

## **Fiscal Affairs**

Tuesday, September 8, 2026 5:30 PM

SASD District Administration Building, 123 Linden Street, Stroudsburg, PA 18360

### **1. MEETING OPENING**

### **2. BUDGET**

2.A. Ford Transit Mobility Wheelchair Van

2.B. Dilligent

2.C. Other

2.D. Public Comment

### **3. BUILDINGS & GROUNDS**

3.A. Clearview Elementary School Physical Needs  
Assessment – B. Isett & Associates, Inc.

3.B. GESA/IGA Presentation - SitelogIQ

3.C. Pennoni Fuel Oil Spill at Transportation

3.D. Other

3.E. Public Comment

### **4. ATHLETICS & ACTIVITIES**

4.A. Girl's Junior High Wrestling

**Speaker (s) :** Rich  
Baker, Athletic  
Director

4.B. Other

4.C. Public Comment

### **5. PUBLIC RELATIONS**

5.A. Other

5.B. Public Comment

# ROHRER

School & Commercial Bus Sales

DATE: **August 27, 2026**

P.O. BOX 100, RTS 11 & 15, DUNCANNON PA 17020-0100 (717)957-2141

NAME

SOLD TO:

**Stroudsburg School District**

ADDRESS:

**123 Linden St.**

COUNTY

**Monroe**

CITY

STATE

ZIP

HOME PHONE

**Stroudsburg**

**PA**

**18360**

BUS PHONE

DESCRIPTION

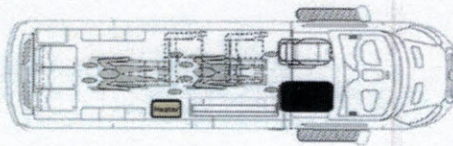
AMOUNT

**1 new - 2024 Ford Transit Mobility wheelchair van #104174**

\$

**96,530.00**

**We will configure seating for school use. GPC - QW648**



**\*\*T**

**E\*\***

INSURANCE CO

CODE#

PRICE \$

**96,530.00**

POLICY NO.

TRADE IN \$

-

SALES TAX EXEMPTION#

BALANCE \$

**96,530.00**

ENCUMBRANCE HOLDER

MISC

ADDRESS

AMT

NET SALES

CITY

STATE

ZIP

PA. SALES TAX

DOCUMENTARY FEES

LIC. TRANS. TITLE ENCB.

TOTAL \$

**96,530.00**

LESS DEPOSIT

DUE UPON DELIVERY \$

**96,530.00**

"The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty or merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items."

\* ALL TRADE IS SUBJECT TO APPRAISAL BEFORE TRANSACTION IS FINALIZED

FOR ROHRER BUS SALES

I, OR WE, HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THIS ORDER

BY

AUTHORIZED  
SIGNATURE

SIGNED X

PURCHASER

SIGNED X

PURCHASER



525 Main Street, Suite 200, Stroudsburg, PA 18360  
272.200.2050 610.481.9098  
barryisett.com

July 6, 2026  
Project # P6321726.000

Mr. Nathan Strouse  
Director of Facilities  
Stroudsburg Area School District  
Administration Building  
123 Linden Street  
Stroudsburg, PA 18360

*Sent via DocuSign to nstrouse@sburg.org*

**RE: CLEARVIEW ELEMENTARY SCHOOL – PHYSICAL NEEDS ASSESSMENT**  
2000 N. 5<sup>th</sup> Street, Stroud Township, Monroe County, Pennsylvania 18360

Dear Mr. Strouse:

Barry Isett & Associates, Inc. (Isett) appreciates the opportunity to provide this proposal for a Physical Needs Assessment (PNA) for the above-referenced property. This proposal is based on recent communication between you and Robert Sarnowski of our firm.

### **PROJECT UNDERSTANDING**

Isett understands that the subject property consists of approximately 6.0 acres and includes a 37,258 square foot (SF), multi-wing, split-level structure constructed in 1940. The structure is not currently occupied and previously served as an elementary school.

The purpose of the PNA is to better understand existing deficiencies and to identify the various building systems and current condition; estimate the expected remaining useful life of the building systems, where appropriate; and identify building system components of the facility that will need repair or to be replaced in the immediate timeframe (1 year), short-term (5 years), and long-term (10 years). Assessment of exterior site improvements such as parking lots and stormwater drainage and interior cosmetic finishes were declined.

### **SCOPE OF SERVICES**

The PNA shall be performed in accordance with *ASTM E2018-15 Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process* as follows:

1. Perform a review of readily-available private and public documents to augment a walk-through survey and to assist in the understanding of the subject property and identification of physical deficiencies. Typical documents include:
  - a. Drawings and specifications (as-built or construction)
  - b. Certificate of occupancy
  - c. Safety inspection records
  - d. Warranty information (e.g. roofing, boiler, chiller, cooling tower, etc.)
  - e. Records indicating the age of material building systems (e.g. roofing, paving, plumbing, heating, air conditioning, electrical, etc.)
  - f. Historical costs incurred for repairs, improvements, recurring replacements, etc.
  - g. Pending proposals or executed contracts for material repairs or improvements
  - h. Outstanding citations for building, fire, and zoning code violations (A Right-to-Know request is filed with the local authority having jurisdiction to obtain this information.)
  - i. Previously-prepared property condition reports or studies pertaining to any aspect of the subject property's physical condition
2. Conduct interviews with appropriate personnel to augment a walk-through survey and to assist in the understanding of the subject property and identification of physical deficiencies. A pre-survey questionnaire will be provided to the Client.
3. Perform a walk-through survey of the subject property to observe material systems and components and identify physical deficiencies and any unusual features. The survey will include, to the extent feasible:
  - a. Structural frame
  - b. Building façade and envelope
  - c. Roofing
  - d. Mechanical, electrical, and plumbing systems
  - e. Vertical transportation, if applicable (review of current inspection certificate and cab condition only; assessment of service history and equipment can be provided at additional cost)
  - f. Life safety/fire protection systems

*Note: The assessments described above will not include any removal or testing of building materials or operation of equipment and will be based solely on visual evidence readily accessible during the walk-through. If access to the roof is not readily accessible, adequate means/method shall be provided by Client.*

4. Prepare Opinion of Probable Costs for the suggested remedy of the material physical deficiencies observed that are greater than \$5,000.00 to assist in developing a general understanding of the physical condition of the subject property and long-term equipment replacement needs. We will prepare an Opinion of Probable Costs for immediate timeframe (1 year), short-term (5 years), and long-term (10 years).
5. Prepare a Physical Needs Report (PNR) for the subject property outlining the findings of the document review, interviews, walk-through survey, and opinion of probable costs organized as follows:

- a. Executive Summary
  - (1) General Description
  - (2) General Physical Condition
  - (3) Opinion of Probable Costs
  - (4) Deviations from the Guide
  - (5) Recommendations
- b. Purpose and Scope
- c. System Descriptions and Observations
- d. Additional Considerations
- e. Document Review and Interviews, including Right-to-Know Response
- f. Opinion of Probable Costs to Remedy Physical Deficiencies and for Replacement of Equipment greater than \$5,000.00
- g. Out-of-Scope Considerations
- h. Qualifications
- i. Limiting Conditions
- j. Exhibits
  - (1) Photographs

### **COMPENSATION**

Based upon the Project Understanding and Scope of Services outlined above, our fees are presented below and shall be billed monthly in accordance with the percentage of tasks completed.

|                                        |                    |
|----------------------------------------|--------------------|
| 1. Structural, Building Envelope, Roof | \$ 6,900.00        |
| 2. Mechanical, Electrical, Plumbing    | \$ 5,000.00        |
| 3. Opinion of Probable Costing         | <u>\$ 1,500.00</u> |
| <b>Total</b>                           | <b>\$13,400.00</b> |

Note: Credit card payments incur a 3% processing fee. Isett also accepts ACH and check payments.

### **SCHEDULE**

Upon receipt of a signed authorization and a completed Pre-Survey Questionnaire, Isett will schedule the site survey. The PNA can typically be completed in approximately 4 weeks. This schedule is contingent upon receiving timely access to the subject property, favorable weather, interview information, and readily available documents from the Client and municipality. The Right-to-Know request response can take up to 30 days.

### **EXCLUSIONS**

- 1. Production of a "Key Plan of Deficiencies" to visually represent findings.
- 2. Attendance at meetings to review findings.
- 3. When project work is suspended for more than 6 months, fees will be renegotiated. The fee listed above is based upon our portion of the work being completed by end of the current calendar year. Should the project be extended through no fault of Isett, we reserve the right to renegotiate the remaining services.

Mr. Nathan Strouse

4

July 6, 2026

4. Digital information generated in the process of developing the PNR for this project is for use only in preparing said PNR. Release of digital information to anyone not party to this agreement without prior, fair compensation constitutes a transfer of full liability to the releasing party.
5. See attached "Exclusions from ASTM E2018-15" for items excluded within the *ASTM E2018-15 Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process*.

Prior to performing any work that is outside the scope of the work of this agreement, Isett will provide an estimate of the additional cost based on the attached hourly rate schedule and will obtain approval from Client.

The attached standard contract terms and conditions shall be made a part of this agreement.

If, after you have reviewed this proposal, you are satisfied with the terms, please sign and return it to us with the completed pre-survey questionnaire, as it will serve as our agreement for this work. If work authorization is not approved, there is no obligation for Isett to complete the work. This proposal is valid for 60 days from date of issuance.

We appreciate the opportunity to serve you and look forward to the successful completion of this work.

Sincerely,



Robert A. Sarnowski, CCCA  
Project Manager  
Project Management & Construction Services

Attachments

\\biaces.com\Work\Projects\2026\1007126.001\_Clearview\_Elementary\PROPOSAL\Cleavview-Elementary-School-FNA-Proposal.docx(cdh)

**EXCLUSIONS FROM ASTM E2018-15**

1. Preparing engineering calculations (civil, structural, mechanical, electrical, etc.) to determine any systems, components, or equipment's adequacy or compliance with any specific or commonly-accepted design requirements or building codes, or preparing design or specifications to remedy a physical deficiency.
2. Taking measurements or quantities to establish or confirm any information or representations provided by the owner, such as size and dimensions of the subject property or subject building; any legal encumbrances, such as easements; dwelling unit count and mix; building property-line setbacks or elevations; number and size of parking spaces.
1. Reporting on the presence or absence of pests, such as wood-damaging organisms, rodents, or insects. Isett is not responsible for determining the treatment or remediation, determining the extent of infestation, nor providing opinions of probable costs for treatment or remediation.
2. Reporting on the condition of subterranean conditions, such as underground utilities, separate sewage disposal systems, or wells.
3. Entering or accessing any area of the premises deemed to pose a threat of dangerous or adverse conditions with respect to the field observer, such as crawl spaces, vaults, tunnels, or sloped roofs.
4. Performing flood plain research or base flood-elevation determination.
5. Accessing any area that may damage or impair the physical integrity of the property, any system, or component.
6. Providing an opinion on the condition of any system or component that is shut down, or whose operation by the field observer may increase significantly the registered electrical-demand load; however, the consultant is to provide an opinion of its physical condition to the extent reasonably possible considering its age, obvious condition, manufacturer, etc.
7. Evaluating acoustical or insulating characteristics of systems or components.
8. Evaluation of or opining on the presence of hidden or latent water or moisture that may exist in roof, ceiling, or walls.
9. Providing an opinion on matters regarding security of the subject property and protection of its occupants or users from unauthorized access.
10. Operating or witnessing the operation of lighting or other systems typically controlled by time clocks or that are normally operated by the building's operation staff or service companies.
11. Providing an environmental assessment or opinion on the presence of any environmental issues, such as asbestos, hazardous wastes, or toxic materials.
12. Performing an Americans with Disabilities Act (ADA) accessibility review.
13. Performing code reviews and/or assessment of fire and panic code compliance.



📍 525 Main Street, Suite 200, Stroudsburg, PA 18360

☎ 272.200.2050 📠 610.481.9098

🌐 barryisett.com

**Date:**

**Property Address:** 2000 N. 5<sup>th</sup> Street, Stroudsburg, PA 18360

**Municipality:** Stroud Township

**County:** Monroe County

**Property Maintenance Manager:**

**Phone:**

**Email:**

## **Pre-Survey Questionnaire: Building History Section**

Please provide the following information to facilitate the Building Envelope Assessment:

1. What is the existing roofing material?
2. When was the last time the roof was replaced?
3. Please provide a copy of the roof warranty/repair history of the roof.
4. What are the existing exterior wall materials?
5. When were the existing windows installed?
6. Have there been any structural repairs/modifications to the exterior of the building? If so, please describe and provide detailed information.
7. Is there any previous water infiltration into the building from the roof, walls, windows, foundation walls, or other envelope systems? If so, please describe and provide detailed information.

***ASCE/SEI 30-14 Pre-Survey Questionnaire***  
***To be completed by the building owner's facility representative***

8. Has a Building Envelope Assessment ever been performed on the subject building? If so, please provide a copy of the Assessment Report.
9. Have there been any upgrades, alterations, or deficiencies to the building envelope that are not mentioned above? Please explain.

During the site visit, we will require the following (if access is not permitted, observations will be limited to what is available):

- ☐ Access to all spaces
- ☐ Roof access, if a flat or low slope roof
- ☐ Access to building common areas
- ☐ A maintenance or facility manager on-site to assist with access if required

*Thank you for your assistance in providing Barry Isett & Associates, Inc. with access to the property and pertinent documentation. Please email this information to your Barry Isett & Associates contact or fax the completed Questionnaire to 610.481.9098.*

Signature and Billing Page

Proposal Acceptance

|                |                          |                |              |
|----------------|--------------------------|----------------|--------------|
| Nathan Strouse | Supervisor of Operations | Nathan Strouse | July 6, 2026 |
| Printed Name   | Title                    | Signature      | Date         |

Customer Billing Information

|                      |       |
|----------------------|-------|
| Billing Contact Name | Email |
|----------------------|-------|

Billing Address

|              |              |                     |
|--------------|--------------|---------------------|
| Office Phone | Direct Phone | PO #, if applicable |
|--------------|--------------|---------------------|



|                                                | I      | II    | III   | IV    |
|------------------------------------------------|--------|-------|-------|-------|
| Project Management                             | \$160  | \$195 | \$215 | \$235 |
| Assistant Project Manager                      | \$140  |       |       |       |
| DESIGN                                         |        |       |       |       |
| Professional Engineer                          | \$160  | \$195 | \$215 | \$235 |
| Staff Engineer/Designer                        | \$140  | \$160 | \$195 | \$205 |
| CAD Drafter                                    | \$100  | \$120 |       |       |
| GIS Specialist/Analyst                         | \$100  | \$130 | \$140 | \$160 |
| Registered Landscape Architect                 | \$140  | \$160 | \$195 | \$225 |
| Landscape Design                               | \$100  | \$120 | \$140 | \$150 |
| FIELD                                          |        |       |       |       |
| Professional Forensic Engineer                 | \$200  | \$220 | \$240 | \$260 |
| Forensic Staff Engineer/Designer               | \$140  | \$160 | \$195 | \$205 |
| Forensic Specialist                            | \$100  | \$120 | \$140 | \$160 |
| Professional Geotech/Engineer                  | \$160  | \$195 | \$215 | \$235 |
| Geotechnical Staff                             | \$140  | \$160 | \$195 | \$205 |
| Geotechnical Technician                        | \$85   | \$100 | \$120 | \$140 |
| Professional Geologist/Scientist               | \$160  | \$195 | \$215 | \$235 |
| Staff Geologist/Scientist                      | \$140  | \$160 | \$195 | \$205 |
| Professional Surveyor                          | \$160  | \$195 | \$215 | \$235 |
| Survey Specialist                              | \$100  | \$120 | \$140 | \$160 |
| Survey Technician                              | \$85   | \$100 | \$120 | \$140 |
| Construction Observer                          | \$100  | \$120 | \$160 | \$185 |
| CMT Field Technician/Special (ICC) Inspections | \$85   |       | \$125 |       |
| Master Code Professional                       | \$235  |       |       |       |
| Survey Crew                                    | \$225  |       |       |       |
| Emergency Response (One-Person)                | \$365* |       |       |       |
| Grants Specialist                              | \$140  |       |       |       |
| Assistant/Clerk                                | \$85   |       | \$100 |       |

\*BILLED IN 4-HOUR INCREMENTS, WHERE NOTED

NOTE: The cost of reimbursable expenses that are in addition to the basic services will be itemized separately. Reimbursable expenses include mileage; priority/express mail and packages; preparation of materials for electronic transfer; hand delivery of materials; reproductions; prints; and any additional insurance coverage or limits (including professional liability insurance) requested in **excess** of that normally carried.

Costs relating to any outside services contracted directly by Isett will be passed on to the client and may have up to a 15% service charge.

When related to a project, the following rates will be charged for reimbursable expenses:

Listed prices are for black and white prints only (additional charge for color prints).

|                                                   |                        |                               |                        |
|---------------------------------------------------|------------------------|-------------------------------|------------------------|
| Photocopies                                       | \$0.18 per sheet       | Large Format Scans            | \$0.45 per square foot |
| Large Format Copies                               | \$0.35 per square foot | Large Format Plotting (dwg's) | \$0.60 per square foot |
| Large Format Plotting (tiff, cal, plt, pdf, jpeg) | \$0.40 per square foot |                               |                        |

Above rates are subject to change if conditions warrant. Reimbursables subject to Sales Tax.

**Effective 1/1/2026**

**Fee Schedule**

## STANDARD CONTRACT TERMS AND CONDITIONS

### 1. DUTIES AND RESPONSIBILITIES

1.1 Engineer agrees to provide those professional services as agreed to in the scope of services.

### 2. RESTRICTIONS ON USE OF DOCUMENTS

2.1 It is understood that the drawing(s) rendered under this agreement will be prepared in accordance with the agreed scope and will pertain only to the subject project. Use of the drawings, information or data contained therein for other purposes is at user's sole risk and responsibility.

2.2 Client agrees that all documentation including drawings and other work Engineer furnished to Client or Client's agents which Engineer does not receive compensation for under the terms of this agreement shall remain Engineer's property and shall be returned upon demand and shall not be used for any purpose whatsoever.

2.3 Plans, CADD disks, and specifications, as instruments of service, are and shall remain the property of Engineer, whether the project for which they are intended is executed or not. The plans, CADD disks and specifications shall not be used by Client on other projects, for additions to this project, or for completion of this project by others, except by agreement in writing with the appropriate compensation to Engineer, provided Engineer is not in default under this agreement.

### 3. STANDARD OF CARE

3.1 Services performed by Engineer under the agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession practicing under similar circumstances in the same or similar locality.

### 4. OBSERVATION SERVICES

4.1 If required under the scope of services Engineer will provide personnel to observe and report on specific aspects or phases of construction in accordance with the agreed scope of services. Engineer's services do not include supervision or direction of the actual work of Contractor, Contractor's employees, agents, or subcontractors. Client agrees to notify Contractor accordingly. Client shall also inform Contractor that neither the presence of Engineer's field representative nor the observation by Engineer shall excuse Contractor for defects or omissions in Contractor's work.

4.2 It is understood that Engineer shall not be held responsible for any errors or omissions on the part of Contractor, including but not limited to Contractor's failure to adhere to the plans and specifications, regardless of whether or not Engineer is performing observation services. This provision shall be included in the contract between Client and Contractor.

4.3 It is understood that Contractor shall be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work, and that these requirements shall apply continuously and not be limited to normal working hours. Any monitoring of Contractor's performance conducted by Engineer excludes review of the adequacy of Contractor's safety measures in, on or near the construction site.

4.4 Engineer shall not be held responsible for Contractor's failure to observe or comply with the Occupational Health and Safety Act of 1970, and regulations or standards promulgated thereunder, or any state, county, or municipal law or regulation of similar import or intent.

4.5 It is understood that if Engineer's scope of services does not include observation services, then Client assumes all responsibility for interpretation of the Contract Documents and for construction observation, and Client waives any claims against Engineer that may in any way be connected thereto. Client agrees to the fullest extent permitted by law to indemnify and hold harmless Engineer, its officers, directors, employees and subconsultants against all damages, liabilities, or costs, including reasonable attorneys' fees and defenses costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustment or changes made to the Contract Documents to reflect changed field or other conditions.

### 5. TERMINATION, SUSPENSION

5.1 This agreement may be terminated by either party upon written notice. In the event of termination, Engineer shall be paid for services performed to the termination date plus reasonable termination expenses.

5.2 In the event of termination or suspension for more than three (3) months, prior to completion of all services contemplated by the agreement, Engineer may complete such analysis and records as are necessary to complete the files and may also complete a report on the services performed on the date of notice of termination or suspension. The expenses of termination or suspension shall include all costs of Engineer in reporting, completed data, completing such analysis, records, and reports.

5.3 Client shall make no request of Engineer that, in Engineer's reasonable opinion, would be contrary to Engineer's professional responsibilities to protect the public. Client shall take all actions and render all reports required of Client in a timely manner. Should Client fail to do so, Client agrees Engineer has the right to exercise its professional judgment in reporting to public officials. Client agrees to take no action against or attempt to hold Engineer liable in any way for carrying out what Engineer reasonably believes to be its public responsibility. Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer, its officers, directors, employees and subconsultants against all damages, liabilities or costs arising out of or in any way connected with Engineer's notifying or failing to notify appropriate public officials.

### 6. INVOICES, PAYMENTS

6.1 Engineer will submit invoices to Client monthly and a final invoice upon completion of services. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. Client agrees to pay a service charge of one and one-half (1-1/2) percent per month (18% per annum) or fraction thereof on past due payments under this agreement. If an invoice remains unpaid for more than sixty (60) days Engineer, reserves the right to pursue all appropriate remedies including stopping work and retaining all drawings without recourse.

6.2 Payment to Engineer is a material consideration of this agreement. Therefore, Engineer has a right to suspend services for non-payment. Engineer shall not be liable, nor in any way be responsible for damages, delays or increased costs that may occur as a result of Engineer's suspension of services. Client shall hold harmless, indemnify, and defend Engineer for claims that arise due to any suspension.

6.3 It is further agreed that in the event a lien or suit is filed to enforce payment under this agreement Engineer shall be reimbursed by Client for all court costs and reasonable attorney's fees in addition to accrued service charges.

### 7. DISPUTES

7.1 In the event that Client institutes suit or arbitration against Engineer for any alleged error, omission, negligence, or failure to perform, and if such suit or arbitration is dropped or dismissed, or if judgment is rendered for Engineer, Client agrees to reimburse Engineer or pay any and all costs and any and all other expense of defense, immediately following dropping or dismissal of the case or immediately upon judgment being rendered on behalf of Engineer.

### 8. WARRANTY OF AUTHORITY TO SIGN

8.1 The person signing this contract warrants they have authority to sign as, or on behalf of, Client for whom or for whose benefit that Engineer's services are rendered, and also that, if Client is a corporation, that the person signing this contract shall be personally liable, if necessary, for all monies owed under this agreement. If such person does not have such authority, he agrees that he is personally liable for all breaches of this contract and that in any action against him for breach of such warranty a reasonable attorney fee shall be included in any judgment rendered.

8.2 If a proposal is submitted to Client and Client fails to return a signed copy of the proposal but knowingly allows Engineer to proceed with services, then Client shall be deemed to have accepted the terms of the proposal and these Standard Terms and Conditions.

### 9. CHOICE OF LAW

9.1 This contract shall be construed in accordance with the laws of the Commonwealth of PA.

### 10. SEVERABILITY

10.1 In the event that any provisions herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in the full force and effect, and binding upon the parties hereto.

### 11. REMEDY

11.1 If the services performed by Engineer are faulty, Client's exclusive remedy shall be for Engineer to re-perform such services to the extent necessary to correct the fault therein without charge to Client or damages limited to those amounts set forth in Warranty, Liability, and Indemnification.

11.2 All claims, disputes, and other matters in question between Engineer and Client, not in excess of \$200,000, arising out of or for relating to the contract documents or the breach thereof, shall be resolved as follows:

11.3 A written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, shall be submitted to "Judicate Headquartered in Philadelphia." The mediator's fee shall be shared equally by the parties. If the dispute has not been resolved by mediation, the matter shall then be submitted to arbitration in accordance with paragraph 11.5.

11.4 No mediation, arbitration, arising out of or relating to this agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this agreement except by written consent containing a specific reference to this agreement, and signed by Engineer, Client, and any other person sought to be joined. Any consent to mediation, arbitration involving an additional person or persons shall not constitute consent to mediation, arbitration of any dispute not described herein. This agreement to mediate, arbitrate (and any agreement to mediate, arbitrate) with an additional person or persons duly consented to by the parties to this agreement shall be specifically enforceable under the prevailing mediation, arbitration law.

11.5 Any dispute between the parties that is to be resolved by arbitration shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect. Any such arbitration shall be held and conducted in Trexlertown, PA. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### 12. VALIDITY

12.1 It is understood that this agreement is valid for a period of sixty (60) days after which time, if it is not rejected by Client, Engineer reserves the right to revise or withdraw this agreement.

### 13. CHANGES IN THE WORK

13.1 The stated total fee constitutes Engineer's estimate of the effort required to complete the project as understood by Engineer. Facts developed after initial planning may dictate a change in direction, additional effort, or suspension of effort, which may alter the scope. If such change, additional effort, or suspension of effort results in an increase or decrease in the cost of or time required for performance of the services, whether or not changed by any order, the fee and schedule shall be equitably adjusted.

13.2 Client acknowledges that no amount of site investigation or design can anticipate every potential cost issue and that changes occur on every project. Accordingly, Client shall include a reasonable contingency in its construction budget for unforeseen conditions, imperfect documents, requirements of authorities having jurisdiction, and Client's own changes. Client further agrees to make no claim by way of direct or third-party action against Engineer or its subconsultants for any increased costs within the contingency because of such changes or because of any Contractor claims relating to such changes.

13.3 Engineer shall not be responsible for the cost or expense of constructing or adding a component or item mistakenly left out of the Construction Documents to the extent such component or item would have been required and included in the original Construction Documents and therefore would have been part of Contractor's bid or proposal. In no event will Engineer be responsible for any cost or expense that provides betterment or upgrades or enhances the Project.

### 14. WARRANTY, LIABILITY, AND INDEMNIFICATION

14.1 Engineer's liability for damages due to error, omission or professional negligence shall be limited to an amount not to exceed \$50,000 or Engineer's fee, whichever is less. If Client prefers not to limit Engineer's professional liability to this sum, Engineer will waive this limitation upon Client's request if Client agrees to pay an additional consideration for this waiver, prior to commencement of services.

14.2 For any Project related claim, demand, or suit action asserted by any party other than Client related to Engineer's alleged act or error, omission, negligence, carelessness, or breach of duty, contractual or otherwise, Client agrees at Client's sole cost and expense to indemnify, defend and hold harmless Engineer, its subsidiaries, affiliates, officers, employees, and consultants or such other who may have assisted Engineer in rendering its services in connection with the project from and against, all claims, liabilities, costs, and expenses, including but not limited to reasonable attorney's fees and other costs and expenses suffered, sustained or required to be paid by Engineer. In the event Client is required to defend Engineer per this section, Engineer shall have the right to choose its own counsel.

14.3 Client agrees to be entirely liable for providing any/all contractors working on this project with the latest revisions of all plans.

14.4 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Engineer, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both Client and Engineer shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.



DESIGN

FIELD

PUBLIC



**EXPERTISE**



**Project Management & Construction Services**



**Civil Land Development**



**Structural Engineering**



**Mechanical / Electrical / Plumbing Engineering & Fire Protection**



**Forensic Building Investigation**



**Environmental Consulting**



**Geotechnical Engineering**



**Construction Materials Testing**



**Survey**

### 11 OFFICES

- HEADQUARTERS —  **Allentown** | 610.398.0904
- SOUTHEAST —  **Wyomissing** | 484.346.7640  
 **Phoenixville** | 610.935.2175  
 **Furlong** | 267.454.2260
- CENTRAL —  **Mechanicsburg** | 717.795.8575  
 **Selinsgrove** | 717.795.8575
- NORTHEAST —  **Bloomsburg** | 570.455.2999  
 **Hazleton** | 570.455.2999  
 **Wilkes-Barre** | 570.285.8200  
 **Olyphant** | 570.497.8360  
 **Stroudsburg** | 272.200.2050

### 4 CONSTRUCTION MATERIALS TESTING LABS

-  **Lehigh Valley**    **Southeast PA**  
 **Central PA**    **Northeast PA**



**Code Inspection & Plan Review**



**Municipal Engineering Services**  
 General Municipal | Transportation | MS4 |  
 Water & Wastewater



**Landscape Architecture**



**Grants Management**

# SITELOGIQ ENERGY SERVICES, INC. INVESTMENT GRADE ENERGY AUDIT AGREEMENT

This Investment Grade Energy Audit Agreement (the "**Agreement**") is entered into on **date**, by and between **School District** (hereinafter referred to as the "**Customer**") and SitologIQ Energy Services, Inc. (hereinafter referred to as "**SitologIQ**"). The Customer and SitologIQ are referred to herein as the "**Parties**".

**Whereas**, the Customer is responsible for the operation, management and maintenance of the Facility(s) located the facilities listed below, including ancillary buildings as incorporated by the Customer:

| Line Item | Building/Facility Name | Address | GSF |
|-----------|------------------------|---------|-----|
|           |                        |         |     |
|           |                        |         |     |

**Whereas**, a comprehensive investment grade energy use and savings analysis (the "**Energy Audit**" and **Report**) will be performed at the Facility(s) to determine the feasibility of entering a guaranteed energy savings contract to provide for the installation and implementation of energy conservation measures ("**ECMs**") at the Facility(s);

**Whereas**, if the ECMs are demonstrated to be feasible, and if the amount of energy savings can be reasonably ascertained and guaranteed in an amount sufficient to cover all costs associated with the project at the Facility(s), the Parties may enter into a guaranteed energy savings contract under which SitologIQ shall design, procure, install, implement, maintain and monitor such ECMs at the Facility(s);

**Now therefore**, intending to be legally bound hereby, the Parties agree as follows:

## **ARTICLE 1 - SCOPE OF INVESTMENT GRADE ENERGY AUDIT AND REPORT.**

SitologIQ will perform an Investment Grade Energy Audit and prepare an engineering and economic report (the "**Report**") which specifically identifies the energy improvements and operational changes which are recommended to be installed or implemented at the Facility(s) (collectively, the "**Services**"). The Report shall contain projections of energy and cost savings to be obtained at the Facility(s) as a result of the installation of the recommended ECMs. The savings calculations shall utilize assumptions, projections and baselines which best represent the true value of future energy, operational or capital avoidance savings for the Facility(s), i.e., utilize accurate marginal cost for each unit of savings at the time the audit is performed; documented material and operational costs actually avoided; adjustments to the baseline to reflect current conditions at the Facility(s) compared to the historic base period; calculations which account for the interactive effects of the recommended ECMs; etc. The Report shall clearly describe how utility tariffs were used to calculate savings for all ECMs. The Report shall describe SitologIQ's plan for installing or implementing the measures in the Facility(s), including all anticipated costs associated with such installation and implementation. The Report and its savings calculations and methodologies shall comply with Pennsylvania's Guaranteed Energy Saving Act, as amended (62 Pa C.S. §3751 et seq.). The primary purpose of the Report is to provide an engineering and economic basis for negotiating between the Customer and SitologIQ.

SitologIQ shall perform the following tasks in performing the Investment Grade Energy Audit and preparing the Report:

### **A. Collect Facility Information**

SitologIQ shall collect general Facility(s) information such as: size, age, construction type, condition and general use of the Facility(s). SitologIQ shall also collect and summarize Facility(s) utility cost and consumption data for the most recent 36-month period. SitologIQ shall evaluate the impact on utility cost and consumption of any energy initiatives, currently being installed or currently contemplated to be installed by the Customer in the Facility(s), which will remain separate from the guaranteed energy savings contract throughout the duration of that contract.

Customer shall furnish (or cause its energy suppliers to furnish) all available records and data concerning energy and water usage for the Facility(s) for the most current 24-month period, including, but not limited to: utility records; occupancy information; descriptions of any changes in the structure of the Facility(s) or its heating, cooling, lighting or other systems or energy requirements; descriptions of all major energy and water consuming or energy and water saving equipment used in the Facility(s); any comfort problems, code deficiencies, and a description of current energy management procedures. The Customer shall also furnish a record of any energy related improvements or modifications that have been installed during the past three years or are currently being

installed or are currently contemplated to be installed by the Customer in the Facility(s) separate from the guaranteed energy savings contract throughout the duration of that contract. The Customer shall also provide copies of drawings, equipment logs and maintenance work orders to SitelogIQ.

**B. Analyze Existing Systems and Equipment**

SitelogIQ shall compile an analysis based on a physical inspection of the major mechanical, electrical, plumbing and building envelope systems at the Facility(s), including:

- Cooling systems and related equipment
- Heating and heat distribution systems
- Automatic temperature control systems and equipment
- Outdoor ventilation and air distribution systems and equipment
- Exhaust systems and equipment
- Interior and exterior lighting
- Domestic hot water generation and distribution equipment
- Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
- Kitchen and cafeteria equipment, as appropriate
- Other major energy using systems, as applicable.

The analysis shall address the loads, proper sizing, efficiencies or hours of operation for each system; and the current operating condition for each system;

SitelogIQ shall conduct interviews with operation and maintenance staff regarding the Facility(s)'s mechanical systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

**C. Establish Base Year Consumption and Reconcile with End Use Consumption Estimates**

SitelogIQ shall examine the most recent 24 months of utility bills and establish Base Year consumption for electricity, fossil fuels and water by averaging, or selecting the most representative contiguous 12 months. SitelogIQ shall consult with Facility(s) staff and account for any unusual or anomalous utility bills which may skew Base Year consumption from a reasonable representation.

SitelogIQ shall analyze all major end uses representing more than 5% of total Facility(s) consumption including, but not limited to Lighting, Heating, Cooling, Other (process) Equipment and Miscellaneous.

Where loading and/or usage are highly uncertain, SitelogIQ shall employ spot measurement and/or short- term monitoring at its discretion. Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment.

**D. Develop List of Potential ECMs**

SitelogIQ shall provide the following:

1. Identify and propose potential ECMs for installation or implementation at the Facility(s), including manufacturer information on proposed equipment.
2. An estimate of the cost, savings and life expectancy of each proposed EEM.
3. Specify Facility(s) operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs.
4. Analysis methodologies, supporting calculations and assumptions used to derive baselines and estimate savings.
5. Existing and proposed air and hot water temperatures, amount of outdoor air ventilation, lighting and acoustic levels.
6. Utility rates/tariffs and commodity price histories used in savings calculations.
7. A preliminary savings measurement and verification plan for the project.
8. A preliminary commissioning plan for the proposed ECMs that require commissioning.
9. Calculations for any rate saving proposals.
10. Supporting calculations for any proposed maintenance, material or other operational savings, and a description of any annual variances in savings from year to year.

11. Estimates of environmental benefits resulting from implementation of the proposed ECMs (e.g., CO<sub>2</sub>, SO<sub>x</sub>, NO<sub>x</sub>).

For all proposed ECMs, SitelogIQ shall comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis.

**E. Select Final Recommended ECMs**

SitelogIQ shall, in consultation with the Customer, recommend specific ECMs from its preliminary compilation for installation and implementation at the Facility(s).

**F. Cost and Fee Estimates**

SitelogIQ shall provide estimates of all costs and fees associated with the installation and implementation of the ECMs. Costs are presents per ECMs and for the entire project, and general include the following:

- Project management
- Energy analysis and calculations
- Project development and engineering/design
- Contractor/vendor estimates for individual EEM hard costs
- Contingency costs for individual EEM hard cost
- Construction management fees for the project
- General conditions
- Commissioning
- Training
- Performance assurance services (including measurement and verification and performance monitoring)
- Warranty
- Bonds, permitting and taxes
- Other costs/fees as applicable

**G. Savings Estimates**

The Customer has endeavored to provide SitelogIQ with sufficient general and specific guidance in this Article 1 to develop the savings estimates for the Report. In the event that questions arise as to the calculation of savings or whether certain items will be allowed as savings, SitelogIQ shall seek written guidance from the Customer. Customer rejection of certain calculations of savings or rejection of certain items as allowable savings in the Report shall be at the risk of SitelogIQ.

The following items will be allowed as savings or in the development of project financial justification (cash flow):

- Customer material/commodity cost
- Maintenance labor costs (if applicable)
- Escalation rates of 2% for natural gas<sup>1</sup>
- Escalation rates of 3% for electricity
- Escalation rates of 3% for water
- Escalation rates of 3% for material/commodity cost savings
- Escalation rates of 3% for allowable labor savings

**H. Report Format**

SitelogIQ shall prepare the Report as follows:

The Report will be submitted using 8 ½ " x 11" sheets of paper and a font size no smaller than 10 point. The pages shall be numbered sequentially and include a Table of Contents.

The Report shall include the presentation of information in the following Schedules required for the Guaranteed Energy Services Agreement ("GESA") to the extent the information has been developed during the course of performing the audit. Preliminary

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<sup>1</sup> It should be noted that the value of fuel and water unit savings will be escalated using actual rates increases as they occur over the term of the contract. It is also noted that the base rate value for each fuel and water unit will not devalue in the event of any rate decrease.

information and incomplete schedules will be finalized during audit negotiations, prior to execution of the GESA.

#### Schedules

|            |                                                                                           |
|------------|-------------------------------------------------------------------------------------------|
| Schedule A | Scope of Work                                                                             |
| Schedule B | Project Costs and Cash Flow Analysis                                                      |
| Schedule C | Energy Savings Guarantee                                                                  |
| Schedule D | Compensation to SitelogIQ                                                                 |
| Schedule E | Baseline Energy Consumption                                                               |
| Schedule F | Savings Measurement & Calculation Formulae; Methodology to Adjust Baseline                |
| Schedule G | Construction and Installation Schedule                                                    |
| Schedule H | Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment, Training |
| Schedule I | Standards of Comfort – Set Points                                                         |
| Schedule J | Maintenance Responsibilities                                                              |

#### Submission of the Report

The Report shall be completed and submitted to Customer within 120 calendar days of the date of execution of this Agreement.

#### **I. Acceptance of the Report– If ECMs are Feasible.**

The Customer shall accept the Report if the recommended ECMs are feasible. If the Customer determines that one or more of the recommended ECMs are not feasible, the Customer shall give SitelogIQ written notice of any and all said objections, in detail, within thirty (30) business days of receipt of the Report. SitelogIQ shall, if necessary, correct the Report and submit a second draft within thirty (30) days of said notification. The Customer shall have ten (10) business days from receipt of the revised Report to notify SitelogIQ if any objections have not been corrected. Upon such notification, SitelogIQ shall have thirty (30) calendar days to resubmit the Report, and Customer shall have ten (10) business days to respond. This re-submission process may continue until: (1) the date all material concerns are resolved and the Report is accepted, (2) the dispute is resolved in accordance with the provisions of Article 3 P. If the Customer fails to give SitelogIQ any written notice within the time provided for in this Article 1.J, the Report is deemed to have been accepted by the Customer.

### **ARTICLE 2 - GUARANTEED ENERGY SAVINGS CONTRACT.**

The Parties may enter into a Guaranteed Energy Savings Contract (GESA) under which SitelogIQ shall design, install and implement ECMs which the Parties have agreed to and provide certain maintenance and monitoring services, all as a turnkey project with SitelogIQ acting as single prime contractor. However, nothing in this Agreement should be construed as an obligation on any of the Parties to execute such a GESA. The terms and provisions of such a GESA shall be set forth in a separate agreement.

### **ARTICLE 3 - STANDARD TERMS AND CONDITIONS.**

#### **A. Term of Agreement**

The term of this Agreement shall commence on the Effective Date (as defined below) and shall end upon termination by the mutual agreement of the parties subject to the other provisions of this Agreement.

The Effective Date shall be the date this Agreement has been fully executed by SitelogIQ and by the Customer and all approvals required by Customer's contracting procedures have been obtained. The Agreement shall not be a legally binding contract until after the Effective Date and when the fully executed Agreement has been sent to SitelogIQ.

Receipt of a fully executed Agreement shall serve as a written Notice to Proceed to SitelogIQ directing SitelogIQ to start performance on a date which is on or after the Effective Date. SitelogIQ shall not start the performance of any work prior to the date set forth in the Agreement and the Customer shall not be liable to pay SitelogIQ for any Service performed or expenses incurred before the date set forth in the Notice to Proceed.

#### **B. Independent Contractor**

In performing the Services required by the Agreement, SitelogIQ will act as an independent Contractor and not as an employee or agent of the Customer.

**C. Compliance with Law**

SitelogIQ shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and codes, regulations, in effect at the time of this agreement and in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of Customer relative to the Premises.

**D. Compensation/Expenses**

SitelogIQ shall perform the specified Services at the below hourly rates which are subject to a 3% escalation following year one, year over year. Customary expenses such as mileage and printing shall be billed without mark-up.

| <b>Work Classification</b>     | <b>2025 Hourly Rate</b> |
|--------------------------------|-------------------------|
| NE Management                  | \$229.00                |
| NE Preconstruction II          | \$172.00                |
| NE Preconstruction I           | \$115.00                |
| NE Consulting Engineer II      | \$165.00                |
| NE Consulting Engineer I       | \$100.00                |
| NE CAD Technician              | \$72.00                 |
| NE Development Engineer II     | \$198.00                |
| NE Development Engineer I      | \$108.00                |
| NE Service Specialist          | \$129.00                |
| NE Director of Operations      | \$229.00                |
| NE Project Manager I           | \$132.00                |
| NE Project Manager Assistant   | \$93.00                 |
| NE Site Superintendent         | \$133.00                |
| NE Regional Field Manager      | \$193.00                |
| NE Project Coordinator         | \$92.00                 |
| NE Intern                      | \$65.00                 |
| NE Assistant Project Executive | \$158.00                |

SitelogIQ will issue the Customer an invoice within ten (10) days of the issuance of a Report. The Customer shall pay SitelogIQ's invoice within sixty (60) days of Customer's receipt of the invoice. However, if the Customer enters into a GESA with SitelogIQ to implement some or all of the work identified in the Report, SitelogIQ will waive its fee and include it in the GESA. If the Customer enters into a GESA with SitelogIQ to implement some or all of the work identified in the Report after payment is due under this Agreement, SitelogIQ shall provide the Customer a credit towards the GESA equal to the fee paid under this Agreement.

The parties agree that multiple Reports may be issued under this Agreement. To request an additional Report, Customer shall notify SitelogIQ in writing (including via e-mail) to complete an additional Report. The Customer will pay for each Report consistent with the hourly rates above or as otherwise mutually agreed by the parties in writing.

All Services shall be performed within the time period(s) specified in this Agreement. In the event the Customer terminates this Agreement as provided for in Article 3(F)(B)(iii), SitelogIQ shall be compensated only for work performed. If any payment is not made within fifteen (15) days after the required payment date, the Customer must pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by SitelogIQ as acceptance of the Service performed by SitelogIQ.

**E. Taxes**

In the event that the Customer is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases. The customer shall provide SitelogIQ with the appropriate tax exemption information to be applied to this project. Nothing in this paragraph is meant to exempt a construction company from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

**F. Termination Provisions**

A. By SitelogIQ:

SitelogIQ may terminate this Agreement prior to the completion of the Energy Audit and Report or subsequent to the completion of the Energy Audit and Report if the Customer directs SitelogIQ to stop work for at least thirty (30) days, provided that SitelogIQ gives the Customer at least seven (7) days written notice of such termination. SitelogIQ may also terminate this Agreement within thirty (30) days in the event the Customer fails to provide SitelogIQ with information necessary to carry out the Services. Provided that SitelogIQ gives the Customer at least seven (7) days written notice of such termination. If the Customer provides SitelogIQ the information necessary to carry out the Services within the seven (7) day cure period, SitelogIQ shall continue to complete its Services.

In the event SitelogIQ terminates the Agreement pursuant to this Subsection A, the Customer shall be obligated to pay an for Services performed or expenses incurred by SitelogIQ in performing the Energy Audit and Report required under this Agreement. SitelogIQ shall provide the Facility(s) with any preliminary notes, reports or analysis which have been produced or prepared upon its receipt of payment.

Termination under this section shall be effective seven (7) days following Customer's receipt of written notification from SitelogIQ.

B. By Customer:

Customer may terminate this Agreement:

- (i) If SitelogIQ fails to complete the Energy Audit and deliver the Report to the Customer by the date established in Article 1, above; or fails to obtain a written extension of that date from the Customer. Termination under this subsection (i) shall be effective upon SitelogIQ's receipt of written notification from the Customer provided that the deadline for submission of the Report has past. In this event, the Customer shall not be obligated to pay any amount to SitelogIQ for Services performed or expenses incurred by SitelogIQ in performing the Energy Audit and preparing the Report required under this Agreement.
- (ii) If, prior or subsequent to the completion of the Energy Audit, SitelogIQ notifies the Customer in writing that it is unable to guarantee a sufficient economic benefit. Termination under this subsection (ii) shall be effective upon SitelogIQ's receipt of written notification from the Customer. In the event of termination under this subsection (ii), the Customer shall reimburse SitelogIQ for actual documented time, material and ancillary expenses incurred, as of the effective date of the termination. Payment for actual expenses incurred shall be made in accordance with the provisions of subsection (iv) as follows SitelogIQ shall provide the Facility(s) with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.
- (iii) If, prior or subsequent to the completion of the Energy Audit, the Customer notifies SitelogIQ in writing that it has elected to terminate this Agreement for its convenience or for unavailability of funds and not enter into an GESA, the Customer shall reimburse SitelogIQ for actual documented time, material and ancillary expenses incurred, as of the effective date of the Agreement. Termination under this subsection (iii) shall be effective upon SitelogIQ's receipt of written notification from the Customer and payment for actual expenses incurred shall be made in accordance with the provisions of subsection (iv) as follows.

C. Payment After Termination

SitelogIQ shall submit an invoice to the Customer within thirty (30) days of any termination under this Article 3. Payment shall be due within thirty (30) days from SitelogIQ's submission of an invoice to Customer. Payment may be delayed in the event the Customer raises a good faith dispute to the invoice or Services rendered. If any payment is not made within fifteen (15) days after the required payment date, the Customer must pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by SitelogIQ as acceptance of the Service performed by SitelogIQ.

G. **Dispute Resolution**

Any Claim arising out of or related to the Agreement, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof that are not resolved through mediation shall be subject to and decided in the County Court of Common Pleas in the County where Customer's principal offices are located.

#### **H. Assignability and Subcontracting**

- (i) Subject to the terms and conditions of this Paragraph, this Agreement shall be binding upon the parties and their respective successors and assigns.
- (ii) SitelogIQ shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Agreement without the prior written consent of the Customer, which consent may be withheld at the sole and absolute discretion of the Customer.
- (iii) SitelogIQ may not assign, in whole or in part, this Agreement or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Customer, which consent may be withheld at the sole and absolute discretion of the Customer.
- (iv) Notwithstanding the foregoing, SitelogIQ may, without the consent of the Customer, assign its rights to payment to be received under this Agreement, provided that SitelogIQ provides written notice of such assignment to the Customer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Agreement.
- (v) For the purposes of this Agreement, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in SitelogIQ provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- (vi) Any assignment consented to by the Customer shall be evidenced by a written assignment agreement executed by SitelogIQ and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of this Agreement and to assume the duties, obligations, and responsibilities being assigned.
- (vii) A change of name by SitelogIQ, following which SitelogIQ's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. SitelogIQ shall give the Customer written notice of any such change of name.

#### **I. Integration**

This Agreement, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Customer or SitelogIQ has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Agreement, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, changes, or waiver to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate Customer form.

#### **J. Personnel**

All personnel necessary for the effective performance of the Investment Grade Energy Audit shall be employed by SitelogIQ and its designated subcontractors, shall be qualified to perform the Services required under this Agreement, and shall in all respects be subject to the rules and regulations of SitelogIQ governing staff members and employees. Neither SitelogIQ, its designated subcontractors, nor its personnel shall be considered to be agents or employees of the Customer.

#### **K. Property/Casualty/Insurance; Indemnification; limitation of liability**

### **Liability Insurance**

SitelogIQ shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect SitelogIQ from claims set forth below which may arise out of or result from SES's operations under this Agreement and for which SitelogIQ may be legally liable.

- .1 claims under worker's compensation, disability benefit and other similar employee benefit acts which are applicable to the operations to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of SitelogIQ's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than SitelogIQ's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by SitelogIQ, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.

The insurance required by Section 16.1.1.1 through 16.1.1.6 shall be written for not less than limits of liability specified in Article 16.1.3, or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the Effective Date until date of final payment and termination of any coverage required to be maintained after the Commencement Date.

### **Limits on Insurance**

The insurance required by Article 16 shall be written for not less than the following limits, or greater if required by law:

|                                               |              |
|-----------------------------------------------|--------------|
| Commercial General Liability                  | \$ 2,000,000 |
| - General Aggregate                           | \$ 2,000,000 |
| - Products-Completed Operations Aggregate     | \$ 1,000,000 |
| - Personal & Advertising Injury               | \$ 1,000,000 |
| - Each Occurrence                             | \$ 1,000,000 |
| - Damage to Rented Premises (each occurrence) | \$ 100,000   |
| - Medical Expense                             | \$ 10,000    |
| Automobile Liability – Combined Single Limit  | \$ 1,000,000 |
| Umbrella Liability                            |              |
| - Each Occurrence                             | \$5,000,000  |
| - Aggregate                                   | \$5,000,000  |
| Worker's Compensation Liability               |              |
| - Each Accident                               | \$ 500,000   |
| - Disease – Policy Limit                      | \$ 500,000   |
| - Disease – Each Employee                     | \$ 500,000   |
| Professional Liability                        |              |
| - Per Claim                                   | \$ 2,000,000 |
| - Aggregate                                   | \$ 4,000,000 |

With respect to any of the insurance policies provided by SitelogIQ pursuant to this Agreement which are "claims made" policies, in the event that such policies are cancelled or not renewed at any time, SitelogIQ shall provide substitute insurance policy with an inception date the same as the prior policy's cancellation date and to have the substitute insurance policy carry forward the same retroactive date as the cancelled policy to fill any gaps in coverage which may exist due to the cancellation or non-renewal of the prior "claims made" policies. With respect to all "claims made" policies which are renewed, SitelogIQ shall provide coverage retroactive to the date of commencement of Work under this Agreement.

### **Indemnification**

To the fullest extent permitted by law, SitelogIQ shall indemnify, defend and hold Customer, the Board of School Directors of Customer, and their officers, employees, agents and representatives (collectively, the "Customer Indemnified Parties")

harmless from and against any and all claims, damages, losses, costs, judgments or injuries including, but not limited to, reasonable legal fees and expenses (collectively, the “Damages”) arising out of the work to be performed by SitelogIQ, its subcontractors, agents or anyone for whose acts or omissions they may be legally liable. Notwithstanding anything to the contrary, in no event shall SitelogIQ be responsible for indemnifying the Customer Indemnified Parties for Customer's own sole negligence.

To the fullest extent permitted by law, Customer shall indemnify, defend and hold SitelogIQ, and its officers, employees, agents and representatives (collectively, the “SitelogIQ Indemnified Parties”) harmless from and against any and all claims, damages, losses, costs, judgments or injuries including, but not limited to, reasonable legal fees and expenses (collectively, the “Damages”) arising out of Customer's negligent acts or omissions related to the performance of its obligations under this Agreement. Notwithstanding anything to the contrary, in no event shall Customer be responsible for indemnifying the SitelogIQ Indemnified Parties for SitelogIQ's own sole negligence.

### **Limitation of Liability**

SitelogIQ's total liability to the Customer for damages or injury to persons or property that may be caused by or arise through performing any obligation under this Agreement shall be limited only to losses proximately caused by SitelogIQ's negligence or the negligence of its consultants, subcontractors, employees, or agents, and only to the extent of the compensation received by SitelogIQ under this Agreement or available insurance proceeds, whichever is greater. Neither party shall be liable to the other for special, indirect, consequential, incidental, or punitive damages.

This Article 3(K) shall survive the termination and/or expiration of this Agreement.

## **L. Miscellaneous Provisions**

Unless otherwise provided, this Agreement shall be governed by the law of the place where the Facility(ies) are located.

Waivers of Subrogation. The Customer and SitelogIQ waive all rights against each other and against the Contractors, consultants, agents and employees of any of them, for damages, but only to the extent covered by property insurance during construction. The Owner and SitelogIQ each shall require similar waivers from their Contractors, consultants, agents, and persons or entities awarded separate contracts administered under the Owner's own forces.

The Customer and SitelogIQ, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Customer nor SitelogIQ shall assign this Agreement without the written consent of the other.

This Agreement represents the entire and integrated agreement between the Customer and SitelogIQ and supersedes all prior negotiations, representations or agreements, either written or oral. The terms and conditions of this Agreement may be amended only by written instrument signed by both Customer and SitelogIQ. However, Customer may continue to issue instructions for additional Reports consistent with Article 3(D).

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Customer or SitelogIQ.

Unless otherwise provided in this Agreement, SitelogIQ and SitelogIQ's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Agreement due to acts of God, war, hostilities, revolution, rebellion, insurrections, riots, strikes, walkouts, lockouts, industrial or labor actions or disputes of a regional or national nature, supply change disruptions, changes in applicable law after execution of this Agreement that materially impact either party's ability to perform under this Agreement, plagues, epidemics, pandemics, outbreaks of infectious disease, or similar events, this Agreement shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days notice to the performing party, in which event neither party shall have any further liability to the other. Upon such termination, SitelogIQ shall recover as its sole remedy payment for Services or work properly performed in connection with the terminated portion of the Services or work and actual costs associated with termination of subcontracts.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2025.

CUSTOMER: SCHOOL DISTRICT

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature

SITELOGIQ ENERGY SERVICES, INC.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

Federal Identification No. 80-0197145

**SITELOGIQ ENERGY SERVICES, INC.  
GUARANTEED ENERGY SERVICES AGREEMENT**

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This Guaranteed Energy Services Agreement (the "Agreement") is made and entered into as of October 16, 2025, by and between Reynolds Energy Services, Inc. d/b/a SitelogIQ Energy Services, Inc. ("SES"), having its principal offices at 3300 North 3<sup>rd</sup> Street, Harrisburg, PA 17110, and Sample School District ("Customer") with its principal offices at , Harrisburg, PA 17110, for the purpose of the sale and installation of certain energy saving measures and equipment, described in Schedule A, and providing other services designed to save energy for the Customer's property and building(s), known as the "Premises."

|              |                      |
|--------------|----------------------|
| Site Name    | Site Address         |
| Headquarters | 3300 N. Third Street |

**RECITALS**

WHEREAS, Customer owns and operates the Premises, and is in need of energy saving measures and equipment and service designed to save energy and associated energy costs at said Premises; and

WHEREAS, SES has made an assessment of the energy consumption characteristics of the Premises and existing Equipment described in Schedule E, which Customer has approved; and

WHEREAS, Customer desires to retain SES to procure, install, implement, maintain and monitor such energy efficiency measures ("EEMs") of the type or class described in Schedule A, attached hereto and made part hereof and to provide other services for the purpose of achieving energy cost reductions within Premises, as more fully set forth herein; and

WHEREAS, Customer desires to compensate SES for its services based upon the value of energy, operational, and capital savings that are obtained; and

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

**SECTION 1 - ENERGY MANAGEMENT PLAN**

**Schedules, Exhibits and Appendices:** SES has prepared, based on information provided to SES, and Customer has approved and accepted the Schedules as set forth below, copies of which are attached hereto (or will be as provided for in the Agreement), and made a part of this Agreement by reference.

**Schedules**

|            |                                            |
|------------|--------------------------------------------|
| Schedule A | Scope of Work                              |
| Schedule B | Project Costs and Cash Flow Analysis       |
| Schedule C | Guaranteed Energy Savings                  |
| Schedule D | Compensation to SES                        |
| Schedule E | Baseline Energy Consumption                |
| Schedule F | Measurement and Verification Methodologies |
| Schedule G | Construction and Installation Schedule     |
| Schedule H | Start-Up and Commissioning                 |
| Schedule I | Standards of Comfort                       |
| Schedule J | Maintenance Responsibilities               |

**Exhibits**

|             |                                                     |
|-------------|-----------------------------------------------------|
| Exhibit I   | Performance Bond/Construction Bond for Construction |
| Exhibit II  | Certificate of Acceptance—Installed Equipment       |
| Exhibit III | Certificates of Insurance (Referenced in Agreement) |

**SECTION 2 - ENERGY USAGE RECORDS AND DATA**

Customer has furnished, shall furnish, or shall cause its energy suppliers to furnish to SES, all of its available records and data concerning energy usage and energy-related maintenance for the Premises, including the following data for the most current twelve (12) month period; utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Premises; bills and records relating to maintenance of energy-related equipment, and a description of energy management procedures presently utilized. If requested, Customer shall also provide any prior energy audits of the Premises, and copies of Customer's financial statements and records related to energy usage and operations for said twelve (12) month period at said Premises, and shall make agents and employees familiar with such records available for consultations and discussions with SES.

### **SECTION 3 - COMMENCEMENT DATE AND TERMS; INTERIM PERIOD**

- 3.1 Commencement Date:** The Commencement Date of the savings guarantee period shall be the first day of the fiscal quarter following the month in which the later of the following occurs: (i) SES has installed and commenced operating all of the Equipment specified in Schedule A and in accordance with the provisions of Section 6 and Schedule H; and (ii) Customer has provided SES with a signed Certificate of Acceptance – Installed Equipment as specified in Exhibit II. If there are multiple scopes of work or phases for a project added through a subsequent amendment to this Agreement, there will be multiple Commencement Dates.
- 3.2 Term of Agreement; Interim Period** - Subject to the following sentence, the term of the Savings Guarantee Agreement shall be twenty (20) years measured beginning with the Commencement Date. Nonetheless, the Agreement shall be effective and binding upon the parties immediately upon the "Effective Date." The Effective Date is the date this Agreement is sent to SES after it has been fully executed by Customer and SES. The period between the Effective Date and the Commencement Date shall be known as the "Interim Period". All energy savings achieved during the Interim Period will be fully credited to Customer.

### **SECTION 4 - PAYMENTS TO SES**

- 4.1 Energy Savings Guarantee:** SES has formulated and, subject to the adjustments provided for in Section 15, has guaranteed the annual level of energy, operations and avoided capital cost savings to be achieved as a result of the installation and operation of the Equipment and other energy saving measures provided for in this Agreement ("Energy Savings Guarantee"). The Energy Savings Guarantee is set forth in annual increments for the term of the Agreement as specified in Schedule C and has been structured by SES so as to be sufficient to cover any and all annual payments required to be made by the Customer as set forth in Schedule D.
- 4.2 Annual Review and Reimbursement/Reconciliation:** If at the end of any year during the guarantee period as specified in Schedule C, SES has failed to achieve the annual Energy Savings Guarantee specified in Schedule C, upon written request by the Customer, which shall be given no earlier than the end of such year and no later than six (6) months thereafter, SES will pay the Customer the difference between the annual amount guaranteed and the amount of actual energy and operations savings achieved at the Premises in accordance with the provisions of Schedule C. SES shall remit such payments to the Customer within sixty (60) days of written notice by the Customer of such monies due.
- 4.3 SES Compensation and Fees** : SES compensation shall be as described in Schedule D. SES has structured the Energy Savings Guarantee referred to in Section 4.1 above, so as to be sufficient to include any and all annual payments required to be made by the Customer in connection with financing or purchasing the Equipment to be installed by SES under this Agreement. Actual energy, operational savings, and avoided capital cost savings achieved by SES through the replacement and operation of Equipment and other energy saving measures by SES shall also be sufficient to cover any and all annual fees to be paid by Customer to SES for the provision of services as set forth and in accordance with the provisions of Schedule B.
- 4.4 Progress Payments**
- (i) See Schedule D
- 4.4.1** Applications for Payment shall be based upon SES's most recent Schedule of Values, as approved by Customer, and shall show the percentage of completion of each portion of Work as of the end of the period covered by the Application for Payment. SES shall keep all financial and job cost information and all other information related to its Applications for Payment, for a period of six (6) years following final completion of Work. Upon written reasonable notice, Customer may inspect and copy any and all such records, and audit or study the same. Payments shall be due (30) days after receipt of invoice by Customer, except for amounts disputed in good faith as to which the Customer has given prompt written notice of the amount disputed and the basis for the dispute.

- 4.5 **Interest Payments:** Payments due to SES under Agreement which are not paid when due (except for amounts disputed in good faith by Customer as noted in Section 4.4.1 of this Agreement) shall bear interest from the date due at six percent (6%) per annum.

## **SECTION 5 - CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL**

- 5.1 SES shall be responsible for the construction and the professional and technical accuracy of all services performed, whether by SES, its consultants, or its subcontractors or others on its behalf, throughout the term of this Agreement. SES shall perform any professional services under this Agreement with the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- 5.2 SES shall provide overall coordination, management, and responsibility and shall ensure that all Work is completed in a good and workmanlike manner. SES's services shall include the following:
- (i) **Engineering Design:** A survey of the Premises for purposes of designing the program for the EEMs.
  - (ii) **Procurement, Installation, Start-Up:** SES will act as a turn-key general contractor assuming total responsibility for the procurement of labor and material for installation and start-up of the Equipment, including, but not limited to, selecting subcontractors, subject to the approval of Customer (a list of subcontractors for major work items is set forth in Schedule A); awarding subcontracts; receiving and evaluating submitted drawings on the Equipment; progress inspections during installation; developing and presenting subcontractor punch lists after each inspection; receiving and evaluating record drawings; and operation and maintenance manuals from subcontractors; providing for training of Customer personnel on proper operation of the newly installed Equipment; and final inspection and recommendation for approval to the Customer for acceptance of the Equipment. Notwithstanding the foregoing, the Customer will have the sole right to make the final decision as to acceptance of Equipment and issuance of the Certificate of Acceptance for the Work.
- 5.3 Construction and Equipment installation shall proceed in accordance with the construction schedule approved by Customer and attached hereto as Schedule G. SES and its subcontractors and/or agents shall not deviate from the construction schedule attached hereto as Schedule G without the Customer's prior written approval or the occurrence of an event beyond the control of the parties as defined in Section 19.
- 5.4 **Systems Startup and Equipment Commissioning:** SES shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in Schedule H and prior to acceptance by Customer. SES shall provide notice to the Customer of the scheduled test(s) and the Customer and/or its designees shall have the right to be present at any or all such tests conducted by SES and/or manufacturers of the Equipment. SES shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed by SES, Customer or Customer's designee during system commissioning procedures.
- 5.5 **Statutory Requirements:** SES shall be required, and shall require its consultants and subcontractors, to comply with all statutory requirements that are applicable to the Work. SES shall submit the technical scope of work to the authority having jurisdiction ("AHJ") for plans review and inspections subject to the requirements of the AHJ and provisions of the Uniform Construction Code to the extent they are applicable to the scope of work on the project. SES shall, at its sole cost, make any adjustments requested by the AHJ and approved in writing by the Customer.

## **SECTION 6 - WARRANTIES**

- 6.1 **General** - Should any piece of Equipment be found to be defective within one (1) year from the date of Substantial Completion of each phase of the Project or portion thereof, SES agrees to repair such piece of Equipment or, if necessary, furnish and install, without charge, similar items to replace it; provided, however, that the original item is returned to SES. All shipping and transportation costs involved in the repair or replacement of the defective Equipment shall be paid by SES. For the purposes of this section 6.1, Substantial Completion is the point in construction that is sufficiently completed in accordance with the contract and is operated for its intended use or as Substantial Completion is outlined in Schedule G, whichever is later.

On all systems installed pursuant to this Agreement, SES shall provide, at no charge during the warranty period, any labor required to repair or replace defective Equipment or parts thereof. Such labor shall include adjustment of controls, air balancing, and correction of mechanical difficulties if such adjustments are due to defective Equipment or improper installation.

If the Equipment fails to fulfill the Energy Savings Guarantee, SES shall have the opportunity to make such changes as it deems necessary to fulfill such Energy Savings Guarantee; provided, however, SES shall obtain the Customer's prior written approval

before making any such changes. If a demonstration is required, SES shall be given a reasonable opportunity to test the Equipment under requisite conditions.

The warranty provisions under this Section 6.1 are in addition to and not in lieu of any warranties made by equipment or component manufacturers. After installation of all EEMs, SES shall deliver to the Customer all manufacturer warranty certificates, documents, operation and maintenance instructions and manuals, and similar documents.

It is understood and agreed that SES shall provide performance and payment bonds covering only the construction work to be performed hereunder in the format requested by the Customer, in its discretion. The exact bond amount shall be determined on a per project basis and shall not exceed the full value of the Agreement. Such bonds shall not be construed to cover any manufacturer warranties or the Guaranteed Energy Savings.

- 6.2 Equipment Warranties** - SES covenants and agrees that all Equipment installed as part of this Agreement is new, in good and proper working condition and subject to manufacturer written warranties covering all parts and Equipment. SES further agrees to: (i) deliver to the Customer for inspection and approval, all such written warranties, which shall be attached and set forth in Schedule J, (ii) to assist the Customer with in pursuing rights and remedies against manufacturer of the Equipment under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance, (iii) to notify the Customer whenever SES becomes aware of defects in Equipment parts or performance occur which give rise to such rights and remedies.

All warranties shall be transferable and extend to the Customer. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessitated by malfunction.

All warranties required hereunder shall be in force for a minimum of one (1) year from the date indicated on the Certificate of Acceptance.

- 6.3** **EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 6 AND THE ENERGY SAVINGS GUARANTEE, SES DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**

#### **SECTION 7 - TRAINING BY SES**

SES shall conduct the training program described in Schedule H hereto. SES shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at no additional charge to the Customer.

#### **SECTION 8 - PERMITS AND APPROVALS; COORDINATION**

- 8.1 Permits and Approvals:** SES shall be responsible for obtaining all necessary permits and approvals related to the work of this Agreement for installation of the Equipment and shall pay any and all permit fees. Customer shall be responsible for obtaining any necessary building permits not directly related to the work of this Agreement. Customer shall use reasonable efforts to assist SES in obtaining all necessary permits and approvals for installation of the Equipment. The Equipment and the operation of the Equipment by SES shall at all times conform to all federal, state and local code requirements in effect at the time of the Commencement Date. SES shall furnish copies of each permit or license which is required to perform the work to the Customer before SES commences the portion of the work requiring such permit or license.
- 8.2 Coordination During Installation:** The Customer and SES shall coordinate the activities of SES's Equipment installers with the Customer. SES shall not commit or permit any act which will interfere with the performance of business activities conducted by the Customer or its employees without prior written approval of the Customer.

#### **SECTION 9 - PERFORMANCE BY SES**

- 9.1** SES shall perform all tasks and phases under the Agreement, including construction and installation of the Equipment, in such a manner so as not to harm the structural integrity of the Premises or their operating systems and so as to conform to the standards set forth in Schedule I and the construction schedule specified in Schedule G. SES shall repair and restore to its original condition any area of damage caused by SES's performance under this Agreement.
- 9.2** SES is responsible for general broom cleaning at its cost. At least once a week, SES shall remove from the Premises all discarded material and rubbish resulting from the work and assure that the Premises are clean and free of such materials and rubbish.

## **SECTION 10 – OWNERSHIP OF EXISTING EQUIPMENT**

Ownership of the equipment and materials presently existing at the Premises at the time of execution of this Agreement shall remain the property of the Customer even if it is replaced or its operation made unnecessary by work performed by SES pursuant to this Agreement. If applicable, SES shall advise the Customer in writing of all equipment and materials to be replaced at the Premises and the Customer shall within thirty (30) days designate in writing to SES which equipment and materials that should not be disposed of off-site by SES. It is understood and agreed to by both parties that the Customer shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. SES shall be responsible, at its sole cost, for the disposal of all equipment and materials, including any hazardous waste materials (except asbestos and lead containing materials as noted below). Customer shall be responsible for the removal and disposal of all asbestos and lead containing materials.

## **SECTION 11 - LOCATION AND ACCESS**

Customer shall provide sufficient rent-free space on the Premises for the installation and operation of the Equipment and shall take reasonable steps to protect such Equipment from harm, theft and misuse. Customer shall provide access to the Premises for SES to perform any function related to this Agreement during regular business hours, or such other reasonable hours as may be requested by SES and acceptable to the Customer. SES's access to Premises to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the Customer.

## **SECTION 12 - EQUIPMENT SERVICE**

**12.1 Actions by SES:** SES shall provide all service, repairs, and adjustments during the warranty period to the Equipment installed under terms of this Agreement pursuant to Schedule J. Customer shall incur no cost for Equipment service, repairs, and adjustments, except as set forth in Schedule J where applicable, provided, however, that when the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Customer, its employees, agents and those for which they are responsible, SES may charge Customer for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

**12.2 Malfunctions and Emergencies:** Customer shall notify SES or its designee(s) within five (5) business days after the Customer's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that materially impacts upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Premises, or (iii) any alteration or modification to the Equipment or in any energy-related equipment.

Where Customer exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Customer shall notify SES within five (5) business days of its having actual knowledge of any equipment malfunction or other emergency condition affecting the Equipment. SES shall respond or cause its designee(s) to respond as expeditiously as possible and as warranted under the circumstances but, in no event, more than forty-eight (48) hours of notice by Customer, and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by Customer shall be followed within two (2) business days by written notice to SES from Customer. If Customer unreasonably delays in so notifying SES of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, such conditions will be treated as a Material Change and the applicable provisions of Section 15 shall be applied.

**12.3 Actions by Customer:** Customer shall not unreasonably move, remove, modify, alter, adjust, or change in any way the Equipment or any part thereof without the prior written approval of SES, except as set forth in Schedule J. Notwithstanding the foregoing, Customer may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify SES before taking any such actions. In the event of such an emergency, Customer shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by SES. Customer agrees to maintain the Premises in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

## **SECTION 13 - UPGRADING OR ALTERING THE EQUIPMENT**

SES shall at all times have the right, subject to Customer's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that:

- (i) SES complies with the standards of comfort and services set forth in Schedule I herein;

- (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable SES to achieve the energy savings at the Premises; and
- (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the sole responsibility of SES.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Customer for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall be new and have equal or better potential to reduce energy consumption at the Premises than the Equipment being replaced. SES shall update any and all software to be used in connection with the Equipment in accordance with the provisions of Section 12. All replacements of and alterations or additions to the Equipment shall become part of the Equipment described in Schedule A and shall be covered by the provisions and terms of Section 6.

#### **SECTION 14 - STANDARDS OF COMFORT**

SES shall not require the Customer to maintain and operate the Equipment in a manner which will result in compromising the accepted standards of heating, cooling, hot water, and lighting as described in Schedule I, during occupied hours of operation.

#### **SECTION 15 - MATERIAL CHANGES**

**15.1 Material Change Defined:** A Material Change shall include any change in or to the Premises, whether structural, operational, or otherwise in nature which reasonably could be expected, as mutually agreed upon by SES and Customer or Customer's designee, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in Schedule E and Schedule F by at least five percent (5%) after adjustments for climatic variations. Actions by the Customer that shall result in a Material Change include, but are not limited to, the following:

- (i) change in manner of use of the Premises by the Customer; or
- (ii) change in hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or
- (iii) permanent changes in the comfort and service parameters set forth in Schedule I; or
- (iv) change in occupancy of the Premises; or
- (v) change in structure of the Premises; or
- (vi) change in types and quantities of equipment used at the Premises; or
- (vii) modification, renovation or construction at the Premises; or
- (viii) the Customer's failure to provide maintenance of and repairs to the Equipment in accordance with Schedule J; or
- (ix) any other material conditions other than climate affecting energy use at the Premises.

**15.2 Reported Material Changes; Notice by Customer:** The Customer shall deliver to SES a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises at least fifteen (15) days before any implementation of any actual or proposed Material Change or as soon as is practicable, but no more than five (5) days, after an emergency, other unplanned event, or discovery of a Material Change.

**15.3 Unreported Material Change:** In the absence of any Material Changes in the Premises or in their operations, the baseline energy consumption as set forth in Schedule E should not change more than ten percent (10%) during any month from the projected energy usage for that month, after adjustments for changes in climatic conditions. Therefore, if energy consumption for any month, as set forth in Schedule E, deviates by more than ten percent (10%) the energy consumption for the same month of the preceding contract year after adjustments for changes to climatic conditions, then such deviation shall be timely reviewed by SES to ascertain the cause of deviation. SES shall report its findings to the Customer in a timely manner and SES and Customer shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in Schedule F.

## **SECTION 16 - PROPERTY/CASUALTY/INSURANCE; INDEMNIFICATION; LIMITATION OF LIABILITY**

### **16.1 SES's Liability Insurance**

**16.1.1** SES shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect SES from claims set forth below which may arise out of or result from SES's operations under this Agreement and for which SES may be legally liable.

- .1 claims under worker's compensation, disability benefit and other similar employee benefit acts which are applicable to the operations to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of SES's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than SES's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by SES, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.

**16.1.2** The insurance required by Section 16.1.1.1 through 16.1.1.6 shall be written for not less than limits of liability specified in Article 16.1.3, or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the Effective Date until date of final payment and termination of any coverage required to be maintained after the Commencement Date.

**16.1.3** **Limits on Insurance** - The insurance required by Article 16 shall be written for not less than the following limits, or greater if required by law:

|                                               |              |
|-----------------------------------------------|--------------|
| Commercial General Liability                  | \$ 2,000,000 |
| - General Aggregate                           | \$ 2,000,000 |
| - Products-Completed Operations Aggregate     | \$ 1,000,000 |
| - Personal & Advertising Injury               | \$ 1,000,000 |
| - Each Occurrence                             | \$ 1,000,000 |
| - Damage to Rented Premises (each occurrence) | \$ 100,000   |
| - Medical Expense                             | \$ 10,000    |
| Automobile Liability – Combined Single Limit  | \$ 1,000,000 |
| Umbrella Liability                            |              |
| - Each Occurrence                             | \$5,000,000  |
| - Aggregate                                   | \$5,000,000  |
| Worker's Compensation Liability               |              |
| - Each Accident                               | \$ 500,000   |
| - Disease – Policy Limit                      | \$ 500,000   |
| - Disease – Each Employee                     | \$ 500,000   |
| Professional Liability                        |              |
| - Per Claim                                   | \$ 2,000,000 |
| - Aggregate                                   | \$ 4,000,000 |

With respect to any of the insurance policies provided by SES pursuant to this Agreement which are "claims made" policies, in the event that such policies are cancelled or not renewed at any time, SES shall provide substitute insurance policy with an inception date the same as the prior policy's cancellation date and to have the substitute insurance policy carry forward the same retroactive date as the cancelled policy to fill any gaps in coverage which may exist due to the cancellation or non-renewal of the prior "claims made" policies. With respect to all "claims made" policies which are renewed, SES shall provide coverage retroactive to the date of commencement of Work under this Agreement. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of final completion of the Work. The insurance policies shall incorporate a provision requiring written notice to the Customer at least thirty (30) days prior to any cancellation, non-renewal or material modification of the policies.

## **16.2 Customer Insurance**

Customer shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Premises is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire work on a replacement cost basis. The Customer's property insurance shall be no less than the value of this Agreement plus the value of subsequent modifications and labor performed, or materials or equipment supplied by others. The property insurance shall be maintained through final completion. The builders risk policy shall include a waiver of subrogation so that in the event of payment of any loss or damages the insurer will have no rights of recovery against SitelogiQ or any additional insureds thereunder.

## **16.3 Indemnification**

To the fullest extent permitted by law, SES shall indemnify, defend and hold Customer, the Board of School Directors of Customer, and their officers, employees, agents and representatives (collectively, the "Customer Indemnified Parties") harmless from and against any and all claims, damages, losses, costs, judgments or injuries including, but not limited to, reasonable legal fees and expenses (collectively, the "Damages") arising out of the work to be performed by SES, its subcontractors, agents or anyone for whose acts or omissions they may be legally liable. Notwithstanding anything to the contrary, in no event shall SES be responsible for indemnifying the Customer Indemnified Parties for Customer's own sole negligence.

To the fullest extent permitted by law, Customer shall indemnify, defend and hold SitelogiQ, and its officers, employees, agents and representatives (collectively, the "SES Indemnified Parties") harmless from and against any and all claims, damages, losses, costs, judgments or injuries including, but not limited to, reasonable legal fees and expenses (collectively, the "Damages") arising out of Customer's negligent acts or omissions related to the performance of its obligations under this Agreement. Notwithstanding anything to the contrary, in no event shall Customer be responsible for indemnifying the SES Indemnified Parties for SES's own sole negligence.

This Section 16.3 shall survive the termination of this Agreement.

## **16.4 Limitation of Liability**

SES's total liability to the Customer for damages or injury to persons or property that may be caused by or arise through performing any obligation under this Agreement shall be limited only to losses proximately caused by SES's negligence or the negligence of its consultants, subcontractors, employees, or agents, and only to the extent of the compensation received by SES under this Agreement or available insurance proceeds, whichever is greater. Neither party shall be liable to the other for special, indirect, consequential, incidental, or punitive damages.

This Section 16.4 shall survive the termination of this Agreement.

## **SECTION 17 - RISK OF LOSS**

Upon SES's completion of the work and Customer's acceptance of the Equipment, as evidenced by Customer's issuance of the Certificate of Acceptance, the Customer assumes all risk of loss of or damage to the Equipment from any cause whatsoever (except as provided in Section 12), and no such loss of or damage to the Equipment shall relieve the Customer of the obligation to make payments or to perform any other obligation under this Agreement. In the event of damage to any item of Equipment, the Customer will immediately notify SES or its assignee and place the same in good repair except as provided in Section 12. If Customer determines that any of the Equipment is lost, stolen, destroyed, or damaged beyond repair and SES, its subcontractors, and agents are not responsible for repair or replacement, the Energy Savings Guarantee will be adjusted by mutual agreement to account for the losses associated with the Equipment and Customer will either: (a) replace the same with like Equipment in good repair, or (b) accept the Energy Savings Guarantee adjustment for the remaining term of the contract.

## **SECTION 18 - CASUALTY OR CONDEMNATION OF PREMISES**

Any construction or restoration of the Premises following or necessitated by fire, flood, or other casualty, or any condemnation affecting any portion of the Premises, shall be deemed a Material Change, and the provisions of Section 15 shall be applicable. If the casualty or condemnation renders fifty percent (50%) or more of the Premises uninhabitable or unusable and, in the case of a casualty, the affected portion is not reconstructed or restored within one hundred and twenty (120) days from the date of such casualty, Customer shall have the option to terminate this Agreement by a notice to SES. In the event of condemnation, Customer agrees that SES shall be entitled to receive payment for the value of all costs to date including engineering, labor, material, restocking, cancellation fees, project demobilization, and reasonable overhead and profit on work properly performed by SES prior to the event of condemnation. Upon such termination, SES may remove the Equipment from the condemned portion of the Premises.

## **SECTION 19 - CONDITIONS BEYOND CONTROL OF THE PARTIES**

- 19.1** If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Agreement due to acts of God, war, hostilities, revolution, rebellion, insurrections, riots, strikes, walkouts, lockouts, industrial or labor actions or disputes of a regional or national nature, supply change disruptions, changes in applicable law after execution of this Agreement that materially impact either party's ability to perform under this Agreement, plagues, epidemics, pandemics, outbreaks of infectious disease, or similar events, this Agreement shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days notice to the performing party, in which event neither party shall have any further liability to the other. Upon such termination, SES shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work and for items properly and timely fabricated off the project site, delivered and stored in accordance with the Customer's instructions and provide, actual costs associated with termination of subcontracts.
- 19.2** SES shall be entitled to an increase in its compensation, described in Schedule D, where the cost to SES for any labor, materials, component, or equipment necessary to complete the project or any portion thereof increases after the Effective Date of this Agreement, provided that such cost increase is attributable to a condition outside of SES's control, including but not limited to acts of God, war, hostilities, revolution, rebellion, insurrections, riots, strikes, walkouts, lockouts, industrial or labor actions or disputes of a regional or national nature, supply change disruptions, changes in applicable law after the Effective Date of this Agreement that materially impact either party's ability to perform under this Agreement, plagues, epidemics, pandemics, or outbreaks of infectious disease.

## **SECTION 20 - TERMINATION FOR CONVENIENCE**

The Customer shall have the right to terminate this Agreement if, in any fiscal year during the term of this Agreement, the Customer does not receive sufficient funds or financing for the Work contemplated under this Agreement. In the event of termination pursuant to this Section 20, Customer agrees that SES shall be entitled to receive as its sole remedy payment for Work properly performed prior to termination of this Agreement and for items properly and timely fabricated off the project site, delivered and stored in accordance with Customer's instructions and actual costs associated with termination of subcontracts.

## **SECTION 21 - EVENTS OF DEFAULT**

**21.1** **Events of Default by Customer** - Each of the following events or conditions shall constitute an "Event of Default" by Customer:

- (i) Any failure by Customer to pay SES any uncontested sum due for a service and maintenance period of more than thirty (30) days after written notification by SES that Customer is delinquent in making payment; or
- (ii) Any other material failure by Customer to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after notice to Customer demanding that such failures to perform be cured or if such cure cannot be effected in thirty (30) days, Customer shall be deemed to have cured default upon the commencement of a cure within thirty (30) days and diligent subsequent completion thereof; or
- (iii) Any representation or warranty furnished by Customer in this Agreement which was knowingly false or misleading in any material respect when made. Upon such termination, SES shall recover as its sole remedy payment for Work properly performed and documented in connection with the terminated portion of the Work and for items properly and timely fabricated and documented off the project site, delivered and stored in accordance with the Customer's instructions and shall provide actual costs associated with termination of subcontracts caused by Customer's breach.

**21.2** **Events of Default by SES** - Each of the following events or conditions shall constitute an "Event of Default" by SES:

- (i) The standards of comfort and service set forth in Schedule I are not provided due to failure of SES to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within thirty (30) days after written notice by Customer to SES demanding that such failure be cured, shall be deemed cured for purposes of this Agreement, unless customer incurs damages in the intervening period.
- (ii) Any representation or warranty furnished by SES in this Agreement is false or misleading in any material respect when made;
- (iii) Any other material failure by SES to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to SES demanding that such failure to perform be cured, if corrected or cured within thirty (30) days after SES's receipt

of such written notice shall be deemed cured for the purpose of this Agreement, unless customer incurs damages in the intervening period for which SES will be responsible.

- (iv) Any lien or encumbrance upon the Equipment by SES, any subcontractor, laborer or materialman of SES;
- (v) The filing of a bankruptcy petition whether by SES or its creditors against SES which proceeding shall not have been dismissed within thirty (30) days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of SES;
- (vi) Failure by SES to pay any amount due the Customer or perform any obligation under the terms of this Agreement or the Energy Savings Guarantee as set forth in Schedule C after thirty (30) day written notice from the Customer; or
- (vii) Repossession or removal of the Equipment by SES or a third party without good cause.

## **SECTION 22 - REMEDIES UPON DEFAULT**

**22.1 Remedies upon Default by Customer** - If an Event of Default by Customer occurs, SES may, without a waiver of other remedies which exist in law or equity:

- (i) Exercise any and all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Customer, and/or for damages.

**22.2 Remedies Upon Default by SES** - In the Event of Default by SES, Customer shall have the choice of one or more of the following remedies without waiving any other rights or remedies in law or equity:

- (i) Exercise any and all remedies available at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages;
- (ii) If the payments under this Agreement have not been assigned, Customer may set off or counterclaim against its obligation to make any of the payments provided in default; or
- (iii) SES will be liable to Customer for damages incurred by Customer as a result of any default by SES. Such damages may include, but are not limited to: (a) payments made to SES or its assignee which represents payment towards a unit of Equipment for which acceptance was revoked because of a latent defect (b) the difference in price between the market price of the Equipment which was not delivered or which was rejected (or the actual purchase price if Customer purchases replacements (like Equipment) for any undelivered or rejected unit of Equipment) and the purchase price indicated in the Agreement for such units of Equipment) (c) damages as a result of breach of warranty, failure to meet specifications, or damages incurred by Customer resulting from the delivery of Equipment which is defective or fails to meet specifications, or resulting from SES's failure to comply with any other requirements of this Agreement, and (d) any other damages recoverable by law.

## **SECTION 23 – DISPUTE RESOLUTION/MEDIATION**

**23.1** Any Claim arising out of or related to the Agreement, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

**23.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**23.3** Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof that are not resolved through mediation shall be subject to and decided in the County Court of Common Pleas in the County where Customer's principal offices are located.

## **SECTION 24 - ASSIGNMENT**

SES acknowledges that Customer is induced to enter into this Agreement by, among other things, the professional qualifications of SES. SES agrees that neither this Agreement nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Customer, except that SES may assign this Agreement to a successor in interest.

## **SECTION 25 - REPRESENTATIONS AND WARRANTIES**

**25.1** Each party warrants and represents to the other that:

- (i) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (ii) Its execution, delivery, and performance of this Agreement have been duly authorized by, and this Agreement has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) Its execution, delivery, and performance of this Agreement will not breach or violate, or constitute a default under any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (iv) It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

## **SECTION 26 - ADDITIONAL REPRESENTATIONS OF THE PARTIES.**

**26.1** Customer hereby warrants, represents and promises that:

- (i) It has provided or will use reasonable efforts to provide timely to SES, all reasonably available records relating to energy usage and energy-related maintenance of Premises requested by SES; and
- (ii) It has not entered into any leases or contracts 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. Customer shall provide SES with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Premises which may be executed from time to time hereafter within thirty (30) days after execution thereof.

**26.2** SES hereby warrants, represents and promises that:

- (i) Before commencing performance of this Agreement:
  - (a) It is or shall become licensed or otherwise permitted to do business in the Commonwealth of Pennsylvania;
  - (b) It shall have provided proof and documentation of required insurance pursuant to Section 16. It shall make available, upon reasonable request, all documents relating to its performance under this Agreement, including all contracts and subcontracts entered into;
- (ii) 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.

## **SECTION 27 - COMPLIANCE WITH LAW AND STANDARD PRACTICES**

SES shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, and in compliance with any and all reasonable rules of Customer relative to the Premises.

## **SECTION 28 - INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties hereto agree that SES, and any agents and employees of SES, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the Customer.

#### **SECTION 29 - NO WAIVER**

The failure of SES or Customer 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 SES or Customer.

#### **SECTION 30 - NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

During the term of the Agreement, SES shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity programs.

#### **SECTION 31 - SEVERABILITY**

In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or unconscionable.

#### **SECTION 32 - COMPLETE CONTRACT**

This Agreement, when executed, together with all Exhibits and all Schedules attached hereto or to be attached hereto, as provided for by this Agreement shall constitute the entire contract between both parties and this Agreement may not be amended, modified, or terminated except by a written contract signed by the parties hereto.

#### **SECTION 33 - ORDER OF PRECEDENCE**

If any conflicts or discrepancies should arise in the terms and conditions of this Agreement or the interpretation thereof, the language of the Agreement shall prevail,

#### **SECTION 34 - PRESERVATION OF RECORDS**

SES shall maintain and preserve for a period extending until six (6) years after date of final payment to SES and during that period shall produce, upon request of Customer, all data, records, and other evidence pertaining to costs incurred by SES in connection with this Agreement for the purpose of an audit or other examination.

#### **SECTION 35 - 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.

#### **SECTION 36 - APPLICABLE LAW**

This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the Commonwealth of Pennsylvania without application of its choice of law provision.

#### **SECTION 37 - ENVIRONMENTAL PROVISIONS**

In the performance of this Agreement, SES shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

#### **SECTION 38 - NOTICE**

Any notice required or permitted hereunder shall be deemed sufficient if given via email to the email addresses provided below, or in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO SES: ***SitelogiQ Energy Services, Inc.  
Attention: Rick Evans  
3300 North 3<sup>rd</sup> Street  
Harrisburg, PA 17110***

Copy To: ***SitelogiQ Energy Services, Inc.  
Attention: Legal Department  
80 South 8th Street, Suite 1850  
Minneapolis, MN 55402***

TO CUSTOMER: **Sample School District**  
**Attention: Superintendent School District**

**Harrisburg, PA 17110**  
**[jeff.harris@sitelogiq.com](mailto:jeff.harris@sitelogiq.com)**

**SECTION 39 - CUSTOMER'S COMPLIANCE WITH FACILITIES MAINTENANCE CHECKLIST**

- 39.1** The parties acknowledge and agree that SES has entered into this Agreement in reliance upon the prospect of earning compensation based on guaranteed energy savings in energy used at Premises, as set forth on Schedules C and D, attached hereto and made a part hereof.
- 39.2** The parties further acknowledge and agree that the said guaranteed energy savings would not likely be obtained unless certain procedures and methods of operation designed for energy conservation shall be implemented, and followed by Customer on a regular and continuous basis.
- 39.3** Customer agrees that it shall use reasonable efforts, adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on Schedule J, to be attached hereto and made a part hereof after Customer's approval.
- 39.4** Customer agrees that SES shall have the right once a month, with prior notice, to inspect Premises to determine if Customer is complying, and has complied with its obligations as set forth above. For the purpose of determining Customer's said compliance, the checklist to be set forth at Schedule J as completed and recorded by SES during its monthly inspections, shall be used to measure and record Customer's said compliance. Customer shall make the Premises available to SES for and during each monthly inspection, and shall have the right to witness each inspection and the recordation on the checklist.

**SECTION 40 - MISCELLANEOUS PROVISIONS**

- 40.1** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Customer or SES.
- 40.2** With the exception of any such materials brought onto the Premises by SES or its agents, consultants, and/or subcontractors, SES and the SES's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Premises, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Agreement by their duly authorized officers on the date first above written.

**Sample School District**

**SAMPLE**

\_\_\_\_\_  
Signature

**SITELOGIQ ENERGY SERVICES, INC.**

\_\_\_\_\_  
Signature of President or Vice President

\_\_\_\_\_  
Name

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Title

Federal Identification No. 80-0197145

SAMPLE

# Exhibit I: Performance Bond/Construction Bond

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## Performance Bond/Construction Bond

The payment and performance bond provided by SES shall specifically exclude coverage for those portions of the Guaranteed Energy Services Agreement and any Energy Services Agreement Amendment pertaining to design services, energy cost savings guarantee, maintenance guarantee, utility incentives and any other clauses which do not relate specifically to construction or construction management and supervision of work for purchasing and installing Equipment, or for work to be accomplished by the Customer.

SES will bond all construction work including hard cost, contingency, construction management project management, and associated OH&P.

Upon execution of the Guaranteed Energy Savings Agreement by the Customer, the original Payment and Performance Bond will be provided to the Customer for inclusion in this Exhibit.

## Exhibit II: Certificate of Acceptance

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### Certificate of Acceptance

Upon the installation and owner acceptance of equipment, Customer will issue a Certificate of Acceptance – Installed Equipment to SES for inclusion in this section.

## Exhibit III: Certificate of Insurance

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### Certificate of Insurance

A Certificate of Insurance is attached listing Customer as the certificate holder for Professional Liability Insurance and listing Customer as additional insured for General Liability Insurance.