



# Standard EPC documents

## V. Energy Performance Contracts

European Energy Service Initiative – EESI  
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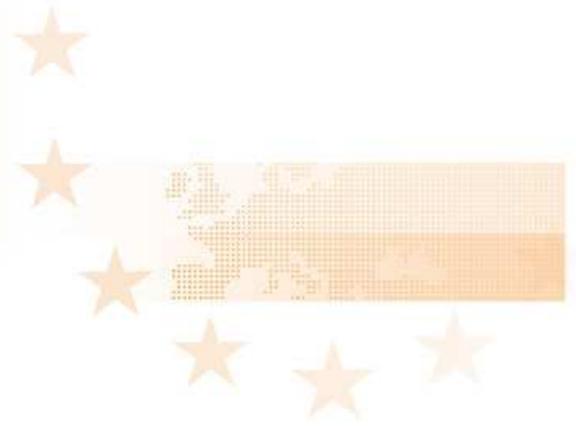
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## Energy Performance Contracts

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### 1 Introduction

The **Energy Performance Contract** between ESCO and building owner usually contains guarantees for energy (cost) savings and regulates allocation of financial and technical risks for implementation and operation during the entire project duration of typically 5 to 15 years.

Since there are **various European model contracts** and different approaches for EPC the EESI project defines not ONE European model contract but the main distinguishing features of Energy Performance Contracts and makes different proven model documents available.

This paper on model Energy Performance Contracts **provides the main principles of contracts** and main articles / heading from available model contracts. For reasons of quality insurance the EESI team has decided not to publish “full text” contracts. Due to differences in conditions in different countries, **such full-text contracts would hardly be of use without advice from experienced project developers**. However sources for the available model contracts are described in the paper and interested users will be provided with the full versions of model documents.

### 2 Content

Main components of the Energy Performance Contract from the reviewed model contracts can be summarized as follows:

- 1) **Guarantee of savings** – the Energy Services Company (ESCO) guarantees a certain amount of yearly savings to be achieved throughout the duration of the contract. The provision on savings also has to clearly define what happens, if the guaranteed savings are not achieved, i.e. there has to be a clear description of how the ESCO settles the negative difference between guaranteed savings and actual achieved savings or if the guaranteed savings are exceeded, i.e. there has to be a clear description of how the excess savings are distributed between the client and the ESCO
- 2) The **volume of investment** to bring the guaranteed savings and a commitment by the client to pay the investment after its installation
- 3) **Definition of a reference scenario** (baseline) of the future energy consumption. The reference scenario of future energy consumption has to be clearly defined. It is set in physical units. For all financial and economic purposes, the reference scenario is calculated in current prices. In the contract, a certain level of inflation is assumed and the reference scenario is calculated accordingly.
- 4) **Obligation of the ESCO** to provide a report on yearly savings evaluation. In this evaluation, the ESCO documents to the client the actual amount of achieved savings in the respective year – in physical as well as monetary units.

- 5) Responsibility of the ESCO for correct **design of the energy saving measures** and their realization.
- 6) Obligation of the client to provide proper **conditions for realization** of the energy saving measures.
- 7) Planned **duration of installation** of the investment
- 8) Way of transfer of the installed energy saving technologies to the **ownership** of the beneficiary.
- 9) Means of **payment for the services** and savings. Usually these are paid as a monthly fixed advanced payment agreed by both parties. At the end of each year of the contract, after the savings evaluation (as in 4), the payments are settled.
- 10) Declaration of the purpose **of operation of the facility** on which the Energy Performance Contract is effectuated.
- 11) **Length of the contract**
- 12) **Method of recalculation of the guaranteed savings** in case any of the input parameters differs from the presumptions defined in the reference (baseline) energy consumption scenario

### 3 Sources and content of available European EPC model contracts

#### 3.1 Energy Performance Contract Czech Republic

The whole contract is available from EESI partner Seven <http://www.svn.cz/> in Czech language.

##### Headings of the contract

1. Contracting Parties
2. Content

##### Part one: General provisions

3. Preamble
4. Initial declaration

Initial statements of both parties, in which the Contractor (ESCO) declares its capability of designing and delivering energy savings in the facilities of the Contracting Party (Municipality) and qualified personnel; the Municipality provides declaration about the ability to fulfill agreed liabilities; declares that the facilities are in its ownership and that the contract with ESCO is in harmony with all legal and contractual issues related to the facilities, with financial decrees, etc



## 5. Definitions

Terminology, which is crucial for mutual understanding and implementation of the contract – all technical terms and economic terms are included. Most of the principles mentioned in the Chapter 4.1 are included, and all important terms in the contract (repayment period, energy services, energy management, ESCO, energy systems, guaranteed savings, measure, investment measure, additional measure, period of construction, energy saved, cost savings, etc.)

## 6. Purpose of the contract

Purpose (content) of the contract – i.e. this part includes the objective of ESCO to achieve energy and other cost savings in the facilities (school, administrative, healthcare, social) of the Contracting Party (municipality), confirmation by the municipality that the data provided are true and correspond to the reality. Both parties state their intention to cooperate

## 7. Subject matter of the contract

Subject of the contract: ESCO agrees with its obligation to implement energy saving measures at the property of the Contracting Party (Municipality), to achieve the proposed energy and other costs savings, to enable to the Client pay the debts which relate to the Measures implementation, to implement the measures in a way in which the building will perform its standard activities, etc.

### Part two: Preliminary activities

This part of the contract includes the agreement of the parties that ESCO, before it starts to implement the proposed energy saving measures, will verify the data and the status of the facility (building and its systems), will inform about any discrepancies between the data in the tender documentation and the verified status. (This rarely happens in case the tender documentation is well prepared.)

## 8. Verification of the state of energy usage in the facilities

## 9. Qualitative criteria, price presumptions

### Part three: Construction period – implementation of basic measures

## 10. Rights and duties of contracting parties

Rights and obligations of the contract parties: the municipality declares that it will enable the ESCO to implement the energy saving measures – it will create conditions for employees of ESCO to implement the measures (provision of a room, electricity, water, etc.).

## 11. Complex tests

Complex test is agreed before the newly installed measures are handed over to the municipality (and its budgetary organisations). A special attachment (Annex 9 hereinafter) defines the conditions of the complex test. Technical details and revision tests are also prepared by ESCO before the newly installed measures are handed over. Potential results of the test and potential disruptions are described.



## 12. Handing over

Time has to be agreed ahead, conditions under which the municipality is obliged to accept the measures are defined. A protocol is prepared between the parties and signed, in which all possible imperfections are defined and deadlines are fixed for rectification of imperfections

## 13. Quality guarantee

ESCO undertakes the liability for smooth operation of delivered and installed machinery and of other articles for a specific period of time starting the successful hand over of installed machinery.

## 14. Guarantee of energy savings

Guarantee for achievement of guaranteed savings is specified in a special article. ESCO accepts the guarantee that the agreed implemented measures will reduce the consumption and other operational costs by at least the guaranteed savings. ESCO guarantees (takes the liability for) that the savings will be achieved for the whole time of repayment of the investment into the measures. The ESCO guarantees that the overall repayments paid by the client for the installation of measures will not be higher than the savings achieved

## 15. Basic simple measures

### Part four: Repayment period- energy management

## 16. Rights and duties of contracting parties

## 17. Quarterly consultations

Quarterly meetings are compulsory during the implementation period

## 18. Additional measures

## 19. Change of conditions

Any change in conditions in which the installed energy saving measures are operated (operation of the facilities, operation of installed measures, installation of new energy consuming appliances and machinery, closure of rooms and all other changes relevant to energy consumption and /or achievement of energy savings) have to be reported by the Municipality (or budgetary organisations) to the ESCO. Procedure is defined in case changes in operation and resulting change in energy savings are permanent (Addendum to the contract in which relevant necessary changes are included).

## 20. Final report

### Part five: Common provisions

#### Section I: Price and payment conditions

## 21. Price for implementation of the measures

Price for implementation of measures is defined. Corresponding detailed budget has to be attached (in Annexes).



22. Interest rate

Interest rates have to be defined by the contract which will be paid by the Municipality.

23. Energy management costs

Price for Energy Management is specified on monthly basis

24. Rebate

25. Premium

26. Final settlement

27. Invoicing

28. Due payment

29. Premature repayment

30. Other payment conditions

31. Security

Section II: Other arrangements

32. Mutual information provision duty

33. Information protection

34. Communication

35. Authorized persons

36. Right of use

37. Insurance

38. Force majeure

39. Indemnification

40. Penal clause

41. Contract duration

42. Settlement of disputes

43. Final provisions



### 3.2 Energy Performance Contract Germany

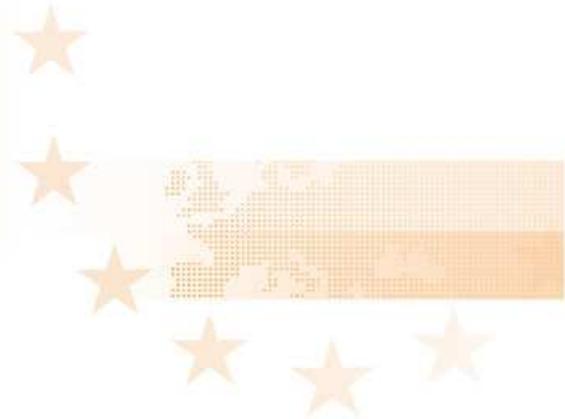
The whole contract is available from EESI partner Berliner Energieagentur <http://www.berliner-agentur.de> in German and English language. This contract was additionally adopted as model contract in EUROCONTRACT and used as base in various European pilot projects on EPC.

#### Headings of the contract

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§ 3	Delivery .....	
§ 4	Preparatory Services by the CN.....	
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§ 4.4.	Compulsory Measures.....	
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§ 4.6.	CL's Right to Demand Performance.....	
§ 4.7.	Discretionary Powers of the CN .....	
§ 4.8.	CN's Duty to Advise.....	
§ 4.9.	CL's Right of Veto.....	
§ 4.10.	Legal Consequences in the Case of Justified Exercise of the CL's Veto .....	
§ 4.11.	Legal Consequences in the Case of Faulty Exercise of the Right of Veto on the Part of the CL	
§ 5	Official Permits and Approvals.....	
§ 6	Main Performance of the CN (Saving Guarantee and Assurance of Success).....	
§ 6.1.	Reference Quantities .....	
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§ 6.3.	Maintenance and Replacement of Energy Saving Measures .....	
§ 6.4.	Setting Up of an Energy Management System/Controlling .....	



§ 6.5.	Disposal of Shut-down and/or Removed Installations, Components of Installations and Objects	Fehler! Textmarke nicht definiert.
§ 7	Vicarious Agents	.....
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§ 9	Calculation of the Amount of Savings	.....
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§ 11.2.	Compensation Claims and Other Claims for Payment on the Part of the CL	.....
§ 11.3.	Legal Consequences of Accepted Payments	.....
§ 11.4.	Bauabzugsteuer [Construction Withholding Tax]	.....
§ 12	CL's Duties to Cooperate	.....
§ 13	Building Maintenance Measures	.....
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§ 13.2.	CN's Right of Intervention	.....
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§ 15	Liability	.....
§ 15.1.	Limitations of the CN's Contractually Agreed Liability Under the Guarantee	.....



- § 15.2. Other Liability Claims on the Part of the CL .....
- § 15.3. Non-observance of Duties to Cooperate .....
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### 3.3 Other sources of model contracts

From the EESI partners further available model contract are:

- Austrian model contracts for EPC, Energy Supply Contracting and Integrated Energy Contracting are available from EESI partner GEA [www.gea.at](http://www.gea.at) in German language, the contracts are just provided in combination with consultancy.
- Property Development Contract is available from EESI partner IVL <http://www.ivl.se> in Swedish language. It currently needs to be updated due to changes in regulations.
- Model contract for Energy Supply Contracting is available from EESI partner JSI <http://www.jsi.si> in Slovenian and English language.
- Model contract for Energy Supply Contracting is available from EESI partner ANRE <http://www.anre.ro> in Romanian and English language.

**EESI consortium will produce the design and translation of further documents, which can be used as examples for other countries. New sources for the model contracts will be added in the update version of this paper.**

**For updates and further also check the EESI website:**

**[www.european-energy-service-initiative.net](http://www.european-energy-service-initiative.net)**