied.

The **COMPANY** expressly understands and agrees that any insurance protection furnished by the **COMPANY** hereunder shall in no way limit its responsibility to indemnify and save harmless the **INSTITUTION** under the provisions of this Agreement.

1.4 **Performance and Labor and Material Payment Bonds.** The **COMPANY** shall, as soon as practicable following the execution date set forth in Article 15 hereof, and prior to commencing the Work, deliver to the **INSTITUTION** a Performance Bond and a Labor and Material Payment Bond securing its obligations to be performed under this Agreement until the Acceptance of the Work by the **INSTITUTION**. Each bond shall be in the amount set forth in Schedule Q hereof.

1.5 **Cooperation with the Institution's Consultants.** (OPTIONAL) The **INSTITUTION** reserves the right to designate authorized representatives or to retain consultants at its expense, including an Architect/Engineer, to act on its behalf with respect to administering the performance required under this Agreement throughout its term. The **INSTITUTION** and its representatives and consultants shall at all times have access to the Work. The **COMPANY** agrees to cooperate with any representative of, or consultant retained by, the **INSTITUTION**.

1.6 **Joint and Several Liability.** Each and every obligation or undertaking herein to be fulfilled or performed by the **COMPANY** shall be the joint and several obligation of the **COMPANY** and its successors or assigns.

1.7 **Miscellaneous.** Other rights and responsibilities of the **COMPANY** are set forth throughout this Agreement and in the Project Documents described in paragraph 3.5 hereof and are included under other titles, articles, sections and headings for convenience. It is the responsibility of the **COMPANY** to familiarize itself with all provisions of this Agreement and the Project Documents in order to understand fully the entirety of its rights and responsibilities hereunder.
ARTICLE 2: THE INSTITUTION'S RIGHTS AND RESPONSIBILITIES

2.1 Project Administration.

2.1.1 Institution Responsibility. The INSTITUTION shall be primarily responsible for the administration and monitoring of the performance of the Work by the COMPANY. The INSTITUTION personnel designated in paragraph 10.9 shall be the principal point of contact between the INSTITUTION and the COMPANY relative to the performance required under this Agreement.

2.2 Responsibilities of the Institution. Tasks to be performed by the INSTITUTION in the administration and coordination of this Agreement include, but are not limited to, the following areas:

(a) Review and approve required insurance coverage and bonds within ten (10) business days following receipt of such documents by the INSTITUTION to ensure compliance with the terms of this Agreement;

(b) Review and approve the ECM submittals required under 2.3 hereof within ___(    ) business days after receipt by the INSTITUTION of such ECM submittals to ensure:

(1) That the design and installation of the ECMs are adequately described and illustrated;

(2) That the design and installation of the ECMs are consistent with current and known future capital projects at the Premises;

(c) Review and approve all submittals required under paragraphs 2.3 and 3.5 herein, in accordance with the timeframes set forth in Schedule K.

(d) Attend project meetings.

2.3 ECMs Submittals. ECMs submittals shall provide sufficient detail to allow the INSTITUTION to complete the reviews described in paragraph 2.2, and shall include:

a) Date and revision dates.
b) Project Number and Title.
c) Names, as applicable, of the Institution representatives, subcontractor, sub-subcontractor, supplier, manufacturer or detailer.
d) Identification of product or material.
e) Relation to adjacent structure or material.
f) Field Dimensions, clearly identified.
g) Specification page and number.
h) Specified standards, such as ASTM or ANSI.
i) Identification of previously approved deviation from Project documents.
j) Stamp or seal of the preparer of the ECM submittal, and the Company's certification that it has reviewed and approved the submittal as to its accuracy and compliance with the provisions of this Agreement.
k) Drawings, plans, specifications, shop drawings, product data, and where appropriate or reasonably required, product samples.
At the request of the INSTITUTION, and where appropriate or reasonably required, the COMPANY shall provide on-site "mock-ups" and demonstrations of the ECMs at the Premises which shall also be construed as ECM submittals under the provisions of this paragraph.

Within (   ) business days of receipt of the submittals, the INSTITUTION shall complete its review of the submittals and provide written approval of the submittal, or if the submittal has not been approved, written explanation as to the reason therefor. The COMPANY shall submit a revised submittal within ten (10) business days to the INSTITUTION for review and approval and the INSTITUTION shall have ten (10) business days from receipt thereof to complete its review of the revised submittal. The COMPANY shall be responsible for any delays caused by rejection of incomplete or inadequate submittals. The COMPANY may not commence any of the Work which requires the submittals without written approval by the INSTITUTION.

The COMPANY’s responsibility for errors, omissions, deviation from existing conditions, or deviation from the Project Documents in submittals is not relieved by the INSTITUTION’S review and approval thereof.

2.4 Drawings, Specifications and Surveys Provided by the Institution

(a) The INSTITUTION will make available for review by the COMPANY any of its working drawings and specifications concerning the Premises which are available to the INSTITUTION and which are reasonably necessary for the execution of the Work.

(b) The INSTITUTION shall provide the COMPANY with such surveys as it may have describing the physical characteristics, legal limitations and utility locations for the site of the Work.

(c) The INSTITUTION will make available for review by the COMPANY such working drawings, specifications, surveys and "As-Built" drawings concerning the Premises which are available and which relate to work being performed by other Companies at the Premises.

(d) All drawings, specifications, surveys and copies thereof furnished by the INSTITUTION are and shall remain INSTITUTION property. All "As-Built" drawings prepared under this Agreement are and shall remain INSTITUTION property. With the exception of one set of such drawings, specifications, surveys and "As-Built" drawings for each party hereto, such drawings, specifications, surveys and "As-Built" drawings are to be returned or suitably accounted for to the INSTITUTION on request at the completion of the Work.

2.5 Ownership, Dissemination and Publication of Documents. The drawings, specifications, reports, renderings, models, electronic media and all such other documents to be prepared and furnished by the COMPANY pursuant to this Agreement shall be the property of the INSTITUTION and the INSTITUTION shall have a license to use any copyrighted material contained in such documents. All documents listed above may be issued for informational purposes by the INSTITUTION without additional compensation to the COMPANY.

2.6 Interpretation of Agreement. The INSTITUTION shall have the authority to determine questions of fact that arise in relation to the interpretation of this Agreement and the COMPANY’S performance hereunder. However, such determinations are subject to the Alternative Dispute Resolution procedures as described in schedule P. Unless the Parties agree otherwise, or the Work cannot be continued without a resolution of the question of fact, such
determinations and Alternative Dispute Resolution procedures shall not be cause for delay of the Work. The COMPANY shall proceed diligently with the performance of this Agreement and in accordance with the INSTITUTION’S decision whether or not the COMPANY or anyone else has an active claim pending. Continuation of the Work shall not be construed as a waiver of any rights accruing to the COMPANY.

ARTICLE 3: THE ENERGY CONSERVATION PROJECT (THE "PROJECT")

3.1 Project Defined. The COMPANY shall design, procure, fabricate and install the energy conservation measures specified in Schedule A and provide training, commissioning, maintenance and monitoring and all other services specified in this Agreement and the Project Documents set forth in paragraph 3.5 at the Premises described in Schedule D.

3.2 Energy Audit Report. The Energy Audit Report prepared by the COMPANY and accepted by the INSTITUTION contains specific recommendations and documentation concerning the energy conservation measures, systems and services to be provided at the Premises and is incorporated herein by reference. Notwithstanding, the provisions of this Agreement and the Schedules referenced in paragraph 3.5 shall govern in the event of any inconsistencies between the Energy Audit Report and the provisions of this Agreement.

3.3 Annual Energy Savings Guaranty. The COMPANY has formulated and guaranteed the level of energy and operating cost savings as provided for in Schedule B, which will be achieved each year as a result of the performance by COMPANY of the services specified in this Agreement utilizing the Methods of Savings Measurement and Verification set forth in Schedule N.

3.4 Annual Review and Reimbursement. Energy savings achieved at the Premises shall be reported, reconciled and verified pursuant to the provisions of Schedule N. If said annual review, reconciliation and verification of energy savings discloses that the COMPANY has failed to achieve the annual guaranteed energy savings and operating cost savings set forth in Schedule B, the COMPANY will pay the INSTITUTION or the INSTITUTION’S designee, as may be directed by the INSTITUTION, the difference between the annual amount guaranteed and the amount of actual annual energy and operating cost savings achieved at the Premises. The COMPANY shall remit such payments to the INSTITUTION within thirty (30) days of written demand therefore by the INSTITUTION.

3.5 Project Documents. The Project Documents include:

- The executed ESA
- The Energy Audit Report
- COMPANY Submittals specified in paragraph 2.3.
- Certificates of Insurance
- Executed Performance Bond and Labor and Material Payment Bond
- Drawings, Specifications and Surveys furnished by the INSTITUTION in accordance with paragraph 2.4.

The Project Documents also include the following Schedules which are incorporated herein and made a part of this ESA when approved by the INSTITUTION and COMPANY:

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<th>Schedule</th>
<th>Description</th>
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<td>Schedule A</td>
<td>ECMs to be Installed</td>
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<td>Schedule B</td>
<td>Energy Savings Guaranty</td>
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<td>Schedule C</td>
<td>Compensation to Company</td>
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<td>Schedule D</td>
<td>Premises</td>
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<td>Schedule E</td>
<td>Calculation of Baseline/Benchmarks</td>
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3.5.1 Project Documents Furnished by the Institution; No Warranty. Pursuant to paragraph 2.4(c), the INSTITUTION shall make available for the COMPANY’S review, inspection, and duplication at COMPANY’S expense, such Project Documents as it may possess which relate to any work being performed by other Companies at the Premises under separate contracts with the INSTITUTION unrelated to the COMPANY’s performance of the Work under this Agreement, including but not limited to drawings, specifications, surveys and as-built drawings. The furnishing of such Project Documents by the INSTITUTION shall not constitute a warranty as to the accuracy or completeness of such Project Documents.

3.5.2 Review of Project Documents; Notification to the Institution. The COMPANY shall carefully review all Project Documents, including all addenda, whether prepared by the COMPANY, its subcontractors or furnished by the INSTITUTION for errors, inconsistencies or omissions relative to the performance of the Work. Upon completion of its review of the Project Documents, and prior to commencing the Work, the COMPANY shall provide written notice to the INSTITUTION that: (i) there are no inconsistencies in the Project Documents pertaining to the performance of the Work at the Premises; or (ii) specifying the nature of any conflicts or inconsistencies noted from the COMPANY’s review of the Project Documents. All Work to be performed under this Agreement by the COMPANY or its subcontractors which the Project Documents indicate is in conflict with the Project Documents or the work of other Companies performing on the Premises shall be brought to the attention of the INSTITUTION before the Work is commenced.

3.5.3 Correction of Conflicting Work. In the event that the COMPANY fails to properly prepare or review Project Documents or commences the Work without providing notice to the INSTITUTION of any conflict it discovers in the Project Documents, the COMPANY shall, upon written direction from the INSTITUTION, remove all such Work or portion thereof so conflicting and rebuild it as directed at no additional cost to the INSTITUTION, provided that the Project Documents furnished by the INSTITUTION have put the COMPANY on reasonable notice that an inconsistency, error, conflict or omission existed.
4.1 Description of the Work. The design, procurement, fabrication, installation and commissioning of the ECMs specified in Schedule A and any training services described in Schedule J, which are integral to the operation of the ECMs, are referred to in this Agreement as the "Work." The maintenance, monitoring, and savings measurement and verification services detailed in Schedules G and O and the any Post-Acceptance Training services detailed in Schedule J, performance of which does not commence until after the Commencement Date, are not part of the Work.

4.2 Performance of the Work. Construction and equipment installation shall proceed in accordance with the provisions contained in ____ (See Attachment A, Sample Construction Process Provisions) and the project installation schedule approved by INSTITUTION and attached hereto as Schedule K.

NOTE: It is important that the construction/installation phase of the project be managed in compliance with individual institutional requirements and the appropriate governing statutes. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract. See Attachment A, Sample Construction Process Provisions.

4.3 Systems Startup/Commissioning. The COMPANY shall conduct a thorough and systematic performance test of each element and total system of the installed ECMs in accordance with Schedule O. The COMPANY shall provide advance written notice of at least ten (10) business days to the INSTITUTION of the scheduled test(s). The INSTITUTION shall have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the ECMs. The COMPANY shall demonstrate that all ECMs installed comply with the requirements of the Project Documents. The COMPANY shall test all components and systems of the installed ECMs. The COMPANY, or its subcontractor(s), shall correct or adjust all deficiencies in operation of the ECMs.

ARTICLE 5: COMMENCEMENT DATE AND TERM; INTERIM PERIOD; FISCAL FUNDING

5.1 Commencement Date. The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by the INSTITUTION and COMPANY shall have delivered a written Notice to the INSTITUTION that: (i) it has completed the installation and commissioning and commenced operating all of the energy conservation measures specified in Schedule A; (ii) no Event of Default under Article 11 exists; and (iii) the Energy Savings Guarantee set forth in Schedule B is in full force and effect; and the INSTITUTION has inspected and accepted said installation and operation as evidenced by the Certification of Acceptance as set forth in Exhibit II. Compensation payments due to ESCO for project monitoring, savings measurement and verification, reporting and maintenance services under this Contract as set forth in Schedule C shall begin no earlier than _____ from the Commencement Date as defined herein.

5.2 Term of Contract; Interim Period. Subject to the following sentence, the term of this Agreement shall be ten (20) years measured beginning with the Commencement Date. Nonetheless, the Agreement shall be effective and binding upon the parties immediately upon its execution, and the period from contract execution until the Commencement Date shall be known as the "Interim Period". All energy savings achieved during the interim period will be fully credited to the INSTITUTION (may be negotiated).
5.3 Nonappropriation of Funds. In the event no INSTITUTION or other funds or insufficient INSTITUTION or other funds are appropriated and budgeted, and funds are otherwise unavailable by any means whatsoever in any fiscal period for which payments are due COMPANY under this Agreement, then the INSTITUTION will, not less than ___ days prior to end of such applicable fiscal period, in writing, notify the COMPANY of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the INSTITUTION of any kind whatsoever, except as to the portions of payments herein agreed upon for which the INSTITUTION and/or other funds shall have been appropriated and budgeted or are otherwise available.

5.4 Nonsubstitution. In the event of a termination of this Agreement due to the nonappropriation of funds or in the event this Agreement is terminated by COMPANY due to a default by the INSTITUTION, the INSTITUTION agrees, to the extent permitted by Alabama law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by COMPANY under the terms of this Agreement for a period of three-hundred sixty five (365) days following such default by the INSTITUTION, or termination of this Agreement due to non-appropriations.

ARTICLE 6: COMPANY COMPENSATION

6.1 Company Compensation for the Work. Payments to the COMPANY for the Work shall be made by the INSTITUTION in the amounts and in accordance with Schedule C hereto. The amount specified as Compensation for the Work is inclusive of all costs and fees to be paid for the Work pursuant to this Agreement including any training services provided prior to acceptance of the project by INSTITUTION and as provided for in Schedule J.

6.2 Maintenance, Monitoring, Savings Measurement and Verification and any Post-Acceptance Training Fees. Payment to the COMPANY for maintenance, monitoring, savings measurement, verification and reporting, and Post-Acceptance Training services performed after the Commencement Date shall be made by the INSTITUTION pursuant to and in accordance with Schedule C.

ARTICLE 7: ACCEPTANCE

7.1 Acceptance of the Work. Acceptance of the Work shall occur when the COMPANY's performance of the entire scope of the Work is complete, in accordance with the Project Documents so that the INSTITUTION can utilize the installed ECMs for their intended use and the Energy Savings Guaranty provided by COMPANY under paragraph 3.3 and Schedule B becomes effective and the INSTITUTION has inspected and accepted said installation and operation as evidenced by the Certification of Acceptance as set forth in Exhibit II.

7.2 Required Acceptance Submittals by the Company. The COMPANY shall submit the following documents to the INSTITUTION with its notice of Final Completion:

(a) All Project Record Documents as described in paragraph 3.5.

(b) All releases of liens arising out of this Agreement, or receipts in full in lieu thereof, which were not previously delivered, and an affidavit that so far as the COMPANY has knowledge or information, the releases and receipts include all labor and material for which a lien could be filed. The COMPANY shall submit lien waivers, sworn statements, guarantees, full releases or other evidence reasonably satisfactory to the INSTITUTION that there are no liens, claims or stop notices pending, filed or threatened against the INSTITUTION, the COMPANY, the Work or the ECMs.
whichever. The COMPANY may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the INSTITUTION to indemnify the INSTITUTION against any lien. If any lien remains unsatisfied after the COMPANY has received payment due for the Work, the COMPANY shall refund to the INSTITUTION all moneys that the INSTITUTION may be compelled to pay in discharging the lien, including all costs and reasonable attorney fees.

(c) Certificates of inspection for all ECMs which require local government inspection.

(d) Asbestos abatement compliance records, if applicable.

7.3 Any retainage amounts will be paid at the completion of and acceptance by INSTITUTION of final punch list items.

ARTICLE 8: THE ENERGY CONSERVATION MEASURES

8.1 ECM Warranties. The COMPANY warrants that all ECMs designed, procured, fabricated and installed pursuant to this Agreement are new, in good and proper working condition and are of merchantable quality and fit for the particular purposes of enabling the INSTITUTION to reduce energy consumption and operating cost. The COMPANY further warrants that the ECMs are protected by appropriate written warranties covering all parts and equipment performance for the periods specified in Schedule R. The COMPANY shall deliver to the INSTITUTION for inspection and approval all such written warranties and shall pursue rights and remedies against the manufacturer and each prior seller of the ECMs under the warranties in the event of equipment malfunction, improper or defective function, or defects in parts, workmanship or performance. The COMPANY shall be responsible for managing all warranty activity during the warranty periods set forth in Schedule R and shall notify the INSTITUTION whenever defects in equipment, parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by the COMPANY. The cost of any damage, loss or claims by any person arising out of the use or operation of the ECMs or damage to the ECMs and their performance, including damage to other property and equipment of the INSTITUTION or the Premises, due to the COMPANY's failure to exercise its warranty rights shall be borne solely by the COMPANY.

All warranties shall be transferable and extend to the INSTITUTION. The warranties shall specify that only new, and not reconditioned, parts may be used and installed when repair is necessitated by malfunction. The COMPANY warrants that all workmanship, materials, and equipment used in conjunction with the ECMs will be in conformance with the Project Documents and free from defects for the period, commencing with the date of the beneficial use of each ECM to the INSTITUTION and continuing for the period set forth in Schedule R.

8.2 Correction of Warranted Work.

(a) Commencing with the date of beneficial use of each ECM to the INSTITUTION and continuing for the warranty periods set forth in Schedule R for each ECM, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Project Documents, the COMPANY shall correct or replace all faulty, defective or nonconforming Work in accordance with the timeframes set forth in 8.2(c). After receipt of written notice from the INSTITUTION to correct such fault or defect, whether it was observed before or after acceptance of the Work, the COMPANY will correct the Work unless the INSTITUTION has given the COMPANY a written waiver of the specific fault or defect. Notice may be given by telephone in the event of an emergency situation. The
The COMPANY shall bear all costs of replacing or correcting such faulty, defective or nonconforming Work.

(b) The COMPANY shall, at its own expense, remove from the Premises all portions of defective and nonconforming Work which COMPANY is obligated to replace or correct under this paragraph 8.2 unless removal has been waived in writing by the INSTITUTION.

(c) If the COMPANY fails to correct faulty, defective or nonconforming Work as provided in this Section within twenty-four (24) hours after notice, in the case of emergency conditions, or within five (5) business days in other cases after the COMPANY’s receipt of written notice from the INSTITUTION of such faulty, defective or nonconforming Work, the INSTITUTION may correct such work at the COMPANY’s expense including costs incurred due to the removal of faulty, defective or non-conforming and removal and storage of equipment or materials left at the Premises by the COMPANY.

(d) If the COMPANY does not pay the cost incurred by the INSTITUTION for such repair, removal and storage within ten (10) days of written demand therefor, the INSTITUTION may upon ten (10) additional days’ written notice, sell any material and equipment not removed by the COMPANY at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the COMPANY. If such proceeds of sale do not cover all costs which the COMPANY should have borne, the difference shall be charged to the COMPANY. If the payments then or thereafter due the COMPANY are not sufficient to cover such amount, the COMPANY shall pay the difference to the INSTITUTION.

(e) The COMPANY shall bear the cost of repairing or replacing all work of other Companies destroyed or damaged by such removal or correction.

(f) Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation which the COMPANY might have under the Project Documents. The establishment of the time period set forth in paragraph 8.2(a) above, relates only to the specific obligation of the COMPANY to correct the Work and has no relationship to the time within which its obligation to comply with the Project Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the COMPANY’s liability with respect to its obligations other than to specifically correct the Work. Notwithstanding the provisions of this paragraph 8.2, the COMPANY shall, on demand made by the INSTITUTION, at any time within the ten (10) year period following Acceptance, promptly repair or replace all defective or non-conforming work resulting from fraudulent misrepresentation, fraudulent concealment or gross negligence by the COMPANY or its subcontractors in the performance of the Work.

8.3 Location and Access. The INSTITUTION shall provide sufficient space at the Premises for the installation and operation of the ECMs for the term of this Agreement, including access to office space with a telephone line, if necessary, to allow the COMPANY to perform required maintenance, monitoring and training services. The INSTITUTION shall provide access to the Premises for the COMPANY and its employees or subcontractors to install, adjust, inspect, maintain and repair the ECMs in accordance with the terms of this Agreement during regular business hours, or such other reasonable hours as may be requested by the COMPANY and acceptable to the INSTITUTION. The COMPANY’s access to correct any emergency condition shall not be unreasonably restricted by the INSTITUTION.

8.4 Company Maintenance and Monitoring Responsibilities for ECMs. The COMPANY shall be responsible for providing the maintenance, monitoring, repairs, and
adjustments to the ECMs as set forth in Schedule G. All replacements of and alterations or additions to the ECMs shall become part of the ECMs and shall become the property of the INSTITUTION. Any replacements of and alterations or additions made by the COMPANY to the INSTITUTION’s pre-existing equipment, or equipment acquired by the INSTITUTION during the term of this Agreement, shall become part of said equipment and be owned by the INSTITUTION. The COMPANY shall be compensated for such maintenance and monitoring services pursuant to Schedule C hereof. In the event of the COMPANY’s failure to provide maintenance, service, repairs and adjustments to the ECMs, as provided in Schedule G or if an Event of Default exists pursuant to Article 11, the INSTITUTION may withhold fees due to the COMPANY for such services until such repairs or adjustments are completed or such Event of Default is cured. The INSTITUTION shall notify the COMPANY in writing when any payments are so withheld. The withholding of fees by the INSTITUTION under this paragraph 8.4 shall not release the COMPANY from its obligation to provide the Energy Savings Guaranty pursuant to paragraph 3.3 and Schedule B hereof.

8.5 Institution Operating and ECMs Maintenance Responsibilities. The INSTITUTION shall be responsible for providing the maintenance, monitoring, service, repairs and adjustments to the ECMs as set forth in Schedule H. Except as set forth in Schedule H, the INSTITUTION shall not move, modify, remove, adjust, alter or change in any material way the ECMs, or any part thereof, during the term of this Agreement, without prior written direction or approval of the COMPANY, except in the event of an occurrence reasonably deemed by the INSTITUTION or the COMPANY to constitute a bona fide emergency. The INSTITUTION acknowledges that substantial deviations from the operating parameters set forth in the Schedules to the ESA may constitute a material change in accordance with paragraph 9.3 hereof. In addition to the responsibilities set forth in Schedule H, the INSTITUTION shall use its best efforts to maintain the Premises in good repair and to protect and preserve the ECMs in good repair and condition in accordance with applicable manufacturers’ recommendations which shall be provided to the INSTITUTION by the COMPANY and to maintain the operating conditions of all mechanical systems and energy related systems located at the Premises. The COMPANY shall notify the INSTITUTION of any improper maintenance or repair as soon as the COMPANY has notice thereof. The INSTITUTION acknowledges that improper repairs or maintenance of the ECMs may constitute a Material Change in accordance with paragraph 9.3, and that the provisions of paragraph 9.5 may be applicable.

8.6 Training by the Company. The COMPANY shall conduct the training program described in Schedule J hereto.

8.7 ECMs Upgrades; Alterations. The COMPANY shall have the right, at all times during the term of this Agreement, subject to the INSTITUTION’s written approval, 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 Premises provided that: (i) such actions by the COMPANY do not result in modifying the standards of comfort and service set forth in Schedule I without the express written approval of the INSTITUTION; (ii) such modifications or additions to, or replacements of the ECMs, and any operational changes, or new procedures are necessary to enable the COMPANY to achieve the energy savings guaranteed by the COMPANY at the Premises; and (iii) any costs incurred relative to such modifications, additions or replacements of the ECMs, or operational changes or new procedures shall be the responsibility of the COMPANY. All modifications, additions or replacements of the ECMs or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the INSTITUTION for approval, which shall not be unreasonably withheld, and incorporated into this Agreement provided that any replacement ECM shall be new and have equal or better potential to reduce energy consumption at the Premises than the ECM being replaced. The COMPANY shall update any and all software to be used in connection with the ECMs in accordance with the provisions of Schedule G. All replacements of and alterations or additions to
the ECMs shall become part of the ECMs described in Schedule A and shall become the property of the INSTITUTION. The COMPANY and the INSTITUTION shall determine in accordance with the provisions of paragraph 9.5 what, if any, adjustments to the Baseline/Benchmarks set forth in Schedule E are necessary due to upgrades or alterations of the ECMs which are necessary to enable the COMPANY to achieve the level of energy savings guaranteed by the COMPANY.

8.8 Malfunction and Emergencies. The INSTITUTION shall use its best efforts to notify the COMPANY or its designee within forty-eight (48) hours after the INSTITUTION’s actual knowledge of the occurrence of:

8.8.1 Any material malfunction in the operation of the ECMs or any pre-existing energy-related equipment;

8.8.2 Any material interruption or alteration of the energy supply to the Premises;

8.8.3 Any material alteration or modification in the ECMs or their operation; and

8.8.4 Any material alteration, modification or change in the Premises or the use of the Premises.

The INSTITUTION’s obligation to use its best efforts to notify the COMPANY as soon as reasonably possible shall be deemed satisfied if the INSTITUTION reports any said material malfunction, interruption, alteration, modification or change within forty-eight (48) hours of the INSTITUTION’s actual knowledge thereof.

The COMPANY and the INSTITUTION shall determine in accordance with paragraph 9.5 what, if any, adjustments to the Baseline/Benchmarks set forth in Schedule E are necessary due to any of the events described in this paragraph 8.8.

8.9 Responsibility for ECM Malfunction. Company agrees to compensate the Institution for business expenses, damages to real or personal property, lost profits, lost revenues, resulting from ECM malfunction due solely or in part to nonperformance or error by the COMPANY.

8.10 Ownership of Certain Proprietary Property Rights. The INSTITUTION shall acquire no ownership interest in any software, formulas, patterns devices, secret inventions or processes, or copyright, patents, and other intellectual and proprietary rights or similar items of property which are or may become used in connection with the ECMs. The COMPANY shall grant to the INSTITUTION a perpetual, irrevocable royalty-free license of any and all software or other intellectual property rights necessary for the INSTITUTION to continue to operate, maintain, and repair the ECMs in a manner that will maximize energy consumption reductions beyond the expiration of this Agreement.

ARTICLE 9: THE PREMISES

9.1 Description of the Premises. The Premises in which the ECMs are to be installed and services are to be provided by the COMPANY under this Agreement are described in Schedule D.
9.2 **Ownership of Existing Property.** The Premises and all equipment and materials existing at the Premises at the time of execution of this Agreement shall remain the property of the \*INSTITUTION\*.

9.3 **Material Change Defined.** A Material Change shall include any change in or to the Premises, not covered by Schedule B, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the \*INSTITUTION\* to increase or decrease annual costs of energy usage by at least $\__\__\__\__\__\.00, in the aggregate, after adjustments for climatic variations. Actions by the \*INSTITUTION\* which may result in a Material Change which is subject to this paragraph 9.3, include, but are not limited to the following:

9.3.1 Changes in the manner of use of the Premises by the \*INSTITUTION\*; or

9.3.2 Changes in the hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or

9.3.3 Permanent changes in the comfort and service parameters set forth in Schedule I; or

9.3.4 Changes in the occupancy of the Premises; or

9.3.5 Changes in the structure of the Premises; or

9.3.6 Changes in the types and quantities of equipment used at the Premises; or

9.3.7 Modification, renovation or construction at the Premises; or

9.3.8 The \*INSTITUTION\*'s failure to provide maintenance of and repairs to the ECMs pursuant to paragraph 8.5 hereof; or

9.3.9 Any significant damage to the Premises or the ECMs caused by fire, flood, or other casualty or any condemnation affecting a significant portion of the Premises; or

9.3.10 The permanent or temporary closing of a building at the Premises; or

9.3.11 Any other substantially changed condition, other than weather, affecting energy use at the Premises.

9.4 **Reported Material Changes; Notice by Institution.** The \*INSTITUTION\* shall use its best efforts to deliver to the \*COMPANY\* a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises no less than thirty (30) days before any actual or proposed Material Change is implemented. Notice to the \*COMPANY\* of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the \*INSTITUTION\* within forty-eight (48) hours after the event constituting the Material Change occurred or was discovered by the \*INSTITUTION\* to have occurred.

9.5 **Reported Material Changes; Adjustments to Baseline/Benchmarks.** Any changes in energy usage which occur as the result of a Reported Material Change shall be timely reviewed by the \*COMPANY\* and the \*INSTITUTION\* to determine what, if any, adjustments to the Baseline/Benchmarks set forth in Schedule E are necessitated by such Material Change(s). The \*COMPANY\* and the \*INSTITUTION\* agree that any adjustments made to the Baseline/Benchmarks shall be in accordance with generally accepted engineering principles. Any
disputes between the COMPANY and the INSTITUTION concerning any such adjustment shall be resolved in accordance with the provisions of Schedule P hereto.

9.6 Unreported Material Changes. Upon and after the Commencement Date and in the absence of any reported Material Change(s) in the Premises or in their operations, if energy savings deviates more than _____ (____%) percent during any month from projected energy savings for that month, after adjustment for changes in climatic conditions, then the COMPANY shall timely review such changes to ascertain the cause of such deviation. The COMPANY shall report its findings to the INSTITUTION in a timely manner. The COMPANY and the INSTITUTION shall determine what, if any, adjustments to the Baseline/Benchmarks set forth in Schedule E are necessary. Any disputes between the COMPANY and the INSTITUTION concerning any such adjustment shall be resolved in accordance with the provisions of Schedule P hereto.

ARTICLE 10: GENERAL TERMS AND CONDITIONS

10.1 Assignment. The COMPANY acknowledges that the INSTITUTION is induced to enter into this Agreement by, among other things, the professional qualifications of the COMPANY. The COMPANY agrees that neither this Agreement nor any right or obligation hereunder may be assigned in whole or in part, without the prior written approval of the INSTITUTION.

10.1.1 Assignment by Company. The COMPANY may, with prior written consent of the INSTITUTION, which consent shall not be unreasonably withheld, delegate its duties and its performance under this Agreement, and/or utilize subcontractors, provided that any assignee(s), delegee(s), or subcontractor(s) shall honor the terms of this Agreement. Notwithstanding the provisions of this paragraph, the COMPANY shall remain jointly and severally liable with its assignee(s), or transferee(s) to the INSTITUTION for all of its obligations under this Agreement.

10.1.2 Assignment by the Institution. The INSTITUTION may, transfer or assign this Agreement and its rights and obligations herein to a successor or purchaser of the Premises, or an interest therein, subject to the approval of the COMPANY which will not be unreasonably withheld.

10.2 Duty to Indemnify. The COMPANY shall defend, indemnify, keep and save harmless the INSTITUTION and its agents and employees against all suits, claims, damages, losses and expenses, including attorney's fees, caused by, growing out of, or incidental to, the wrongful or negligent performance of the Work under this Agreement by the COMPANY or its subcontractors to the full extent as allowed by the laws of the State of Illinois provided that the COMPANY shall promptly notify the INSTITUTION of any suits or claims and shall allow COMPANY, at its sole expense, to settle or defend and control the defense of any suit based upon such claim or claims. In the event of any such injury (including death) or loss or damage, or claims therefor, the COMPANY shall give prompt notice to the INSTITUTION. The COMPANY's subcontractors shall include the foregoing indemnitees as parties as to whom indemnification is due under their subcontracts.

10.2.1 Effect of Statutory Limitations. In the event of any claim against the INSTITUTION or against any of its officials or employees, in either their personal or official capacities, made by any direct or indirect employee or agent of the COMPANY or of any subcontractor, the COMPANY's indemnification obligation shall not be affected by any limitation on the amount or type of damages, compensation or benefits payable to said employee or agent contained in any other type of employee benefit act.

10.2.2 Intellectual Property Claims Indemnification. The COMPANY shall protect, defend, indemnify and hold the INSTITUTION harmless against and from any and all claims,
judgments, amounts paid in settlement, costs and expenses, including reasonable attorneys' fees relating to alleged patent, trademark or copyright infringement, misappropriation of proprietary rights, or trade secrets or similar claims, resulting from actions taken by the COMPANY in connection with this Agreement.

10.3 Alternative Dispute Resolution. The provisions for Alternative Dispute Resolution (ADR) attached as Schedule P shall govern the resolution of any disputes arising relative to the terms of, or performance required by, this Agreement.

10.4 No Waiver. The failure of COMPANY or the INSTITUTION to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of the COMPANY or the INSTITUTION.

10.5 Severability. It is agreed that the illegality or invalidity of any term or clause of this Agreement, shall not affect the validity of the remainder of this Agreement and this Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein.

10.6 Complete Agreement; Amendments. This Agreement, when executed, together with all Project Documents and Schedules referred to in paragraph 3.5 and any other exhibits or attachments referred to in this Agreement, shall constitute the entire agreement between the Parties and this Agreement may not be amended or modified except by a written agreement signed by the Parties hereto.

10.7 Further Documents. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

10.8 Applicable Law. This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the State of Alabama.

10.9 Notices. All notices required under this Agreement shall be in writing and shall be deemed properly served if delivered in person to the individual to whom it is addressed or, three (3) days after deposit in the United States mail, if sent postage prepaid by United States registered or certified mail, return receipt requested, as follows:

a) To the INSTITUTION:
(____ copies of all submittals, correspondence and notices) required under the ESA)

b) To the COMPANY

10.10 Termination for Convenience by the Institution. Subsequent to the Acceptance Date, this Agreement may be terminated at the sole discretion of the INSTITUTION in accordance with the provisions of this paragraph 10.10.
The INSTITUTION shall provide notice of its election to terminate to the COMPANY no later than thirty (30) days in advance of the end of the current guaranty period. The termination shall become effective on the last day of said guaranty period. The COMPANY’s obligation to report, reconcile and verify the energy savings achieved during the guaranty period proceeding termination remains in full force and effect, as does its obligation, pursuant to paragraph 3.4 of this Agreement, to remit payment to the INSTITUTION in the event that the energy savings have not been achieved at the level guaranteed by the COMPANY.

The termination of this Agreement by the INSTITUTION shall release the COMPANY from its obligation to provide maintenance, monitoring and training services after the effective date of termination, as well as its obligation to provide the Energy Savings Guaranty after the termination date. Termination by the INSTITUTION shall release it from the obligation to make any payments to the COMPANY for maintenance, monitoring and training services after the termination date, provided, however, that the INSTITUTION is responsible for payment for maintenance, monitoring and training services performed in accordance with the terms of this Agreement prior to the termination date.

ARTICLE 11: EVENTS OF DEFAULT; REMEDIES; TERMINATION; RIGHT TO OFFSET

11.1 Events of Default by the Institution. Each of the following events or conditions shall constitute an "Event of Default" by the INSTITUTION with respect to its obligations under this Agreement:

(i) Any failure to make payments to the COMPANY in accordance with the provisions of Schedule C hereof more than thirty (30) days after written notification by COMPANY that INSTITUTION is delinquent in making such payment, provided that the COMPANY is not in default in its performance under the terms of this Agreement;

(ii) Any representation or warranty furnished by the INSTITUTION in this Agreement proves to be false or misleading in any material respect when made;

(iii) Any other material failure by the INSTITUTION to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein except, provided that such failure if corrected or cured within thirty (30) days after written notice to the INSTITUTION demanding that such failure to perform be cured shall be deemed cured for purposes of this Agreement.

11.2 Remedies Upon Default by the Institution. If an Event of Default by the INSTITUTION described in paragraph 11.1 occurs, the COMPANY shall exercise the remedies as provided for in Schedule P.

11.3 Events of Default by the Company. Each of the following events or conditions shall constitute an "Event of Default" by the COMPANY for purposes of this Agreement with respect to obligations of the COMPANY:

(i) The COMPANY’s failure to furnish and install the ECMs in accordance with the provisions of this Agreement and within the time specified by this Agreement.

(ii) Failure by the COMPANY to pay any amount owing to the INSTITUTION due to the COMPANY’s failure to achieve its Energy Savings Guaranty during any Guaranty Year throughout the term of this Agreement or to perform any obligation under the Energy Savings Guaranty.
(iii) The standards of comfort and service set forth in Schedule I are not provided due to failure of the COMPANY to properly design, install, maintain, repair or adjust the ECMs except that such failure if corrected or cured within thirty (30) days after written notice to the COMPANY demanding that such failure be cured shall be deemed cured for purposes of this Agreement.

(iv) Failure to perform its obligations in accordance with the terms of this Agreement, including failure to provide sufficient personnel, equipment or material to ensure the performance required and failure to meet the Project Installation Schedule provided for in Schedule K, due to a reason or circumstance within the COMPANY’s reasonable control.

(v) The COMPANY’s failure to promptly re-perform within a reasonable time Work or services that were rejected as defective or nonconforming.

(vi) The COMPANY’s discontinuance of the required performance for reasons not beyond the COMPANY’s reasonable control.

(vii) Any lien or encumbrance upon the ECMs by any subcontractor, laborer, materialman or other creditor of the COMPANY.

(viii) Any change in ownership or control of the COMPANY without the prior approval of the INSTITUTION, which shall not be unreasonably withheld.

(ix) Default under any other agreement the COMPANY may presently have or may enter into with the INSTITUTION during the term of this Agreement. The COMPANY acknowledges and agrees that in the event of a default under this Agreement the INSTITUTION may also declare a default under any such other agreements.

(x) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by the COMPANY to the INSTITUTION, the INSTITUTION or a third party.

(xi) The filing of a bankruptcy petition whether by the COMPANY or its creditors against the COMPANY which proceeding shall not have been dismissed within sixty (60) days of its filing, or an involuntary assignment for the benefit of creditors or the liquidation or insolvency of the COMPANY.

(xii) Any failure by the COMPANY to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty (30) days after notice to the COMPANY demanding that such failure to perform be cured, shall be deemed cured for purpose of this Agreement.

11.4 Remedies upon Default by the Company. The occurrence of any Event of Default described in paragraph 11.3(viii) or (x) shall constitute an immediate default. The occurrence of any Event of Default other than an Event of Default described in paragraph 11.3(viii) or (x) which the COMPANY has failed to cure within thirty (30) calendar days after receipt of notice given in accordance with the terms of this Agreement and specifying the Event of Default shall, at the sole option of the INSTITUTION, permit the INSTITUTION to declare the COMPANY in default; provided however, that if such Event of Default cannot reasonably be cured within such thirty (30) day period, such Event of Default shall not constitute a default if the COMPANY begins to cure
such Event of Default within such thirty (30)-day period and diligently pursues the actions necessary to cure such Event of Default so that the Event of Default is cured as soon as reasonably possible. Written notification of the Event of Default, and the intention of the INSTITUTION to terminate this Agreement, shall be provided to the COMPANY and such decision shall be final and effective upon the COMPANY’s receipt, as defined herein, of such notice. Upon the giving of such notice as provided herein, the COMPANY must discontinue any services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in process, to the INSTITUTION. At such time the INSTITUTION make invoke any or all of the following remedies:

(a) The right to take over and complete the Work, or any part thereof.
(b) The right to immediately terminate this Agreement as to any or all of the Work or other services yet to be performed by the COMPANY.
(c) The right of specific performance, injunctive relief or any other appropriate equitable remedy.
(d) The right to money damages.
(e) The right to withhold all or any part of the COMPANY’s compensation hereunder.

If the INSTITUTION considers it to be in its best interests, it may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the INSTITUTION and that if the INSTITUTION permits the COMPANY to continue to perform the Work and other services despite one or more Events of Default, the COMPANY shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the INSTITUTION waive or relinquish any of its rights.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power nor shall it be construed as a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

11.5 Right to Offset. Any additional costs incurred by the INSTITUTION in the event of termination of this Agreement for default or otherwise resulting from the COMPANY’s performance or non-performance under this Agreement, including the exercise by the INSTITUTION of any of the remedies available to it under paragraph 11.4 hereof, and any credits due to or overpayments made by the INSTITUTION may be offset by use of any payment due for the Work or other services completed before the termination for default or before the exercise of any remedies. If such amount offset is insufficient to cover such excess costs, the COMPANY shall be liable for and promptly remit to the INSTITUTION the difference upon written demand therefor. This right to offset is in addition to and not a limitation of any other remedies available to the INSTITUTION.

ARTICLE 12: REPRESENTATIONS AND WARRANTIES

12.1 Each party warrants and represents to the other that:
12.2 Representations and Warranties by the Institution. The INSTITUTION hereby warrants and represents to the COMPANY that:

(a) It will provide throughout the term of this Agreement (or cause its energy suppliers to furnish) to the COMPANY, upon its request, copies of all available records and data concerning energy usage for the Premises including but not limited to the following data: utility records and rate schedules; occupancy information; descriptions of any major changes in the structure or use of the buildings or heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Premises; descriptions of energy management procedures presently utilized; and any prior energy analyses of the Premises. The INSTITUTION shall make knowledgeable employees and agents available for consultations and discussions with the COMPANY concerning energy usage of the Premises.

(b) It has not entered into any leases, contracts or agreements with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Premises or with regard to servicing any of the energy related equipment located in the Premises.

12.3 Representations and Warranties by the Company. The COMPANY represents and warrants the following to the INSTITUTION (in addition to the other representations and warranties contained in the Project Documents), as an inducement to the INSTITUTION to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement and the Final Completion of the Work.

(a) That it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Agreement;

(b) That it and each of its employees, agents and subcontractors of any tier are competent to perform its obligations under this Agreement;

(c) That it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

(d) That it is authorized to do business in the State of Alabama and is properly licensed by all necessary governmental and public and quasi-
public authorities having jurisdiction over it and over the Work and the Premises;

(e) That its execution of this Agreement and its performance thereof is within its duly authorized powers; and

(f) That its duly authorized representative has visited the Premises, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Project Documents.

ARTICLE 13: APPLICABLE LAWS

13.1 Statutory and Regulatory Requirements. All applicable Federal and State laws and the codes, rules and regulations of all authorities having jurisdiction over the performance of the Project shall apply to this Agreement throughout its term and they will be deemed to be included in this Agreement the same as though written herein in full.

13.2 Company's Failure to Comply with Statutory and Regulatory Requirements. The COMPANY, and its subcontractors shall comply with all laws, rules regulations and codes applicable to performance of the Work and the maintenance, monitoring and training services to be performed pursuant to Article 6. Except where expressly required by applicable laws and regulation, the INSTITUTION shall not be responsible for monitoring the COMPANY’s compliance with any laws or regulations. When the COMPANY observes conflicting regulatory requirements, it shall notify the INSTITUTION in writing immediately. If the COMPANY performs any of the Work or other services required by this Agreement knowing or having reason to know that the Work or such services are contrary to such laws, rules and regulations, the COMPANY shall pay all costs arising therefrom.

ARTICLE 14: RIGHT TO AUDIT

The INSTITUTION shall have the right to have access to and audit all of the COMPANY’s records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. In addition, the INSTITUTION or its authorized representative shall have access to the COMPANY’s facilities and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with this article.
ARTICLE 15: EXECUTION

IN WITNESS WHEREOF, the Parties have executed this Energy Services Agreement by their authorized signatures as of this ___ day of _______, 200__.

THE INSTITUTION:

BY:____________________________
Title:___________________________

THE COMPANY:

BY:____________________________
Title:___________________________
SCHEDULE P

SAMPLE ALTERNATIVE DISPUTE RESOLUTION (ADR) LANGUAGE

1. **All Disputes**: In the event any dispute or claim related to construction or the contracts should arise between any of the parties to this Agreement, each party agrees to exercise good faith efforts to resolve the matter fairly, amicably, and in a timely manner. The parties shall consider litigation as a last resort, to be employed only when ADR methods fail. To this end, the parties agree to take affirmative steps to communicate effectively, to keep lines of communication open, and to handle all disputes in a reasonable and businesslike manner, which may include the use of a dispute resolution board.

2. **Mediation: Disputes under $50,000**: Each party to any dispute under $50,000 agrees, upon the request of any other party to the dispute, to submit the matter to mediation. The parties shall first confer informally with one another to attempt to resolve the dispute. The mediator shall be a person the parties agree is unbiased and qualified to understand the dispute and make the determinations that are required.

3. **Methods of ADR: Disputes over $50,000**: Each party to any dispute over $50,000 agrees, upon the request of any other party to the dispute, to submit the matter to ADR, in a form to be determined by agreement of the parties. The parties shall first confer informally with one another to attempt to resolve the dispute. In the event that the assistance of an unbiased neutral is required, the parties shall meet and come to an agreement as to what form the ADR should take and who the unbiased neutral should be. Forms of ADR that may be utilized include, but are not limited to, mediation and mini-trials, but do not include formal arbitration. The unbiased neutral may be a professional mediator, an attorney, an architect, an engineer, a board composed of two (2) or more qualified persons, or any person(s) the parties agreed is unbiased and qualified to understand the dispute and make the determinations that may be required.

4. **Authority**: When ADR is utilized, regardless of the dollar value of the dispute, each party agrees to have in attendance at their mediation (or whatever method is utilized) a person with actual authority to resolve the dispute.

5. **Non-parties**: Persons who have a stake in the dispute but who are not parties to this Agreement may be included in the ADR by consent of the parties. When disputes arise between only persons involved in the project who are not parties to this Agreement, the parties agree to encourage and facilitate the use of ADR when possible.

6. **Court of Claims**: The Company agrees that ADR is a condition precedent to the filing of a Court of Claims action or other administrative proceeding seeking economic recovery from *insert name of party* in an amount greater than $50,000.

7. **Costs of ADR**: When ADR is utilized, the parties included in the process agree to equally share the costs of same.

8. **Appendixes**: Any and all written agreements for mediation or other method of ADR must be agreed to by all contractual parties and shall be incorporated into the contract.

INSTITUTION ACCEPTANCE INITIALS: ________________ DATE: ______________
ATTACHMENT A

SAMPLE CONSTRUCTION PROCESS PROVISIONS

A.1.1 Description of the Work. The design, procurement, fabrication, installation and commissioning of the ECMs specified in Schedule A and the Training services described in Schedule J, which are integral to the operation of the ECMs, are referred to in this Agreement as the “Work.” The maintenance, monitoring, and savings measurement and verification services detailed in Schedules G and O and the any Post-Acceptance Training services detailed in Schedule J, performance of which does not commence until after the Commencement Date, are not part of the Work.

A.1.2 Supervision of the Work. The COMPANY shall supervise and direct the performance of the Work using its best skill, attention and judgment. The COMPANY shall be solely responsible for site safety and for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement.

A.1.3 Rejection of the Work by the Institution. The INSTITUTION may reject any sequences or procedures proposed by the COMPANY in connection with the Work which might constitute or create a hazard to the Premises, or to persons or property, or which deviate from the Project Documents or will result in schedule delays or additional costs to the INSTITUTION. This provision shall not be construed to mean that Work which is not rejected is therefore approved.

A.1.4 Responsibility for the Work. The COMPANY shall not be relieved of its obligations to perform the Work in accordance with the Project Documents by reason of observations or inspections, tests or approvals by any person or entity except as expressly agreed to in writing by an authorized representative of the INSTITUTION.

A.1.5 Coordination of the Work. The COMPANY shall consult with the personnel designated by the INSTITUTION in order to coordinate the Work, including installation of any ECM, and to provide appropriate training in the operation of any ECM. The COMPANY shall not permit any act which will interfere with the performance of the INSTITUTION's business activities at the Premises without the prior written approval of the INSTITUTION. The COMPANY may install no ECM that will require the hiring of additional personnel by the INSTITUTION without the express permission and written approval of the INSTITUTION.

The COMPANY shall consult with the INSTITUTION regarding the coordination of the Work with any other work being performed by other Companies at the Premises.

A.1.6 Sufficient Workforce. The COMPANY shall furnish a competent and adequate staff as necessary for the proper administration, coordination and supervision of the Work; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; and ensure that an adequate force of skilled workmen are available to complete the Work in accordance with all requirements of this Agreement.

A.1.7 Project Manager. The COMPANY shall employ a competent project manager who shall be responsible for the coordination of the Work, and who shall be authorized to commit the COMPANY with regard to manpower, schedule, coordination and cooperation. The project manager shall not have less than two (2) years of documented experience in responsible field supervision for projects of comparable size and complexity. The COMPANY shall give the INSTITUTION advance written notice if it intends to remove or replace the project manager. In
the event the project manager fails to perform its duties under this Agreement the COMPANY shall provide a competent replacement.

A.1.8 Harm to Structure of the Premises. The COMPANY shall perform the Work under this Agreement and install the ECMs in such a manner so as not to harm the structural integrity of the Premises or their operating systems, except as specifically described in the Project Documents which have been approved by the INSTITUTION. The COMPANY shall repair and restore to its condition immediately preceding the performance of the Work, any area of damage caused by its performance under this Agreement which has not been so described in the Project Documents and approved by the INSTITUTION. The COMPANY’s failure to complete the repair or restoration required under this paragraph A.1.8 shall constitute an Event of Default under paragraph 11.3 hereof.

A.1.9 Responsibility for Damages. The COMPANY shall be responsible for all loss or damage to the Work, the Premises, or to improvements or personal property thereon and the work of other Companies caused by the COMPANY’s performance of the Work.

A.1.11 Verification of Dimensions and Existing Conditions. The COMPANY is responsible for becoming knowledgeable of the conditions of the Premises relating to the performance of the Work and the conditions under which the Work is to be performed, other than concealed conditions which the COMPANY should not have reasonably been expected to discover or anticipate. All dimensions and existing conditions have been verified by the COMPANY during the energy audit conducted at the Premises by actual measurement and observation. All discrepancies between the requirements of the Project Documents and the existing conditions or dimensions shall be reported to the INSTITUTION as soon as they are discovered. Failure to verify and report prior to the commencement of work shall constitute the COMPANY’s acceptance of existing conditions as fit for the proper execution of the Work under this Agreement, other than concealed conditions which the COMPANY should not have reasonably been expected to discover or anticipate.

A.1.12 Changed Conditions. Should the COMPANY encounter subsurface or latent physical conditions at the site which differ materially from those indicated in the Project Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, the COMPANY shall give written notice to the INSTITUTION before any such condition is disturbed or further disturbed. No claim of the COMPANY under this provision will be allowed unless the COMPANY has given the required notice. The INSTITUTION will promptly investigate and, if it is determined that the conditions materially differ from those which COMPANY should reasonably have been expected to discover or anticipate, the INSTITUTION will approve such changes in the Project Documents as may be necessary. If such changed conditions cause an increase or decrease in the COMPANY’s cost or time of performance, the parties may negotiate a mutually acceptable solution.

A.2 The Institution’s Right to Carry Out the Work.

A.2.1 In the event that the COMPANY neglects or fails to carry out the Work in accordance with this Agreement and the Project Documents, the INSTITUTION may correct such deficiencies after giving twenty (20) business days written notice to the COMPANY and its surety. This shall be without prejudice to any other remedy the INSTITUTION may have. INSTITUTION may deduct from the payments to be made to the COMPANY for the Work, pursuant to paragraph 6.1 hereof and of Schedule C, the amount of all costs incurred in correcting deficiencies made necessary by such neglect or failure. If such payments to be made to the COMPANY are not sufficient to cover such amount, the COMPANY shall be liable in such amount to the INSTITUTION.
A.2.2 **Emergencies.** In case of bona fide emergencies as determined by the INSTITUTION involving public health or public safety or to protect against further loss or damage to the INSTITUTION’s property or to prevent or minimize serious disruption of INSTITUTION services or to insure the integrity of INSTITUTION’s records, the INSTITUTION may cause such Work as is necessary to be performed without prior notice to the COMPANY or its surety.

A.2.3 **Right to Reject or Stop the Work.** The INSTITUTION may reject any of the Work which does not conform to the Project Documents. If the COMPANY fails to correct defective Work or fails to supply labor, materials or equipment in accordance with the Project Documents or to execute the Work in a workmanlike manner, the INSTITUTION may order the COMPANY to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

A.2.4 **Right to Terminate the Company's Performance of the Work.** If the COMPANY fails or refuses to prosecute the Work with such diligence as to allow completion of the Work substantially in accordance with the Project Installation Schedule, or commits a material breach of any other provision of this Agreement or the Project Documents, and provided that such breach continues for thirty (30) days after written notice to the COMPANY demanding that such breach be cured or if cure cannot be effected in such thirty (30) days, COMPANY’s failure to propose and commence a cure acceptable to the INSTITUTION within such thirty (30) days, the INSTITUTION may terminate the COMPANY’s right to proceed with the Work as specified herein. In no event shall the INSTITUTION have any obligation to compensate the COMPANY for delays arising pursuant to the COMPANY’s failure or refusal to complete the Work and damages arising in connection therewith.

In such case, the INSTITUTION will give the COMPANY and its surety written notice of intention to terminate the COMPANY’s right to complete the Work and the reason therefor and, unless within seven (7) business days the delay or violation shall cease or a cure acceptable to the INSTITUTION for correcting the situation is proposed, the INSTITUTION may issue a termination notice to such effect for the COMPANY and its surety. Thereupon, the surety will be given the opportunity to complete the Work in accordance with the Project Documents. Such completion may include, but not be limited to, the use of a completing COMPANY, satisfactory to the INSTITUTION, pursuant to a written takeover agreement, the payment of a sum of money required to allow the INSTITUTION to complete the Work, or other arrangements agreed to by the INSTITUTION and the surety.

If within seven (7) business days following the issuance of the termination notice, the surety fails to notify the INSTITUTION that it intends to exercise its right to undertake the Work, the INSTITUTION may take over the Work, exclude the COMPANY from the Premises and take possession of all of the COMPANY’s tools, appliances, equipment and machinery at the Premises and use the same to the full extent they could have been used by the COMPANY (without liability for trespass or conversion), incorporate into the Work all materials and equipment stored at the Premises and finish the Work as the INSTITUTION may deem expedient.

In the event the INSTITUTION terminates the COMPANY’s right to complete the Work under this paragraph A.2(d), the COMPANY shall not be entitled to receive further payments until a Certificate of Acceptance has been delivered pursuant to paragraph 5.3 hereof specifying the amount, if any, payable to the COMPANY pursuant. If the INSTITUTION’s expenses in completing the Work exceed the COMPANY’s Compensation for the Work, the COMPANY shall pay the difference to the INSTITUTION upon demand therefor.
Provided further, that a Certificate of Acceptance directing payment to the COMPANY for any portion of the Work be issued only if the notification required pursuant to Article 7 has been delivered by the COMPANY. If the COMPANY is not able to deliver such notification, the INSTITUTION shall not execute and deliver a Certificate of Acceptance and may terminate this Agreement in accordance with the provisions of Article 11 and may pursue any and all remedies provided therein.

A.3 Permits and Approvals. The COMPANY shall obtain and pay for all necessary permits and approvals for the design, installation and operation of the ECMs. The INSTITUTION shall exercise its best efforts to assist the COMPANY. The ECMs and the operation of the ECMs by the COMPANY shall at all times conform to all applicable codes. The INSTITUTION cannot and will not waive any permits or approvals required from any other governmental bodies.

The COMPANY shall furnish copies of each permit or license which is required to perform the Work to the INSTITUTION before the COMPANY commences the portion of the Work requiring such permit or license.

If the COMPANY observes that any of the Project Documents are at variance with permits or licenses granted, or laws, ordinances, codes, rules or regulations of governmental authorities, the COMPANY shall promptly notify the INSTITUTION in writing and shall make any necessary changes, subject to the approval thereof by the INSTITUTION in accordance with the terms of this Agreement. If the COMPANY performs any Work which is contrary to any permit or license granted, or any applicable laws, ordinances, codes, rules or regulations, the COMPANY shall make changes as required to comply therewith and shall bear all costs arising therefrom without additional compensation from the INSTITUTION.

A.4 Royalties and Patents. The COMPANY shall pay all royalties and license fees due to third parties in connection with the Work. The approval of any method of construction, invention, appliance, process, article, device, material or equipment of any kind by the INSTITUTION will only be an approval of its adequacy for the Work, and will not be an approval of the use thereof by the COMPANY in violation of any Patents or other rights of any third person. The COMPANY shall indemnify the INSTITUTION against all suits and claims that may be based on an infringement of Patents, trademark or trademark on designs.

A.5 Project Schedule. The COMPANY shall consult with the INSTITUTION concerning the development of a detailed Project Installation Schedule and, recognizing that time is of the essence of this Agreement, shall perform the Work in such manner and with such sufficient equipment and forces to complete the Work in accordance with Schedule K.

A.6 Extensions. Extensions of time will be allowed for delays which affect critical items on the Project Installation Schedule arising from unforeseeable causes beyond the control and without the fault or negligence of the COMPANY.

A request for an extension of time must be made in writing to the INSTITUTION within fifteen (15) calendar days after the cause of delay. In the case of a continuing cause of delay, only one request is necessary. The grant of an extension of time to the COMPANY shall not impair or prejudice the rights of the INSTITUTION hereunder.

A.7 Compensation for Delay.

(a) Certain risks and uncertainties in connection with the Work are assumed by the COMPANY as a part of this Agreement and are included in the COMPANY Compensation for the Work. Thus, the COMPANY, except as otherwise definitely specified
herein, shall bear all loss or damage for hindrances or delays during the progress of any portion of the Work and also all loss or damage arising out of the nature of the work to be done, or from inclement weather, or from any unforeseen and unexpected conditions or circumstances encountered in connection with the Work, and except as otherwise definitely specified in this Agreement, no payment shall be made by the **INSTITUTION** for such loss or damage.

(b) The **COMPANY** shall be entitled to payment from the **INSTITUTION** only for those actual damages, costs or expenses which are directly attributable to delays in the performance of the Work which are caused by the **INSTITUTION**.

A.8 **Subcontracts and Subcontractors.** The **COMPANY** shall have the right to have any of the services to be provided by the **COMPANY** under this Agreement accomplished by subcontractors pursuant to written subcontracts between the **COMPANY** and such subcontractors.

The **COMPANY** shall, upon entering into any agreement with a subcontractor, furnish the **INSTITUTION** with an executed copy thereof. All subcontracts shall be subject to, consistent with, and in conformance with all applicable State and federal laws, rules, regulations and codes, and shall contain provisions that require all services to be performed in strict accordance with the requirements of this Agreement and shall provide that the subcontractors are subject to all the terms of this Agreement. Provided that such agreements do not prejudice any of the **INSTITUTION**'s rights under this Agreement, such agreements may contain different provisions than are provided herein with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Work.

The **COMPANY** shall not grant or allow to exist any lien or security interest for labor or material or otherwise on the ECMs, the Premises or any other property owned by the **INSTITUTION**.

A.9 **Interim Savings; and Utility Rebates.**

(a) **Interim Savings.** Interim Savings as defined in Article 4 belong to the **INSTITUTION**.

(c) **Utility Rebates.** Utility rebates secured or obtained due to the installation of the ECMs at the Premises belong to the **INSTITUTION**.

A.10 **Hazardous Materials.**

(a) The **COMPANY** acknowledges that compliance with the National Emission Standard for Hazardous Air Pollutants as promulgated by the United States Environmental Protection Agency pursuant to Section 112 of the Clean Air Act is a continuing obligation requiring any and all demolition or renovation activity completed by or on behalf of the **INSTITUTION**, to conform to the standards for such activity as set forth in 40 CFR 61.145. The **COMPANY** shall observe all notification procedures established by the United States and Illinois Environmental Protection agencies in the execution of the Work under this Agreement.

(b) The pertinent provisions of the Hazardous Substances Construction Disclosure Act, 415 ILCS 70/1, (the “Act”) shall apply in the event that the **COMPANY** or any of its subcontractors encounters any hazardous substance or material covered by the Act in the performance of the Work, the existence of which has not previously been disclosed to the **COMPANY** by the **INSTITUTION**. The **COMPANY** shall, before disturbing such materials, immediately notify the **INSTITUTION** of the location thereof. The **COMPANY** shall advise the **INSTITUTION** as to whether it is feasible to re-route the Work as to avoid such materials. If
such re-routing is reasonably feasible, the COMPANY shall do so without additional compensation hereunder.

If such re-routing or avoidance is not reasonably feasible in the judgment of the INSTITUTION and such material must be disturbed or relocated to complete the Work, and if (i) removal or containment of the hazardous substance or material cannot be effectuated without a cessation of the Work; or (ii) applicable law, rule or regulation requires cessation of the Work, or (iii) continuation of the Work exposes any person to a substantial risk, the COMPANY may suspend its performance of the Work without penalty until the substance or material is removed or contained by the INSTITUTION.

(c) The following options are available to the INSTITUTION in the event that undisclosed hazardous materials are encountered in the performance of the Work by the COMPANY or its subcontractors:

(i) If feasible, the INSTITUTION may direct the COMPANY to modify the scope of the Work to eliminate portions of the Work affected by the undisclosed hazardous substance or material.

(ii) The INSTITUTION may terminate this Agreement upon payment to the COMPANY of the amount due for services or materials and equipment supplied by the COMPANY prior to suspension of the Work, including damages caused by the delay as prescribed by the Act. Provided, however, that the INSTITUTION shall not be liable for damages or other costs or expenses incurred by the COMPANY if the existence of the hazardous substance or material was disclosed to the COMPANY by the INSTITUTION or, if as a result of the COMPANY’s review of the Project Documents, including any Asbestos Management Plan developed for the Premises and its investigation of the Premises, the COMPANY should reasonably have been expected to discover or anticipate the existence of the hazardous substance or material and the COMPANY could have developed the scope of the Work in such a manner as to avoid said hazardous substance or material.

(d) The COMPANY and the INSTITUTION agree that any work relating to (i) asbestos, material containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, or (ii) pollutants, hazardous wastes, hazardous materials, contaminants (collectively "Hazardous Materials") or the storage, handling, use, transportation, treatment or the disposal, discharge, leakage, detection removal or containment thereof which is not specifically provided for in this Agreement, is the responsibility of the INSTITUTION. Notwithstanding the foregoing, the COMPANY will utilize due diligence in order to determine whether the Work will require the removal of PCB ballasts and whether asbestos is likely to be encountered in the performance of the Work. COMPANY shall provide the INSTITUTION with an estimate for the cost of removal and disposition of PCB ballasts and asbestos it expects may be encountered in the performance of the Work and shall allow for an amount equal to the estimated cost of removal and disposal in the Guaranteed Savings detailed in Schedule B.

If an Asbestos Management Plan has been developed for the Premises, the INSTITUTION shall make said plan available for the COMPANY’S review and inspection throughout the Interim Period.

A.11 Material and Workmanship.
(a) The COMPANY shall ensure that all materials used by the COMPANY and its subcontractors and workmanship performed or caused to be performed by the COMPANY in connection with the Work meets or exceeds all applicable codes and is performed in a workmanlike manner. Where conflicts exist between applicable codes, the more stringent provision shall apply.

(b) The COMPANY shall ensure that all equipment and materials to be used in the Work for which Underwriters Laboratory labeling services is provided shall be UL labeled.

(c) The COMPANY shall obey the following list of codes where applicable:

1) Applicable construction and electrical code;
2) Underwriters Laboratories (UL);
3) Insulated Power Cable Engineers Association (IPCEA);
4) National Electrical Code (NEC);
5) National Electrical Manufacturers Association (NEMA);
6) American National Standards Institute (ANSI); and
7) Institute of Electrical and Electronic Engineers (IEEE).

(d) The COMPANY shall timely advise the INSTITUTION in writing of all existing equipment and materials to be replaced at the Premises as part of the Work and the INSTITUTION shall within ____ ( ) days designate in writing to the COMPANY the equipment and materials which should not be disposed of off-site by the COMPANY. The COMPANY shall be responsible for the disposal of all equipment and materials removed or replaced through its performance of the Work in accordance with all applicable laws and regulations regarding such disposal, except those items designated by the INSTITUTION as nondisposable. The cost of disposal to be performed by the COMPANY is included in the COMPANY compensation for the Work set forth in Schedule C.

A.12 Warranty of Materials. The COMPANY warrants that all materials and equipment installed as part of the Work will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Project Documents. All work not so conforming to these requirements may be considered defective. If required by the INSTITUTION, the COMPANY shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of paragraph 8.1 below. This warranty of materials, equipment and workmanship is separate from, independent of, and in addition to any other guarantees in this Agreement or any other warranties in this Agreement or required by the Project Documents.

A.13 Responsibility for Materials. The INSTITUTION does not assume any responsibility for the availability of any controlled materials or other materials and equipment required for the Work. However, INSTITUTION reserves the right to review and approve the quality and standards for all materials. The COMPANY shall be responsible for the contracted quality and standards of all materials, components or completed Work furnished by the COMPANY pursuant to the terms hereof. Materials, components or completed Work which fails to comply with this Agreement and the Project Documents may be rejected by the INSTITUTION and shall be replaced by the COMPANY at no cost to the INSTITUTION. The COMPANY shall remove from the Premises within a reasonable time any materials or components so rejected at the entire expense of the COMPANY, after written notice has been delivered by the INSTITUTION to the COMPANY that such materials or components have been rejected. (OPTIONAL)
A.14  Inspections.

(a) All materials and equipment and each part of the detail of the Work shall be subject at all times to inspection by the INSTITUTION or its designated representatives or consultants, and the COMPANY will be held strictly to the true intent of this Agreement and the Project Documents with regard to quality of materials, workmanship, and the diligent execution of the Work.

(b) The COMPANY shall allow the INSTITUTION access to all parts of the Work, and shall furnish such information and assistance as is required to make a complete and detailed inspection or inspections.

(c) All material and equipment installed as part of the Work must be inspected, tested and approved in accordance with the Project Documents and this Agreement prior to its use.

(d) The COMPANY shall, if the INSTITUTION requests, remove or uncover such portions of the finished Work as the INSTITUTION may direct. After the examination, the COMPANY shall restore said portion of the Work to the standard required by this Agreement and the Project Documents. If the Work thus exposed or examined proves acceptable, the expenses of uncovering or removing and the replacing of the parts removed shall be the responsibility of the INSTITUTION and such uncovering, removing and replacing shall be deemed to be an excusable event of delay, if a delay in completion is caused thereby. If the Work so exposed or examined has not been performed in accordance with the Project Documents, the expense of uncovering, removing and replacing any portion of the Work necessary to comply with this Agreement and the Project Documents shall be borne by the COMPANY and requests for a time extension or claims for delay will not be granted.

(e) Upon written request by the COMPANY, the INSTITUTION shall schedule preliminary inspections of the Work as soon as practicable after notification by the COMPANY that major ECMs or systems are substantially installed. If such Work is not acceptable to the INSTITUTION at the time of such preliminary inspections, the COMPANY will be provided written notice as to the particular defects to be remedied before the Work will be accepted. The date such Work is approved by the INSTITUTION, shall be the date of beneficial use to the INSTITUTION for the applicable ECM, relative to the commencement of the warranty period set forth in Schedule R for such ECM.

Notwithstanding the foregoing, the Certificate of Acceptance shall not be executed until a final inspection has been performed.

A.15  Project Meetings. The COMPANY shall provide for regularly scheduled project meetings in the Project Installation Schedule, and shall give timely advance written notice and agenda of such meetings to the INSTITUTION. The COMPANY shall record minutes and distribute copies of minutes of meetings to the INSTITUTION within five (5) business days after each meeting. The COMPANY shall schedule additional project meetings if requested by the INSTITUTION.

A.16  Assignment of Claims. The INSTITUTION shall not be bound by any assignment by the COMPANY to third parties of moneys due or to become due or of any other claims it may have under this Agreement except where the INSTITUTION consents in writing to be so bound.
A.17 Claims and Disputes. The COMPANY shall promptly notify the INSTITUTION in writing of any claims or disputes relating to the Work. Failure to notify the INSTITUTION in such instances may result in rejection of any such claim.