

Template for ESCo contract – short version

IEA-SHC INFO SHEET 45.C.2.3, page 1 of 4

Subject:	Template for ESCo contract – short version
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Description:	Example template (short) for “Energy Performance Contract” for services done by an “Energy Service Company” (ESCo.)
Author:	Sabine Putz, S.O.L.I.D. (s.putz@solid.at)
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1 Parties of the contract

This contract has two parties, the ESCo company (later referred to as ESCo) and the Client company (later referred to as the Client).

2 The ESCo project

- 2.1 The ESCo project refers to a project, where the ESCo company invests in and makes changes which save energy, water, maintenance need or equivalent for the Client.
- 2.2 The value of the ESCo project consists of the background studies, equipment costs, installation costs, monitoring of the savings and other costs arising from the services performed by the ESCo company for the Client.
- 2.3 Savings are considered to be borne to the Client by the measures made by the ESCo company compared to the situation if the measures had not been taken by the ESCo company. Conditions that are a result of neglect of the Client or change in the purpose of use of the building, causing loss in savings shall be deemed as the responsibility of the Client. If the loss in savings is deemed to be caused by the Client, the savings shall be calculated based on a situation where the Client has not caused the loss in savings. The Client shall maintain and service the equipment of the ESCo project carefully according to the instructions given by the manufacturers and suppliers.
- 2.4 The Client shall pay the ESCo company a share of the savings. The Client shall also pay the ESCo project with at least the agreed minimum fare. The Client can at its will pay more than the agreed minimum fare or buy the whole project to itself (2.5 and 2.6)
- 2.5 The ESCo company shall own the investment until it has been fully paid back, after which the investment will be owned by the Client.
- 2.6 The ESCo company shall keep accounts, where the current value of the project and the proportional share of the ESCo company’s ownership is identified. The account shall include the direct and in-direct costs as well as the savings arising from the ESCo project. The accounts shall include purchases of equipment, feasibility studies, the changed costs of maintenance and changes in electricity, water and heat invoices.
- 2.7 The ESCo project can include smaller sub projects which are treated as separate ESCo projects.

Template for ESCo contract – short version

IEA-SHC INFO SHEET 45.C.2.3, page 2 of 4

3 Feasibility study and equipment installations

- 3.1 The ESCo company commissioned a feasibility study to Company XX based on an earlier agreement (Annex 1).
- 3.2 The study showed xx projects to be feasible. Detailed descriptions of the projects are in annexes xx, xx and xx.
- 3.3 The costs of the feasibility study are included in project xx.
- 3.4 The Client authorizes the ESCo company to execute the activities recommended in the feasibility studies.

Note: This section is referring to a feasibility study. If the study has not been performed, it is referring to a overview.

4 Verification of savings

- 4.1 The costs occurring from the verification of the savings will be included in the ESCo project.
- 4.2 The savings will be assessed as monitoring periods. The monitoring period is one year. The first monitoring period starts on the day of the signature of this contract.
- 4.3 The savings can also be estimated if the Client and ESCo Company so agree mutually. This way the verification does not cause any costs.
- 4.4 In case of dispute over the savings, the savings shall be assessed based on the principles set out in this contract and by the organisation who performed the feasibility studies.

5 Distribution of the savings

- 5.1 The share of the ESCo Company's investment at the start of the project is 100% and shall diminish as the Client pays back investments. When the share of investment by the ESCo Company is 0% the ownership of the investment shall be transferred to the Client.
- 5.2 The Client shall pay, as agreed in section 6, a fee of half (50)% of the savings accrued during the monitoring period times the share of the ESCo Company's before the due date to the ESCo Company.
- 5.3 At the same time as the Client pays the ESCo Company the share of savings specified in section 2.5.2, the Client shall payback the investment with at least a quarter (25%) of the amount of the savings during the monitoring period. This payback will diminish the ESCo Company's share of the investment.
- 5.4 Example: If the ESCo project is worth 10 000€ and the Client has paid back 4000€ previously, the share of the investment owned by the ESCo Company is 60%. If the saving is 2000€, the Client should pay the ESCo Company a fee of 600€ (2000€*50%*60%). In addition, the Client shall payback the investment of a mini-mum of 25% of the savings, 500€. After this, the Client has paid 4500 (4000€+500€) of the investment.
- 5.5 If savings are not accrued in any monitoring period, and is not caused by situations caused by the Client as mentioned in 2.2.3. or 2.8.2 change is operating conditions or sudden accidents mentioned in 1.12.1, the Client will not have to pay the fee as mentioned in 2.5.2 or pay back the investment as mentioned in 2.5.3.

Template for ESCo contract – short version

IEA-SHC INFO SHEET 45.C.2.3, page 3 of 4

6 Invoicing

- 6.1 The Client shall pay the fees and paybacks of the monitoring period in instalments four times a year; 15th of March, June, September and December, based on the estimated costs made by the ESCo Company. The instalments paid by the due date shall be registered on the ESCo account on the due date
- 6.2 The ESCo Company will make a balance invoice after every monitoring period. The invoice shall take into account the savings from the monitoring period (2.4.) and the true change in the ESCo project.

7 Additional payback

- 7.1 The Client may pay back the investment more than the minimum amount at the time of invoicing.
- 7.2 Unless otherwise ordered by the Client, the additional paybacks shall be targeted at the projects which are most feasible to the Client and assessed by the ESCo Company. In other words, towards that project, which will yield the Client with the biggest saving for the Client.
- 7.3 The minimum fee to the ESCo Company is 2% of each project's cost. The fee shall include the fee calculated based on the savings (2.5.2) If the Client pays the investment back completely before the savings costs exceed 2% of the investment, the Client will also pay the remainder of the fee to the ESCo Company.

8 Ownership and ending the contract

- 8.1 The equipment of each sub project is owned by the ESCo Company and managed by the Client until the whole project has been paid. After this they will be owned by the Client.
- 8.2 If the Client's activities in the premises of where the investment has been made end, the savings end due to change in operations or there is a substantial change in the operations of the Client (e.g. purpose of the premises changes), the Client is obliged to buy the remainder of the project.
- 8.3 If the Client has performed the duties as set out in this contract and the investment has not been paid back in 20 years (twenty years) after the signature of this contract, the ownership and obligations related to it shall be transferred to the Client directly with no redemption.
- 8.4 The ESCo Company can at any time end the ESCo project and transfer the ownership and the obligations related to it to the Client without redemption.

9 Transferring the ESCo Project to third parties

- 9.1 The ESCo Company can transfer the ESCo project with its obligations and rights to a third party. The ESCo Company must notify the Client about the transfer. The transfer cannot cause any additional inconvenience to the Client.

Task 45 Large Systems

Template for ESCo contract – short version

IEA-SHC INFO SHEET 45.C.2.3, page 4 of 4

10 Notifications

- 10.1 The ESCo Company must report the current status and accounts of each sub project when invoicing the Client.
- 10.2 The Client can at any time check the accounts of the projects.
- 10.3 The Client shall name a contact person who will give the necessary details for the ESCo Company's accounting if needed. The ESCo Company has the right to check the installed equipment.
- 10.4 The Client will inform the ESCo Company without delay of all changes in the circumstances, faults in the equipment, etc, which are relevant to the ESCo project or which can affect the amount of savings or are relevant to the proper functioning or maintenance of the equipment.

11 Additional investments

- 11.1 Additional investments will be agreed upon with a separate contract.

12 Insurances and responsibilities

- 12.1 The Client will have insurance to cover the equipment from sudden accidents, such as fire. If the installed equipment is damaged in case of a sudden accident and their repairing is not economically viable, the Client will redeem the rest of the project.
- 12.2 The indemnification responsibility of the ESCo Company is restricted to the total value of the ESCo project in this specific contract.
- 12.3 Any disputes concerning this contract shall be solved in the xxxxxx court.

Annexes:

- 1. Contract xx.xx.xx
- 2. xx-project description
- 3. xx-project description
- 4. xx-project description

Template for more detailed and longer contract is available from IEA-SHC TECH SHEET 45.C.3, available from <http://task45.iea-shc.org/fact-sheets>.