

## **SUPPLEMENTAL AGREEMENT TO THE TRANSITION CONTRACT FOR THE SUPPLY OF ELECTRICITY**

This Supplemental Agreement to the Transition Contract for the Supply of Electricity (the "Agreement") is entered into by and between:

The **NATIONAL POWER CORPORATION**, a government-owned and controlled corporation duly organized and existing by virtue of Republic Act No. 6395, as amended, with principal office at Building 1, NPC Building Complex, BIR Road corner Quezon Avenue, Diliman, Quezon City, Philippines, represented herein by its \_\_\_\_\_, \_\_\_\_\_ (hereinafter "SELLER");

and

\_\_\_\_\_, a [\_\_\_\_\_] organized and existing by virtue of the laws of the Philippines, with principal office address at [\_\_\_\_\_] represented herein by its [\_\_\_\_\_] [\_\_\_\_\_] (hereinafter "BUYER").

SELLER and BUYER are sometimes referred to herein individually as "Party", and collectively, the "Parties".

### **RECITALS:**

#### **WHEREAS:**

- a. SELLER has the authority under its Charter to sell electricity to electric cooperatives, private electric distribution utilities, government-owned electric distribution utilities or local government units which have exclusive franchise to operate a distribution system (collectively, "Distribution Utilities").
- b. Section 67 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" or "EPIRA", provides that SELLER shall file with the Energy Regulatory Commission ("ERC") for its approval transition supply contracts duly negotiated with Distribution Utilities.
- c. The Parties entered into a Transition Contract for the Supply of Electricity ("TSC") dated \_\_\_\_\_ providing for the supply of generation, transmission, sub-transmission and ancillary services.
- d. Pursuant to the EPIRA, the National Transmission Corporation ("TRANSCO"), assumed the authority and responsibility of SELLER with respect to power delivery (transmission and sub-transmission) and ancillary services.
- e. The Parties hereto agree to supplement and revise the TSC by this Agreement to conform with the provisions of the EPIRA, such as the functional unbundling of SELLER, the term of the TSC, the jurisdiction of the ERC, and to provide a price settlement mechanism during the commercial operation of the Philippine Wholesale Electricity Spot Market ("WESM").

- f. Upon the commercial operation of WESM, all energy produced by generation companies (including those operated by SELLER) shall be bid through the power pool and the customers (including BUYER) may procure all its requirements through the pool (including contracted levels under the TSC).
- g. The price of and payments for energy supplied/sourced at the WESM are to be determined under the TSC, this Agreement and the WESM Rules.

NOW THEREFORE, for and in consideration of the foregoing premises, and the mutual covenants, hereinafter contained, the Parties, for themselves, their assigns, transferees and successors-in-interest, agree as follows:

**1. SUBJECT MATTER**

- 1.01 The obligation of the SELLER to BUYER shall be limited to the supply of energy (generation only) at the high voltage connection point.
- 1.02 Notwithstanding the absence of the Deed of Assignment between SELLER and TRANSCO, power delivery, ancillary and other related services shall be provided by TRANSCO. The BUYER shall be charged for the transmission services based on the fees and charges as approved by the ERC. The BUYER and TRANSCO may modify or amend Annex "A" of the TSC or may enter into a Transmission Service Agreement.

**2. TERM AND TRANSITION**

**EFFECTIVITY**

- 2.01 This Agreement shall take effect on \_\_\_\_\_ until 26 June 2005 (for private distribution utilities)/26 June 2007(for electric cooperatives) or until one (1) year from the introduction of retail open access as defined in the EPIRA, whichever comes earlier. It shall be filed with the ERC for its approval.

In cases where the term of the TSC extends beyond 26 June 2005 or 26 June 2007 or 1 year from the introduction of retail open access, the remaining term of the TSC shall be considered as a regular bilateral contract.

Despite an early commercial operation of the WESM, the TSC and this Supplemental Agreement shall continue to be effective

**TRANSITION TO WESM**

- 2.02 On the date of the commercial operation of WESM as declared by the DOE, all amounts due and owing by BUYER to SELLER or its assigns shall be settled by the Parties as follows:
  - a. Within ten (10) days from commercial operation of the WESM, SELLER shall provide a billing statement for all outstanding accounts of the BUYER up to the commercial operation of the WESM.

- b. Within thirty (30) days from receipt of the billing statement, BUYER shall pay SELLER the amount stated in said billing statement.
- c. Restructured accounts payable to the SELLER shall be paid in accordance with the Memorandum of Agreement duly executed by the Parties.

### **PRICE SETTLEMENT MECHANISM**

- 2.03 All settlements for a particular trading interval shall be effected through the Market Operator in accordance with the WESM Rules.
- 2.04 To protect the Parties from price volatility in the WESM, the parties agree on the following mechanism regarding the price difference between the TSC agreed generation price and the Spot Market Price.
  - 2.04.1 If the Spot Market Price for generation is higher than the TSC agreed price, the SELLER shall pay the BUYER the price difference multiplied by the Contract Energy.
  - 2.04.2 If the Spot Market Price for generation is lower than the TSC agreed price, the BUYER shall pay the SELLER the price difference multiplied by the Contract Energy.
  - 2.04.3 If on any date amounts would otherwise be payable by each party to the other pursuant to 2.04.1 and 2.04.2, then, on such date each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the difference between the aggregate amounts.
- 2.05 All energy purchased in excess of the Contract Energy shall be paid the Spot Market Price.

### **3. CONTRACT ENERGY**

- 3.01 The SELLER shall facilitate, through TRANSCO, the provision of the BUYER's load profile to determine the basis of application of the Time-of-Use (TOU) rates. The Load Profile shall be deemed attached to this Agreement as **Annex "A"**. The Load Profile refers to historical energy consumption for a particular period (i.e., hourly, daily, weekly or monthly).
- 3.02 Upon the implementation of retail competition and open Access, BUYER shall be entitled to decrease its Contract Energy without the application of the buy-out provision and payment of buy-out fee provided the reduction is caused by the transfer of contestable Customer(s) to another Supplier of electricity. The historical data for the past six (6) months of said contestable Customer(s) shall be averaged to determine the reduction in Contract Energy.

#### **4. CHARGES AND ADJUSTMENTS**

- 4.01 Prior to the commercial operation of the WESM, the BUYER shall be billed by the SELLER the energy charges based on the rates approved by the ERC and other applicable adjustments as provided in Annex "C" (Charges and Adjustments) of the TSC. These charges and adjustments may be modified from time to time by the SELLER subject to the approval of the ERC. The Parties agree that the latest charges and adjustments approved by the ERC shall be applied to this Agreement. Should TOU rates be approved by the ERC, Annex "D" (Rate Schedule) of the TSC shall be amended accordingly.
- 4.02 Upon the commercial operation of the WESM, the generation price will be settled in accordance with the price settlement mechanism as per sections 2.03, 2.04 & 2.05 of this Agreement.

#### **5. MISCELLANEOUS PROVISIONS**

##### **ASSIGNABILITY**

- 5.01 The TSC, this Agreement and their respective Annexes may be assigned or transferred, in whole or in part, by the SELLER to a successor entity upon due notice to the BUYER.
- 5.02 The TSC, this Agreement and their respective Annexes may be assigned or transferred, in whole or in part, by the BUYER with prior written consent by the SELLER.

##### **NO PRESUMPTION OF WAIVER**

- 5.03 A failure or delay in the exercise of rights, power or privilege in respect of this Contract will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege, or the exercise or any other right, power or privilege.

##### **PROHIBITION AGAINST MARKET ABUSE**

- 5.04 The PARTIES shall not engage in any activity that would be tantamount to market manipulation covering the quantity subject of this contract.

##### **CHANGE IN LAW**

- 5.05 The Parties shall perform all of their obligations under the TSC and this Agreement in accordance with applicable laws and regulations. In case of any amendment, modification or change in applicable laws and regulations, the Parties shall continue to perform their obligations under the TSC and this Agreement unless made expressly unlawful or impossible by such amendment, modification or change.

## **SETTLEMENT OF DISPUTES**

- 5.06 The Parties shall exert reasonable efforts, including but not limited to, the dispute resolution provisions of the WESM Rules, to amicably settle all disputes arising in connection with this Agreement, as a condition precedent before filing a dispute with the ERC.

## **LITIGATION**

- 5.07 Any dispute arising in connection with the TSC and this Agreement that the Parties failed to settle amicably shall be brought exclusively to the ERC pursuant to Section 43 (u) of the EPIRA.

## **SEPARABILITY**

- 5.08 The TSC and this Agreement shall bind the Parties, their respective assigns, buyers, transferees, or successors-in-interest. If for any reason, any provision of the TSC and this Agreement is declared invalid by competent courts during its effectivity, the other provisions hereof which are not affected thereby shall continue to be in full force and effect.

## **ENTIRE AGREEMENT**

- 5.09 Consequent with the commercial operation of the WESM, the parties upon mutual agreement may amend, modify and/or revise any provision of this Agreement.
- 5.10 This Agreement supersedes any provision of the TSC executed between the parties inconsistent with the provisions hereof. All other provisions of the TSC and its Annexes not inconsistent with this Agreement shall remain in full force and be enforceable between the Parties.

## **REPORTORIAL REQUIREMENT**

- 5.11 For monitoring and regulatory purposes, the parties shall disclose market information and load profiles to the DOE and ERC to ensure transparency and facilitate access to market information. Likewise, the DUs should immediately inform the ERC, DOE and MO of any future variation in contracted levels including event of Default or Termination of Contract.
- 5.12 In the event of Force Majeure, the affected parties should immediately inform the DOE and ERC.

**IN WITNESS OF THE FOREGOING**, the Parties affix their signatures this \_\_\_\_th day of \_\_\_\_\_ 2004 in \_\_\_\_\_.

**NATIONAL POWER CORPORATION**

By:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_  
\_\_\_\_\_

CONFORME: **NATIONAL TRANSMISSION CORPORATION**

By:

**ALAN T. ORTIZ Ph.D**  
President and COO

Witnesses:

\_\_\_\_\_

\_\_\_\_\_

REPUBLIC OF THE PHILIPPINES )  
QUEZON CITY ) S.S.

**ACKNOWLEDGMENT**

Before me, a Notary Public for and in Quezon City, Philippines, this \_\_\_\_th day of \_\_\_\_\_, 200\_\_, personally appeared \_\_\_\_\_, National Power Corporation, with Community Tax Certificate No. \_\_\_\_\_ issued on \_\_\_\_\_ at \_\_\_\_\_ known to me and to me known to be the same person who executed the foregoing testament, consisting of \_\_\_ pages, including the pages where the Acknowledgments are written, all pages signed by both parties and their instrumental witnesses, and he acknowledged before me that the same is his free and voluntary act and deed and that of the Corporation he represents.

**WITNESS MY HAND AND SEAL** on the date and place first above written.

Doc. No.  
Page No.  
Book No.  
Series of 200\_

NOTARY PUBLIC

REPUBLIC OF THE PHILIPPINES )  
 ) S.S.

**ACKNOWLEDGMENT**

Before me, a Notary Public for and in \_\_\_\_\_, Philippines, this  
\_\_\_\_th day of \_\_\_\_\_ 200\_\_, personally appeared  
\_\_\_\_\_, with  
Community Tax Certificate No. \_\_\_\_\_ issued on \_\_\_\_\_ at  
\_\_\_\_\_ known to me and to me known to be the same person who  
executed the foregoing testament, consisting of \_\_\_ pages, including the pages  
where the Acknowledgments are written, all pages signed by both parties and their  
instrumental witnesses, and he acknowledged before me that the same is his free  
and voluntary act and deed and that of the Corporation he represents.

**WITNESS MY HAND AND SEAL** on the date and place first above written.

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