

**Model Agreement on Joint Procedure Recommended by the State  
Environmental Fund of the Czech Republic**

## **Agreement on Joint Procedure of the Parties**

concluded pursuant to Section 1746(2) of Act No. 89/2012, Civil Code,  
as amended (the "**Civil Code**")

[...]

ID No.: [...]

with registered office at [...]

registered in the Commercial Register maintained by the [...] Court in [...], Section  
[...], Insert [...] represented by [...]

(as the energy service provider, hereinafter referred to as the  
"**ESCO**")

and

[...]

ID No.: [...]

with registered office at [...]

registered in the Commercial Register maintained by the [...] Court in [...], Section  
[...], Insert [...] represented by [...]

(the "**Client**")

and

[...]

ID No.: [...]

with registered office at [...]

registered in the Commercial Register maintained by the [...] Court in [...], Section  
[...], Insert [...] represented by [...]

(the "**Bank**")

(the ESCO, the Client and the Bank are hereinafter jointly referred to as  
the "**Parties**")

**PREAMBLE**

## WHEREAS:

- A. The ESCO is a company engaged in the provision of services and consulting in the field of energy and the environment;
- B. The Client is the sole owner of plot parcel no. [...], built-up area and courtyard, which includes building with indication no. [...], all in the cadastral territory of [...], municipality of [...], registered on title deed no. [...] at the Cadastral Authority for [...], cadastral office [...] (the "Building");
- C. On [...] the ESCO concluded with the Client contract for the provision of energy services with a guaranteed result for a public contracting authority pursuant to Section 10e(1) of Act No. 406/2000 Coll., on Energy Management, as amended (the "Energy Management Act"), in conjunction with Section 1746(2) of the Civil Code (the "EPC Contract"), by which the ESCO undertook to implement the project goal, which is to achieve an increase in energy efficiency and a reduction in operating costs in the Building, through the implementation of energy services with a guaranteed result pursuant to Section 2(2)(o) in conjunction with Section 10e of the Energy Management Act, consisting of: a) implementation of preliminary activities; b) implementation of subsequent basic measures; c) provision of energy management in buildings and provision of other related activities and services, including implementation of additional measures; d) providing a guarantee for achieving contractually guaranteed savings; and all this for the duration of the EPC Contract, to the extent and under the conditions specified in the EPC Contract (hereinafter also collectively referred to as the "Project");
- D. For the implementation of the Project, a consideration was agreed between the ESCO and the Client in the EPC Contract in the total amount of CZK [...] (in words [...] Czech crowns) incl. VAT (the "Consideration for the EPC Project"), which was billed to the Client in invoice no. [...], issued on [...] which was delivered to the Client on [...];
- E. Part of the Consideration for the EPC Project in the amount of CZK [...] (in words [...] Czech crowns) incl./excl. VAT (the "Subsidy") [may be / will be] financed for the Client by the European Structural Investment Funds within the subsidy programme of the Ministry of Industry and Trade (the "MIT") for Entrepreneurship and Innovation for Competitiveness ("EIC");
- F. On [...] 2020, the ESCO and the Bank concluded Agreement on the Future Assignment of Receivables No. [...] (the "Agreement on the Future Assignment of Receivables"), according to which, upon fulfilment of the required conditions, an Agreement on Assignment of Receivables (the "Agreement on Assignment of Receivables") is to be concluded between the ESCO and the Bank, by which the ESCO will assign to the Bank receivables from the Client for payment of the Consideration for the EPC Project (the "Assigned Receivable"). The condition for the payment of the consideration for the Assigned Receivable (the "Consideration for the Assigned Receivable"), which the Bank will pay to the ESCO in accordance with the Agreement on Assignment of Receivables, is, among other things, the conclusion of this Agreement and the submission by the Client to the Bank of a debt acknowledgment corresponding to the Assigned Receivable;
- G. The ESCO informed the Client of its intention to transfer the Assigned Receivable to the Bank, and the Client had no reservations against such a procedure and agreed to the transfer of the Assigned Receivable to the Bank;
- H. The Parties are interested in agreeing on the Consideration for the EPC Project, payment by deferred payments in the form of instalments, where one extraordinary instalment (the "Extraordinary Instalment") will correspond to the amount of the Subsidy, as defined below;
- I. The Parties are interested in the Client using the Subsidy it has drawn to pay the Extraordinary Instalment to the Bank;

- J. The Parties intend to regulate by means of this Agreement their mutual rights and obligations, as well as other conditions related to the assignment of the Assigned Receivable and the payment of the Subsidy and its use to pay the Extraordinary Instalment of the Consideration for the EPC Project, as set forth below;

The Parties have **CONCLUDED** on the day, month and year indicated below this agreement on a joint procedure of the parties (the "**Agreement**")

### **1. Declaration of the Parties**

- K. The ESCO and the Client declare that, based on the EPC Contract, the ESCO has a receivable vis-à-vis the Client for payment of the Consideration for the EPC Project. The Client declares that, upon signing the EPC Contract, it agreed that the ESCO's receivable for payment of the Consideration for the EPC Project will be assigned in full to the Bank.
- L. The Client declares that part of the Consideration for the EPC Project in the amount of the Subsidy will be financed by drawing the Subsidy, while the condition for payment of the Subsidy is the submission by the Client of a request for payment and the provision to the MIT of a statement from the ESCO's bank account, which will confirm the receipt of the Consideration for the Assigned Receivable from the Bank (the "Statement").
- M. The Parties declare that the amount of the Subsidy corresponds to the amount of the Extraordinary Instalment and will be used by the Client immediately after it has been credited to the Client's account for the purpose of paying the Extraordinary Instalment to the Bank.
- N. The ESCO and the Bank declare that the condition for the payment of the Consideration for the Assigned Receivable is the conclusion of this Agreement, the recognition of the Client's debt corresponding to the Assigned Receivable and the conclusion of the Agreement on Assignment of Receivables. If all the conditions for payment of the Consideration for the Assigned Receivable are met, the Consideration for the Assigned Receivable is due by [...] 2020.

### **2. Acknowledgment of debt and conclusion of repayment schedule**

- 2.1. The Client undertakes that, following the EPC Contract and the subsequent conclusion of the Agreement on Assignment of Receivables between the ESCO and the Bank, without undue delay, but no later than [5] working days from the delivery of the ESCO's notification of the assignment of the Assigned Receivable, to issue in favour of the Bank and hand over to the Bank an acknowledgment of the debt corresponding to the Assigned Receivable, according to the model in Annex 2 of this Agreement (with any adjustments to the factual data so that the content of the debt acknowledgment corresponds to reality).
- 2.2. The Parties have agreed that the Client will be obliged to repay the Assigned Receivable in instalments according to the repayment schedule, which constitutes Annex 1 of this Agreement.

### **3. Obligations of the Parties**

- 3.1. The ESCO undertakes to provide the Client with a copy of the Statement within [5] working days from the date the Consideration for the Assigned Receivable is credited, by sending the Statement to the address: [...].

- 3.2. The Bank and the ESCO hereby grant consent to the Client to provide the Statement to the relevant provider, or to the Subsidy administrator to document the payment of the Consideration for the EPC Project, to carry out a mandatory documentary financial check according to the rules of the relevant support programme and thereby enable the Subsidy to be drawn.
- 3.3. After the delivery of the Statement from the ESCO, the Client undertakes to request payment of the Subsidy without undue delay.
- 3.4. The Client further undertakes to pay the Extraordinary Instalment to the Bank, no later than [5] working days after the Subsidy has been credited to the Client's account, or by the date specified in the repayment schedule, whichever occurs first.
- 3.5. For the avoidance of doubt, the ESCO hereby expressly declares that the ESCO's obligation pursuant to Art. 12, Art. 20 and Annex 5 of the EPC Contract, under which the ESCO guarantees the agreed volume of guaranteed savings specified in the EPC Contract, does not transfer to the Bank either by this Agreement or by the Agreement on Assignment of Receivables and the ESCO continues to provide a guarantee to the Client for the achievement of the guaranteed volume of savings to the extent agreed in Art. 12, Art. 20 and Appendix 5 of the EPC Contract. If any payable receivable of the Client vis-à-vis the ESCO arises after the assignment of the receivable in connection with the guarantee for the agreed volume of guaranteed savings or for any other reason, it is in no case a receivable vis-à-vis the Bank and such a receivable cannot be set off against the instalments according to the repayment schedule.
- 3.6. The Client undertakes that until the debt – Consideration for the EPC Project is repaid in full in accordance with the repayment schedule, the Client will submit its annual financial and accounting statements for the last closed annual accounting period to the Bank, within [...] days of the day the relevant accounting period ends.

#### **4. Final provisions**

- 4.1. This Agreement may be amended or revoked only in writing and with the consent of all Parties.
- 4.2. The Parties undertake to provide each other with all cooperation necessary to fulfil the purpose of this Agreement.
- 4.3. The Parties have communicated to each other all factual and legal circumstances of which they were aware at the time of signing this Agreement and which are relevant in relation to the conclusion of this Agreement, the Agreement on Assignment of Receivables and all related legal acts.
- 4.4. This Agreement is governed by Czech law, in particular the Civil Code.
- 4.5. This Agreement is drawn up in three copies, one for the ESCO, one for the Client and one for the Bank.
- 4.6. In witness of their consent to the content of this Agreement, the Parties append their signatures and at the same time declare that this Agreement was concluded of their free and serious will, that they consider the content of this Agreement to be clear and understandable, and that they are aware of all the facts decisive for the conclusion hereof.
- 4.7. This Agreement comes into force and effect upon being signed by all Parties, except

for Art. 2.2 hereof, which comes into effect upon the effectiveness of the Agreement on Assignment of Receivables.

4.8. The following annexes are part of this Agreement:

Annex 1 – Repayment  
Schedule

Annex 2 – Debt  
Acknowledgment Model

In \_\_\_\_\_, on \_\_\_\_\_

In \_\_\_\_\_, on \_\_\_\_\_

\_\_\_\_\_  
[...] ESCO

\_\_\_\_\_  
[...] Client

In \_\_\_\_\_, on \_\_\_\_\_

\_\_\_\_\_  
[...] Bank

Annex 1 to the Agreement on Joint Procedure – Repayment Schedule

<b>Order of instalments</b>	<b>Amount of instalment in CZK</b>	<b>Due date</b>
1.	...	...
2.	...	...
	...	



## Debt Acknowledgement

[...],  
ID No.: [...],  
with registered  
office at [...], (the  
"**Client**")

hereby pursuant to Section 2053 et seq. Civil Code acknowledges the reason for the origination and the amount of its debt to [...], ID No.: [...], with registered office at [...] (the "**Bank**") as the creditor in the amount of CZK [...] (in words [...] Czech crowns), which it is obliged to repay to the Bank no later than [...] in [...] [monthly] instalments according to the repayment schedule below (the "**Debt**").

The subject of the Debt is the price of measures undertaken by the company [...], ID No.: [...], with registered office at [...] (the "**ESCO**") based on a contract for the provision of energy services with a guaranteed result for the public contracting authority pursuant to Section 10e(1) of Act No. 406/2000 Coll., on Energy Management, as amended, in connection with Section 1746(2) of the Civil Code concluded between the Client and ESCO on [...] (the "**EPC Contract**") and the price for financial services (interest) agreed in the EPC Contract excl. VAT, which were billed to the Client:

- by invoice no. [...] issued by the ESCO to the Client on [...] 2020 for the amount of CZK [...] incl. VAT, which includes a repayment schedule in which is set the price  
of financing in the amount of CZK [...] and
- by invoice no. [...] issued by the ESCO to the Client on [...] 2020 for the amount of CZK [...] incl. VAT, which includes a repayment schedule in which is set the price  
of financing in the amount of CZK [...].

The Client undertakes to pay the Debt to the Bank in [...] instalments in accordance with the following repayment schedule:

Order of instalments	Amount of instalment in CZK	Due date
1.	...	...
2.	...	...

	...	
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(the "**Debt Repayment Instalments**")

The Client declares and confirms that the measures according to the EPC Contract were carried out and delivered on time, in the required quality, without defects and unfinished works.

The Client confirms the right, the correctness of the amount and the repayment schedule of the assigned receivables and declares that, to date, it has no objections to these receivables or its own set-off receivables vis-à-vis the ESCO.

The Client undertakes to pay the individual Debt Repayment Instalments directly to the Bank to account no. ... / within the deadlines specified in the above-mentioned repayment schedule.

In \_\_\_\_\_, on \_\_\_\_\_

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[...]  
Client

## **Annex No. 3 Minimum requirements for the Agreement on Joint Procedure**

**The agreement on joint procedure, if the model specified in Annex No. 2 of these guidelines is not used, must contain at least provisions regulating/confirming:**

1. statement by the beneficiary of the subsidy that, when signing the EPC Contract, it agreed that the ESCO's receivable for repayment of the Consideration for the EPC Project will be assigned in full to the Bank;
2. acknowledgment of the subsidy recipient's debt to the bank; the acknowledgment must be issued by the subsidy recipient no later than 10 days after receiving the ESCO's notification of the assignment of the receivable;
3. the repayment schedule of the assigned receivable, which will also include an extraordinary instalment corresponding to the amount of the subsidy paid out. The recipient of the subsidy will be obliged to make an extraordinary instalment no later than 10 days after the subsidy has been credited to his account;
4. the ESCO's obligation to provide the subsidy recipient with a copy of the bank statement that will show payment from the bank to the ESCO in the appropriate amount, the ESCO's and the bank's consent to providing the subsidy provider with the statement,
5. the ESCO's obligation to guarantee savings and guarantee them after the assignment of the receivable.