

**CONTRACT
FOR TECHNICAL ASSISTANCE**

between

The European Energy Efficiency Fund SA, SICAV-SIF

as the Fund

and

[NAME OF FINAL BENEFICIARY]

as the Final Beneficiary

Reference Number:

[*]**

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CONTRACT FOR TECHNICAL ASSISTANCE DATED [DATE]

relating to the arrangement of services to be provided in connection with the implementation of the Project Development Services for [NAME OF PROJECT] (the “Contract”)

AND ENTERED INTO BY AND BETWEEN

The **European Energy Efficiency Fund, SA, SICAV-SIF** (the “Fund”), a public limited liability company (*société anonyme*), qualifying as an investment company with variable share capital - specialised investment fund (*société d’investissement à capital variable – fonds d’investissement spécialisé*) in accordance with the Luxembourg law of 13 February 2007 on specialised investment funds, as amended, incorporated under the laws of the Grand Duchy of Luxembourg, with registered office at 31 Z.A. Bourmicht, L-8070 Bertrange, Grand-Duchy of Luxembourg, and registered with the Luxembourg Register of Commerce and Companies under number B 162.036, duly represented for the purposes hereof by Ms. Lada Strelnikova and Mr. Rahul Pratap Singh (hereinafter referred to as the “Fund”),

on one part,

and

[NAME OF FINAL BENEFICIARY], a company incorporated and existing under the laws of [COUNTRY OF INCORPORATION] with its registered office at [ADDRESS] and registered with [COMPANY’S REGISTER] under number [REGISTRATION NUMBER], duly represented by its [AUTHORISED CORPORATE BODY] and duly authorised for the purposes hereof (hereinafter referred to as the “Final Beneficiary”),

on the other part

each a “Party” and, collectively, the “Parties”

HAVE AGREED

Definitions used in this Contract

Closing	means the execution within the Implementation Timeframe by the Final Beneficiary and the relevant ESCO company of an agreement for the purpose of the Investment Programme and the Project to be completed (maximum 2 years from the closing date)
Closing Date	means the date on which Closing occurs, within a maximum period of 2 years after signing of this Contract
Consultant	means any consultants and/or service providers mandated by the Fund to provide the Project Development Services
Contract for Consultancy Services	means a contract entered into between the Fund and the Consultant with respect to the Project
Covenant of Mayors Initiative	means the initiative launched by the European Commission on 29 January 2008, under which the signatory cities have formally committed themselves to going beyond the objectives of the "20-20-20" Initiative in terms of reducing their CO2 emissions through energy demand and renewable energy actions
Eligible Costs	means the costs and fees of the Consultant which are eligible for payment by the Fund as further detailed in Article I.3 (<i>Eligible Costs</i>) of this Contract
ESCO	means an Energy Service Company
Final Beneficiary	means any authority or any Public Body that is entitled to benefit from Project Development Services under the TA and in particular for the purpose of this Contract has the meaning ascribed to such term in the headings thereto
Final Implementation Report	means the report to be submitted by the Final Beneficiary in accordance with Article I.2.2 (<i>Reporting Obligations</i>), substantially in the form of Annex III (<i>Final Report</i>)

Fund	has the meaning ascribed to such term in the headings of this Contract
Implementation Timeframe	means the period of implementation of the Project Development Services, which is limited to two (2) calendar years starting from the Closing Date
Incompletion Indemnity	means the amounts which shall be paid by the Final Beneficiary to the Fund in accordance with Article III.1 (<i>Incompletion Indemnity</i>) of this Contract
Investment Programme	means an investment project or a group of projects presented by the Final Beneficiary, in the field of greenhouse gas emission reduction, energy efficiency and renewable energy sources that is eligible to be financed by the Fund
Leverage Factor	means a minimum ratio of 20 between the TA Budget and the Investment Programme
Project	means the project of the Final Beneficiary, entitled [***], as described in Annex I (<i>Description of the Project Development Services and the Planned Investment Programme</i>) and under the conditions set in Annex II (<i>Eligibility rules for the Project Development Services and the Planned Investment Programme</i>) which is part of the Investment Programme
Project Development Services	<p>means a technical assistance provided by the Consultants in the form of a technical support funded by the Fund for the benefit of the Final Beneficiary to help them prepare and implement the Investment Programme and to cover in particular the following activities and those listed in Annex I and under the conditions of Annex II hereto:</p> <ul style="list-style-type: none"> - Technical feasibility studies in respect to outlining the current baseline and mapping of the existing infrastructure/applications etc., proposing improvement measures with estimated savings; - Financial calculations as a basis for the economic proposal for the ESCO tender; - Preparation of the tendering documentation containing technical and financial components

Public Body	means a body created by a public authority or a legal entity governed by private law with a public service mission, financed more than 50% by public sources, whose internal procedures and accounts are subject to control by a public authority and for whose liabilities a public authority will accept responsibility in the event that the public body ceases its activities
TA Budget	means the budget for the Project Development Services to be supported by the Fund through the TA
TA	means the technical assistance whereby the Fund supports, for the benefit of the Final Beneficiary, energy efficiency and renewable energy initiatives and in particular, under this Contract, the Project Development Services
Termination Event	has the meaning ascribed to such term in Article II.10.1 (<i>Termination by the Fund</i>) of this Contract
"20-20-20" Initiative	means the European Union initiative which aims at reducing greenhouse gas emissions by at least 20%, increasing the share of renewables in energy consumption to at least 20% and improving energy efficiency by at least 20%, all by 2020

The Special Terms and the General Terms below, and the following Annexes:

Annex I	Description of the Project Development Services and the Planned Investment Programme
Annex II	Eligibility rules for the Project Development Services and the Planned Investment Programme
Annex III	Final Implementation Report

In the event of discrepancies, inconsistencies and/or conflict between the terms of this Contract, the documents shall prevail in the following order:

- the Special Terms;
- the General Terms;
- Annex I;
- Annex II;
- Annex III.

I — SPECIAL TERMS

ARTICLE I.1 - PURPOSE

I.1.1 The Fund's mission is to contribute to advancing sustainable energy for Europe, in the form of a public-private partnership with a layered risk / return structure, enhancing energy efficiency and fostering renewable energy within the European Union, primarily through the provision of dedicated financing to municipal, local, regional or national authorities or public or private entities acting on their behalf. Financing is generally provided directly or through partnerships with financial institutions.

I.1.2 The Fund dedicates its funding to upgrade public sector infrastructure and all the Fund's activities are focused around the public sector with the majority of its capital being provided by public sources.

I.1.3 The purpose of this Contract is for the Fund to support the Project Development Services.

I.1.4 The provision of the Project Development Services is conditional to the financing by the Fund of the Investment Programme.

I.1.5 The Parties expressly acknowledge that this Contract and the Contract for Consultancy Services form part of a contractual framework which gives a true economic value to the Contracts. The Parties hereby therefore accept that the interpretation, application or implementation of the Contract for Consultancy, including its existence, validity or termination are conditional to the existence and validity of this Contract.

I.1.6 The Final Beneficiary hereby agrees to be bound by the terms of this Contract, accepts the arrangement by the Fund of the Project Development Services and undertakes to achieve Closing within the Implementation Timeframe by Closing Date with the support of the Consultant and implement and complete the Investment Programme.

I.1.7 The Fund and the Final Beneficiary agree hereby that the TA Budget is EUR [***] ([***]).

ARTICLE I.2 - OBLIGATIONS OF THE FINAL BENEFICIARY

The Final Beneficiary shall ensure that its employees or agents, consultants and other parties contracted in relation with the Project and in particular, with the Project Development Services, comply with the obligations set out under this Contract, including but not limited to, with those set out in Article 1.2.1 (*General Obligations*) and Article 1.2.2 (*Reporting Obligations*) below.

I.2.1 General Obligations

The Final Beneficiary shall without limitation:

- (a) formally accept the mandate of each Consultant;
- (b) manage and monitor the Consultant(s) in respect of the execution of the Project Development Services;
- (c) ensure the due provisions of the Project Development Services by the Consultant and the quality thereof;
- (d) inform the Fund as soon as possible in case this Contract and/or the Project Development Services are prejudiced or jeopardised by actions of third parties (including, but without being limited to, by attachments);
- (e) inform the Fund as soon as possible of any event or circumstance which may have a material adverse effect on the validity or enforceability of this Contract and/or the Project Development Services and in particular of any dispute and/or litigation arising under the Project Development Services;
- (f) ensure that the Consultant's team has a single point of contact within the team of the Final Beneficiary and all work is coordinated, agreed, approved and collaboration is given to ensure that the Consultant has full access to the premises, lands or otherwise and all necessary documents of the Final Beneficiary for the purpose of the Project Development Services;
- (g) sign off monthly time sheets confirming the work completed by the Consultants with related EUR amounts;
- (h) report immediately any deviations from the agreed timeline to the Fund and measures to be taken to correct these;
- (i) recover EUR amounts utilised for advisory services to be repaid to the Fund in case ESCO company finances the project via other sources;
- (j) present reporting as described in Article I.2.2 (*Reporting Obligations*) below;
- (k) ensure that the tender documents include the clause that the ESCO company shall bear incompleteness indemnity as referred in Article III.1 (*Incompletion Indemnity*).

1.2.2 – Reporting Obligations

1.2.2.1 The Final Beneficiary shall report to the Funds' management board on a regular basis and when so requested by the management board or the supervisory board, and, in general, complete all assignments which the Fund may request from time to time.

1.2.2.2 In particular, the Final Beneficiary without limitation:

- (a) shall present (i) activity reports (for technical feasibility studies, including annual final energy savings from energy efficiency projects in GWh and estimated

annual final energy production by renewable energy sources in GWh; (ii) economic studies/financial calculations; (iii) copies of prepared tenders to be published as soon as they are available;

(b) shall request from the Consultant reports which enable it to understand the status / potential impact of the Project with respect to its energy consumption and a complete investment plan, including but not limited to, (i) a report focusing on how the Project would improve energy performance and centralising all Project information regarding all energy drivers and (ii) all final documentation (financial calculations, audit reports, public tenders, documentation, primary energy savings estimations) which should be agreed between the Final Beneficiary and the Consultant, provided that ESCO's tender is subject to approval by the legal and treasury departments of the Final Beneficiary;

more generally, shall supply all documents and information in connection with this Contract as the Fund may reasonably request and payment requests.

1.2.2.3 The Final Beneficiary shall submit, with the assistance of the Consultant, the Final Implementation Report to the Fund within thirty (30) calendar days following the Closing Date, provided that the Final Implementation Report shall cover the entire period from the beginning of the Project Development Services to the Closing Date.

1.2.2.4 All documents in connection with the reporting shall be submitted in English and in electronic format and are subject to the ownership rights set out in Article II.4 (*Ownership of the Results and Access Obligations*) of this Contract.

ARTICLE 1.3– ELIGIBLE COSTS

1.3.1 The Eligible Costs shall consist in the fees and costs incurred by the Consultant in consideration for the Project Development Services and which are eligible for payment by the Fund under Article 1.4 (*Eligible Costs*) of the Contract for Consultancy Services, a copy of which is notified to the Final Beneficiary pursuant to the provisions contained therein.

1.3.2 It is expressly specified that the Eligible Costs supported by the Fund shall not exceed 90% of the overall costs of the Investment Programme.

1.3.3 The Fund will only be obliged to pay the Eligible Costs referred to in Article 1.3.1 above if no Termination Event has occurred or is continuing and no situation or event is continuing which might, after lapse of a determinate period of time, constitute a Termination Event.

ARTICLE I.4 — GENERAL ADMINISTRATIVE PROVISIONS

I.4.1 Any communication in connection with this Contract shall be in writing, in English, indicating the reference number of the Contract and the title of the Project.

I.4.2 Any communication in connection with this Contract may be made by ordinary post or electronic mail. Each party shall notify each other of any change to their address or any other such information supplied by them.

I.4.3 Any communication sent by ordinary mail shall be considered to have been received by the Fund on the date on which it is formally registered by the unit responsible within the Fund. Any electronic communication made between the Parties will be effective only when actually received in readable form.

I.4.4 The address and electronic mail address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Contract is:

(a) For the Fund:

31 Z.A. Bourmicht
L-8070 Bertrange
Grand Duchy of Luxembourg
lada.strelnikova@db.com
rahul.pratap-singh@dws.com

(b) For the Final Beneficiary:

[Full official name]
[Mr/Ms] [First name and surname] [Position]
[Full official address] [E-Mail]

or any substitute address and electronic mail address as a Party may notify to each other.

II — GENERAL TERMS

PART A - LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 – COMPLIANCE WITH APPLICABLE RULES AND REGULATIONS

The Final Beneficiary without limitation:

- (a) shall not commit fraud or corruption, be involved in a criminal organisation or commit any other fraudulent or illegal activity detrimental to the interests or reputation of the Fund, its Shareholders or its Investors;
- (b) shall comply in all respects with all laws and regulations (whether international, European, national, regional or municipal laws), including but not limited to labour law to which it may be subject and, the breach of which may (i) adversely impact the performance of this Contract and/or the Project Development Services or (ii) adversely prejudice the interests of the Fund, in particular any of its rights under this Contract, or any of its shareholders or investors.

ARTICLE II.2 - CONFLICTS OF INTEREST

II.2.1 The Final Beneficiary shall prevent any risk of conflicts of interests (including without limitation as a result of economic interest, political or national affinity, family or emotional reasons or any other shared interest), which could affect the impartial and objective performance of the Project Development Services.

II.2.2 The Final Beneficiary shall promptly notify the Fund as to any circumstances constituting or reasonably likely to constitute a conflict of interests in connection with the Project Development Services and the steps it has taken or it intends to take to rectify any conflicts of interests. The Fund may verify such steps and/or demand that the Final Beneficiary take additional measures, if the Fund determines this to be necessary, within a certain time.

ARTICLE II.3 - LIABILITY

II.3.1 The Final Beneficiary shall be responsible for complying in all respects with all legal obligations to which it may be subject.

II.3.2 The Final Beneficiary shall ensure that all of its staff and employees are bound by the same obligations as incumbent on it under this Contract, where applicable, and in any event shall be personally bound by the provisions of this Article II.3.

III.3.3 The Fund shall not, in any circumstances or on any grounds (including, without limitation, for negligence or any other category or liability whatsoever), be held liable in the event of any action taken or inaction by it, by the Consultant or the Final Beneficiary

or any claim under or in connection with the Contract and the Project Development Services.

II.3.4 The Final Beneficiary agrees to hold harmless and/or to indemnify the Fund and to keep it continuously indemnified at all times, including following termination of the present Contract, against all claims, losses, damage, costs or liability, including taxes and social security contributions (inclusive of interest, penalties, costs and expenses) which the Fund may incur (i) in respect of any or all sums paid under this Contract or (ii) as a result of a material breach (an act or omission) by the Consultant of any of its duties (including the Project Development Services) under this Contract.

II.3.5 The Final Beneficiary confirms that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Contract including but not limited to the Project Development Services, the financing and/or the implementation of the Investment Programme.

II.3.6 Neither Party shall be held liable for any delay or failure to perform under this Contract (save for the payment of any sums due hereunder) if such delay or failure is due to causes beyond its reasonable control (*cas de force majeure*), such as, but not limited to, fire, flood, strikes, labour disputes or other industrial disturbances, declared or undeclared war, embargos, blockades, legal restrictions, riots, insurrections, governmental regulations or the unavailability of means of transport. However, the Parties expressly agree and acknowledge that any change of political, administrative, institutional or organisational situation within the Final Beneficiary (including, but not limited to, a change of major or governor or the occurrence of whatsoever event within the Final Beneficiary) shall not constitute a cause beyond the reasonable control of the Final Beneficiary (*cas de force majeure*). As a consequence, upon the occurrence of any such events the Final Beneficiary shall continue to execute the present Contract in the terms set out hereof.

ARTICLE II.4 – NO TRANSFER OF RIGHTS OR OBLIGATIONS

Neither Party shall assign or transfer any of its rights or obligations under this Contract, in whole or in part, to any third party without the prior written consent of the other Party. Any such assignment or transfer without the prior consent of the other Party shall be deemed null and void.

ARTICLE II.5 – INTERPRETATION

Whenever possible, the provisions of this Contract shall be interpreted in such a manner as to be valid and enforceable under Luxembourg law. However, if one or more provisions of this Contract is found to be invalid, illegal or unenforceable, in whole or in part, the remainder of any such provision and of this Contract shall not be affected and shall continue in full force and effect as if the invalid, illegal or unenforceable provision had never been contained herein. Moreover, if the Parties decide to amend the invalid,

illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision, they should take care that the new or amended provision embodies as closely as possible the purpose of the invalid, illegal or unenforceable provision.

ARTICLE II.6 – NO AUTOMATIC WAIVER OF RIGHTS

II.6.1 Any waiver or delay by either Party in exercising any right under this Contract, the exercise, in whole or in part, of any right under this Contract, or any reaction or absence of reaction by either Party in the event of violation by other Party of one or more provisions of this Contract shall not operate or be interpreted as a waiver (whether express or implied, in whole or in part) of any of its rights under this Contract or under said provisions, nor shall it preclude the further exercise of any such rights. Any waiver of a right must be express and written.

II.6.2 If one Party has expressly waived a right in writing following a specific failure by other Party, this waiver cannot be invoked by the latter Party in favour of a new failure, similar to the previous one, or any other failure.

ARTICLE II.7 - OWNERSHIP OF THE RESULTS AND ACCESS OBLIGATIONS

II.7.1 Unless otherwise provided in this Contract, ownership of the results of the Project Development Services, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested within the Final Beneficiary.

II.7.2 Moreover, all records, documents, papers (including copies and summaries hereof) and other works protected by copyright made or acquired by the Consultant in the performance of its duties under and in the course of this Contract shall, together with all worldwide copyrights, patent rights and design rights in all such works, remain at all times the exclusive property of the Final Beneficiary.

II.7.3 Without prejudice to Article II.8 (*Confidentiality*), the Final Beneficiary grants the Fund the right to make free use of the results of the Project Development Services as it deems fit.

II.7.4 The Consultant shall keep at disposal of the Fund and the Final Beneficiary all original documents, especially accounting and tax records, or, if requested, certified copies of original documents relating to the Contract, stored on any appropriate medium that ensures their integrity in accordance with the applicable national legislation, for a period of **seven** (**[7]**) years from the date of payment of the last invoice of the Consultants.

II.7.5 The Final Beneficiary shall without limitation:

- (a) grant access to the Fund investors to such documents and information in relation to the Project Development Services as is necessary to enable such bodies to perform their obligations under European Union law;

- (b) allow such persons and bodies to undertake, including on the spot, checks in relation to the Project Development Services;
- (c) make available the results of the Project Development Services to third parties, including the Fund's investors so that such results can be used for further projects.

II.7.6 Any investigation under Article II.7.5 above may be carried out at any time from the date of this Contract until the date falling seven (7) years after the date on which the payment of the last invoice of the Consultant is made.

ARTICLE II.8 - CONFIDENTIALITY

II.8.1 Notwithstanding the provisions of Article II.8.2 below, the Fund and the Final Beneficiary undertake to preserve the confidentiality of any document, information or other material in connection with this Contract that is expressly designated in writing by either Party as confidential or where disclosure could reasonably be expected to cause prejudice to any Party.

II.8.2 Any Party may disclose to any person:

- (a) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (b) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (c) who is a Party; or
- (d) with the consent of the Party or as expressly permitted by this Contract.

ARTICLE II.9 - PUBLICITY

II.9.1 The Final Beneficiary shall ensure in general that suitable publicity is given in order to inform the public of the role of the Fund. Any communication or publication by the Final Beneficiary pertaining to the Contract in any form and media shall indicate that sole responsibility lies with the author and that the Fund is responsible for any use that may be made of the information contained therein.

II.9.2 The Final Beneficiary authorises the Fund to publish the following information in any form and medium, including via Internet:

- (a) the Final Beneficiary's names and addresses,
- (b) the subject and purpose of the grant,

- (c) the amount granted and the proportion of the support total costs covered by the funding.

II.9.3 Upon a reasoned and duly substantiated request by the Final Beneficiary, the Fund and the Final Beneficiary may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the Final Beneficiary security or prejudicing their commercial interests.

ARTICLE II.10 - TERMINATION OF THE CONTRACT

II.10.1 Termination by the Fund

The Fund may terminate the Contract with immediate effect by notice to the Final Beneficiary on or at any time after the occurrence of any event specified in this Article II.10.1. The Termination Events are:

- (a) the Investment Programme is not financed by the Fund (i.e. either by the Final Beneficiary itself and/or a third party lender);
- (b) the relevant ESCO does not comply with its obligations;
- (c) any representation or statement made by the Final Beneficiary in connection with this Contract or any document delivered by or on behalf of the Final Beneficiary in connection with this Contract is or proves to have been incorrect or misleading when made;
- (d) any person acquires the ability to direct the affairs of the Final Beneficiary whether by virtue of contract, ownership of shares or otherwise howsoever or there is a change of organisation, methods of control or management of the Final Beneficiary, which in each case and in the opinion of the Fund will have a material adverse effect on the Final Beneficiary's ability to comply with its obligations under this Contract;
- (e) the Final Beneficiary being in breach (whether or not a repudiatory breach) of an obligation under this Contract and, if the breach is capable of remedy, failing to remedy the breach within [thirty] [(30)] days starting on the earlier of the day after receipt of notice from the Fund giving details of the breach or becoming aware of such breach. For the purposes of this paragraph, a breach is capable of remedy if time is not of the essence in performance of the obligation and if the Final Beneficiary can comply with the obligation within the [thirty] [(30)] day period;
- (f) the Final Beneficiary passing a resolution for its winding up or a court of competent jurisdiction making an order for the Final Beneficiary's winding up or dissolution;
- (g) the Final Beneficiary being insolvent or over-indebted, an administration order being made in relation to the Final Beneficiary or the appointment of a receiver over, or an encumbrancer taking possession of or selling, an asset of the Final Beneficiary the Final Beneficiary making an arrangement or composition with its

creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally or any event that would, under the law of the jurisdiction in which the Final Beneficiary carries on business or has an asset, be equivalent or analogous to any of the aforementioned events;

- (h) the Leverage Factor is not complied with;
- (i) the Closing does not occur.

ARTICLE II.11 – CONSEQUENCES OF TERMINATION

II.11.1 No effect on accrued rights and obligations

Expiry or termination of this Contract does not affect a Party's accrued rights and obligations at the date of expiry or termination. Each Party's further rights and obligations will cease immediately on expiry or termination, together with those clauses the survival of which is necessary for the interpretation or enforcement of this Contract, will survive expiry or termination of this Contract and will continue in full force and effect.

II.11.2 No Compensation

Any termination by the Fund in accordance with the terms of Article II.10. (*Termination of Contract*) above shall not give rise to any obligation to compensate the Final Beneficiary.

In case of such termination, the Final Beneficiary shall reimburse, in part or in full, the amounts paid upfront in case of a Termination Event or if any specific or general obligations laid down under this Contract are not fulfilled or are not met, as set out in Article III.1 (*Incompletion Indemnity*) below.

II.11.3 Obligation to Return the Documents etc.

Upon termination of this Contract for any reason whatsoever, the Final Beneficiary shall immediately and promptly return to the Fund any documents, equipment, correspondence, etc. entrusted to it under this Contract.

ARTICLE II.12 – NON-SOLLICITATION OBLIGATIONS

The Final Beneficiary hereby agrees that it shall not for a period of [twelve] ([12]) months immediately following the termination of this Contract, whether on its own behalf or in conjunction with or on behalf of any person, company, business entity or other organisation (as an employee, director, principal, agent or in any other capacity) directly or indirectly solicit or assist in soliciting, in competition with the Fund, the business of any Final Beneficiary or a potential Final Beneficiary (i) with whom the Final Beneficiary had material contacts or dealings on behalf of the Fund during the course of

performance of this Contract or (ii) for whom the Final Beneficiary served in a client management capacity on behalf of the Fund and for whom the Final Beneficiary was directly responsible during the term of this Contract.

ARTICLE II.13 – LEGAL VALUE AND FURTHER AMENDMENTS

II.13.1 This Contract and its Annexes contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and replaces all prior agreements or understandings, written or oral, with respect to the same subject matter still in force between the Parties.

II.13.2 Any amendment to this Contract, as well as any additions or omissions, can only be agreed in writing with the mutual consent of and duly signed by the Parties.

ARTICLE II.14 – APPLICABLE LAW AND JURISDICTION

II.14.1 This Contract and any non-contractual obligations arising out of or in connection with it are governed by Luxembourg law.

II.14.2 The courts of Luxembourg have exclusive jurisdiction to settle any dispute arising out of or in connection with this Contract (including a dispute relating to the existence, validity or termination of this Contract or the consequences of its nullity) or any non-contractual obligations arising out of or in connection with this Contract (a "**Dispute**"). The Parties agree that the courts of Luxembourg are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary. This Article I.14.2 is for the benefit of the Fund only. As a result, the Fund shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Fund may take concurrent proceedings in any number of jurisdictions as it may think fit for the preservation of its interest and rights.

PART B — FINANCIAL PROVISIONS

ARTICLE III.1 – INCOMPLETION INDEMNITY

III.1.1 The Termination Costs, shall be paid to the Fund, either by:

- (a) the Final Beneficiary, in the event of a termination in accordance with Article II.10 (*Termination by the Fund*), other than paragraphs (a) to (b) of Article II.10.1; or
- (b) the relevant ESCO in the event of a termination in accordance with paragraphs (a) and (b) of Article II.10.1 thereof. To that effect, the Final Beneficiary shall include in the tender documents that the ESCO shall bear such costs. In any case, the Final Beneficiary commits to pay to the Fund all amounts due by the ESCO under this paragraph upon first demand by the Fund.

III.1.2 The amounts to be paid pursuant to Article III.1.1 above to the Fund for the benefit of the Fund shall consist of:

- (a) the Eligible Costs; and
- (b) an indemnity representing [5] per cent of the total amount of the Eligible Costs as a financial compensation for all the work performed by the Fund in connection with this Contract and the Project Development Services.

III.2.3 The Fund shall provide to the Final Beneficiary or the ESCO, as the case may be, the total amount to be paid to the Fund together with a copy of the Eligible Costs.

ARTICLE III.2 - CALCULATIONS AND CERTIFICATES

III.2.1 In any litigation proceedings arising out of or in connection with this Contract, the documents communicated to the Final Beneficiary by the Fund for the purpose of determining the amounts due by the Final Beneficiary under Article III.1 (*Incompletion Indemnity*) are *prima facie* evidence of the matters to which they relate.

III.2.2 Any certification or determination by the Fund of an amount under this Contract is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

III.2.3 Any interest, indemnity or costs accruing under this Contract will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

ARTICLE III.3 - BANK ACCOUNT FOR INCOMPLETION INDEMNITY

For the purpose of paying the Incompletion Indemnity to the Fund, the Final Beneficiary shall use the following bank account in EUR:

Name of the bank: [...]

Address of the branch: [...]

Precise denomination of the account holder: [...]

Full account number (including bank codes): [...]

IBAN account code: [...]

ARTICLE III.4 - RECOVERY

III.4.1 Upon the occurrence of a Termination Event in accordance with Article II.10 (*Termination by the Fund*), other than paragraphs (a) to (b) of Article II.10.1, the Fund may declare that the amounts due by the Final Beneficiary under Article III.1 (*Incompletion Indemnity*) hereof are to be repaid immediately, at which time such repayment shall become immediately due and payable, or are to be repaid on demand, at which time such repayment demand shall become due and payable on demand.

III.4.2 The Fund will have the right to charge interest at the rate of 5% per annum, from the due date for payment to the date of actual payment in full (whether before or after judgment) on any unpaid sum due from the Final Beneficiary under this Contract.

III.4.3 The Fund charges occasioned by the recovery of the sums owed to the Fund shall be borne solely by the Final Beneficiary.

SIGNATURES

The Contract is executed in three counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Contract.

The Fund

The Final Beneficiary

Date:

Date:

.....
Name:
Title:
The European Energy Efficiency Fund
S.A., SICAV-SIF

.....
Name:
Title:

.....
Name:
Title:
The European Energy Efficiency Fund
S.A., SICAV-SIF

.....
Name:
Title:

Overview of contract annexes

Annex I

Description of the Project Development Services and the planned Investment Programme

Annex II

Eligibility rules for the Project Development Services and the planned Investment Programme

Annex III

Final Implementation Report

ANNEX I: DESCRIPTION OF THE PROJECT DEVELOPMENT SERVICES AND THE PLANNED INVESTMENT PROGRAMME

1. Background
 - 1.1 Location
 - 1.2 Beneficiary (description, type of authority)/Member of Covenant of Mayors (yes/no)/ National targets under the "20-20-20" initiative
 - 1.3 Motivation to participate in the TA programme and objectives to be achieved
 - 1.4 European Commission support under other EU programmes for the same project
 - 1.5 Confirmation on compliance with Article 93(1) points (a), (b) and (e) and Article 94 points (a) and (b) of the Financial Regulation. The confirmation can be downloaded at http://ec.europa.eu/competition/calls/2010_judges/annex_5.pdf

2. Investment Programme
 - 2.1 Description (objective, technology used, sector involved)
 - 2.2 Total cost and leverage factor
 - 2.3 Description of the main impact in terms of:
 - 2.3.1 Investments mobilized (total and financed by the Fund)
 - 2.3.2 Estimated annual energy savings from energy efficiency projects in GWh, and estimated annual final energy production by renewable energy sources in GWh) envisaged
 - 2.3.3 Renewable energy to be produced
 - 2.3.4 Jobs created/sustained by the investment
 - 2.5 Compliance with EU policies
 - 2.6 Intended Investment Programme implementation process
 - 2.7 Intended process and procurement procedure for ESCO selection
 - 2.8 Market replication potential for other municipalities
 - 2.9 Description of previous assessments and studies, if any (please include with this application)

3. Technical Assistance required for the Investment Programme
 - 3.1 Description of the services required from TA to implement the Investment Programme (for each segment separately eg. public buildings, street lighting)
 - 3.2 Implementation Timeframe (GANTT chart)
 - 3.3 Information on other subsidies or grants, if applicable
 - 3.4 Commitment to support this TA (describe your own contribution)
 - 3.5 Beneficiary's commitment to facilitate dissemination of experience and results

ANNEX II: ELIGIBILITY RULES FOR THE PROJECT DEVELOPMENT SERVICES AND THE PLANNED INVESTMENT PROGRAMME

The following eligibility criteria will be applied to the Project Development Services, the identified planned Investment Programme and needs to be respected by the Final Beneficiary.

Eligibility of area's covered

Project Development Services can be provided for the development of the Investment Programme within the following areas:

- public and private buildings incorporating energy efficiency and/or renewable energy solutions including those based on the usage of Information and Communication Technologies (“**ICT**”);
- investments in high energy efficient combined heat and power (“**CHP**”), including micro-cogeneration, and district heating/cooling networks, in particular from renewable energy sources;
- decentralised renewable energy sources embedded in local settings and their integration in electricity grids;
- microgeneration from renewable energy sources;
- clean urban transport to support increased energy efficiency and integration of renewable energy sources, with an emphasis on public transport, electric and hydrogen vehicles and reduced greenhouse gas emissions;
- local infrastructure, including efficient lighting of outdoor public infrastructure;
- such as street lighting, electricity storage solutions, smart metering, and smart grids, that make full usage of ICT;
- energy efficiency and renewable energy technologies with innovation and economic potential using the best available procedures.

ANNEX III: FINAL REPORT

Name of project: Reporting period:

1. Work progress

Achieved results against initial objectives of the work programme, sectors covered. Please outline all changes in relation to the information submitted on the initial application for Technical Assistance

2. Final list of the implemented Investment Programme

[Detailed list of measures and projects and partners implementing the Investment Programme and the actual implementation timetable]

3. Actual cost incurred for the whole project duration

4. Supporting documents to provide

please refer to Article I.3

5. Conclusions

[lessons learnt and to pass over to other local authorities, next steps planned in the implementation of the Investment Programme– if relevant]: Please outline cumulative renewable energy production to be implemented and/or cumulative primary energy savings achieved and also information for financing of the Investment Programme:

Date of report: