

AGREEMENT

This **AGREEMENT** made this day of October 2009 between:

[], a company organized and existing under the laws of [country], with its principal address at [state address of company], herein represented by [**NAME AND DESIGNATION**],

hereafter referred to as []

– and –

The **NATIONAL GRID CORPORATION OF THE PHILIPPINES**, duly organized and existing under and by virtue of Republic Act No. 9511, with its principal office address at Power Center, Quezon Avenue corner BIR Road, Quezon City, herein represented by its **PRESIDENT and CEO, WALTER W. BROWN**, who is duly authorized by virtue of Board Resolution dated to represent it in this transaction;

hereafter referred to as **NGCP**.

WHEREAS

- A. The Energy Regulatory Commission of the Republic of the Philippines (ERC) requires a Regulatory Reset Expert to assist it with the review of expenditures for resetting the revenue cap of **NGCP** that will apply for the third regulatory period under Performance Base Rate Setting (PBR);
- B. [], a suitably experienced and capable consultant, has submitted a proposal to execute the work which was accepted by the ERC;
- C. In accordance with the PBR regulatory regime adopted by the ERC on May 29, 2003 as the "Guidelines on the Methodology for Setting Transmission Wheeling Rates" (TWRG) re-issued on September 16, 2009 as the "Rules for Resetting the Transmission Wheeling Rates for 2003 to around 2027" (RTWR); where these Rules confer on the ERC the right or obligation to retain a Independent Expert, the costs of that Independent Expert must be borne by **NGCP**.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS:

In this Agreement, which is to be read in conjunction with the price and scope, the following expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

- 1.1 **Letter of Offer, Tender, Proposal:** means the letter, tender or proposal accompanying this Agreement addressed to the ERC.

2. SCOPE OF SERVICES:

The Scope of Services to be performed by [] shall be as specified in the attached First Schedule ('the Expenditure Review Services').

3. COMPENSATION AND PAYMENT:

- 3.1 Compensation for the performance of the Expenditure Review Services by [] shall be as specified in the Second Schedule attached hereto. [] shall invoice **NGCP** in accordance with the invoicing schedule included in the Second Schedule attached hereto. This invoice shall at the first instance be submitted to the ERC, who shall review the invoice to ensure its validity and that it covers only work that has been performed and delivered to the satisfaction of the ERC. After certifying its approval of the invoice, the ERC shall forward the invoice to **NGCP** for payment.
- 3.2 **NGCP** shall make payment of the amount of the invoice by electronic funds transfer into []'s designated [*state country*] bank account within thirty (30) days of receiving the approved invoice from the ERC. Any amount not paid within that period shall attract interest from the due date until receipt of payment by [] at a rate equivalent to four percent (4%) per annum over and above the simple average of the monthly 180 day weighted-average Manila Reference Rate as published by the Bangko Sentral ng Pilipinas. Compensation shall be exclusive of any value added or equivalent tax, and any such tax which is payable on the provision of Expenditure Review Services to the ERC shall be for the account of **NGCP**, if applicable

4. CHANGES:

4.1. Scope:

The Expenditure Review Services described in accordance with the attached documents are based on facts known at the time of preparation of the Proposal, which include information made available to [] by the ERC. Subsequent information may indicate that the Scope of Services must be redefined. In this case, [] will promptly provide the ERC with the proposed amendment to the Scope of Services, with a copy to **NGCP**, and this amended scope will be deemed to have been approved when ERC explicitly approves the amended scope. The ERC will consult with **NGCP** in this regard but will be the sole party making the final decision on whether to approve the amendment to the Scope of Services. In the event that the ERC disagrees on the redefinition of scope, the ERC shall instruct [] on the action to be taken. Additionally, the ERC may by written instruction make changes to the Scope of Services. In any of the above circumstances, []'s compensation shall be adjusted accordingly by agreement and thereafter [] shall commence performance of the additional services.

4.2. Schedule:

The ERC shall upon the request of [] grant an extension to any planned schedule for performance of the Expenditure Review Services and, if appropriate, an adjustment to []'s compensation, if [] has been delayed or impeded in the performance of the Expenditure Review Services by (a) a change order granted hereunder, (b) any delay caused by the ERC or **NGCP**, (c) an event of Force Majeure being any event beyond the control of [], (d) any change of law or ERC rules and regulations, or (e) any other reason mutually agreed by the parties.

4.3 Force Majeure: Force Majeure shall mean events beyond the control of [] that affect the provision of the Expenditure Review Services, and will include:

- (i) any accident due to natural causes, directly, exclusively without human intervention, such as could not have been prevented by any kind of oversight, pains and care reasonably to have been expected;
- (ii) acts of terrorism, war, kidnapping, social or political disturbance, military activity, riot, insurgency or strikes; and

- (iii) the occurrence of pandemic or epidemic disease in or near the locations where the Expenditure Review Services are carried out that affects []'s capability to perform the Expenditure Review Services.

5. WARRANTY AND LIABILITY:

- 5.1 [] warrants that the Expenditure Review Services shall be performed by [] with reasonable skill, care and diligence in accordance with accepted professional consulting standards and practices existing at the date of performance of the Expenditure Review Services and subject to those provisions shall comply with existing law and ERC rules and regulations. []'s liability arising out of the performance of the Expenditure Review Services for any breach of this warranty shall be limited to (a) re-performance of any portion of the services to correct the breach or (b) the direct consequences of such breach where such breach was reported to [] in writing within one year of the date of performance of the relevant portion of the Expenditure Review Services. However, []'s maximum liability arising out of or related to the Expenditure Review Services shall be limited to the lesser of one-and-a-half (1.5) times []'s compensation for the Expenditure Review Services or the sum of professional indemnity insurance coverage specified herein.
- 5.2 [] shall not be responsible for the construction, means, methods, techniques, sequences, procedures, safety precautions, and programs incident thereto; nor for the acts or omissions of the ERC, or the **NGCP** or any of the ERC's or **NGCP's** agents, employees or subcontractors; nor for the acts or omissions of material or equipment manufacturers or suppliers; nor for the acts or omissions of any other consultant or expert.
- 5.3 All warranties other than the above, whether express or implied, including without limitation any warranties of merchantability or fitness for purpose, are expressly excluded.
- 5.4 [] shall defend, indemnify and hold harmless the ERC and **NGCP** from and against all claims, demands, or causes of action for damage to or loss of any equipment or property of [], its vendors, subcontractors, subconsultants for injury to or death of any employees of [] arising out of the default of [] in the performance of the Expenditure Review Services.
- 5.5 The ERC and **NGCP** shall defend, indemnify and hold harmless [] from and against all claims, demands, or causes of action for damage to or loss of any equipment or property of the ERC and **NGCP** or their customer(s), or their respective contractors, consultants or vendors (other than []) or for injury to or death of any employee of the ERC and **NGCP** arising out of the performance of the Expenditure Review Services howsoever caused and regardless of whether such loss or damage shall result in whole or in part from [] except in the case that such claim, demand and/or cause of action is due to []'s willful act, omission or negligence.
- 5.6 Notwithstanding any other provision herein, except in the case of gross negligence, willful misconduct or deliberate withholding of information, [] shall not be liable to the ERC or **NGCP** for any indirect or consequential losses or for loss of profit, loss of revenue, loss of use of any facilities, or loss of product or production.

6. INSURANCES:

[] shall at its own cost and expense, maintain workers compensation, employer's liability, motor vehicle, comprehensive general liability and professional indemnity insurance coverage in amounts in accordance with legal requirements and []'s own business requirements. For the purposes of the warranty and liability provisions above, unless otherwise agreed in writing, []'s professional indemnity insurance shall be maintained in the sum of thirty million Philippine Peso (PhP 30,000,000).

7. PROJECT INFORMATION:

7.1 The ERC shall make available to [] or shall cause to be made available by **NGCP** all data on project scope, schedule, cost and quality requirements and other information reasonably necessary to allow [] to perform the Expenditure Review Services. [] shall be entitled to rely upon all such information made available by the ERC and **NGCP**.

7.2 In case [] considers that **NGCP** has reasonable access to information that is essential to allow [] to perform the Expenditure Review Services, but is not prepared to share this information, it will inform the ERC in writing of this situation, detailing the further information that is required. The ERC will assess the request and, if it is deemed reasonable, will take further steps to procure the required information. If the required information is still not received within twenty (20) days after giving such written notice to the ERC, [] may decide to qualify the outputs from the Expenditure Review Services to indicate the impact of insufficient information or, in extreme cases, it may constitute grounds for termination of the Expenditure Review Services, as described in paragraph 10.3.

8. INTELLECTUAL PROPERTY RIGHTS:

Copyright of all software models, reports, and other documents provided by [] in connection with the Expenditure Review Services shall remain vested in [] but the ERC and **NGCP** shall have a license to copy, publish, distribute and use such reports and other documents for any purpose related to the project in relation to which the Expenditure Review Services are performed, including for future regulatory reset periods under PBR. [] shall not be liable for any use by the ERC or **NGCP** of any of the reports or other documents for any purpose other than that for which the same were prepared and provided by [].

9. CONFLICTS OF INTEREST:

Whilst [] has established procedures to identify situations where a conflict of interest may arise, [] cannot be certain that it will identify all of those which exist or may develop. If the ERC is aware or become aware of any potential conflict affecting []'s provision of the Expenditure Review Services, the ERC will notify [] immediately. Where a potential conflict is identified and [] believes that the ERC's interests can be properly safeguarded by the implementation of appropriate procedures, [] will agree with the ERC the arrangements that [] will implement to preserve confidentiality and to ensure that the advice and opinions that [] give are wholly independent. Just as [] will not use information confidential to the ERC or **NGCP** for the advantage of a third party, [] will not use confidential information obtained from any other party for the ERC's or **NGCP**'s advantage.

10. TERMINATION/SUSPENSION:

10.1 The ERC may, by itself or upon considering notice from **NGCP**, terminate the performance of the Expenditure Review Services if [] is in substantial breach of its obligations herein and [] has not commenced to remedy that breach within thirty (30) days after receipt of a written notice to that effect from the ERC and has not substantially resolved the breach of its obligations within forty-five (45) days after receipt of such written notice.

10.2 [] may suspend or terminate performance of the Expenditure Review Services if any compensation payable to [] has been outstanding for more than sixty (60) days from the date **NGCP** receives the approved invoice from ERC. [] shall give ERC at least two (2) weeks advance written notice of such outstanding payment and its intention to terminate performance of the Expenditure Review Services.

10.3 [] may suspend or terminate performance of the Expenditure Review Services if **NGCP** fails to provide sufficient information to which it (**NGCP**) has reasonable access and

where such unavailability of information makes the effective performance of the Expenditure Review Services impossible, even after [] has considered making allowances to qualify the project outputs to account for unavailability of required information.

- 10.4 In the event of termination of the performance of the Expenditure Review Services, **NGCP** shall make payments to [] for, (a) all invoice and interest amounts outstanding at the date of termination and (b) the proportion of the overall cost for which the **NGCP** is responsible for that part of the Expenditure Review Services completed up to the time of termination, as agreed to by the ERC. If, at the time of termination of the performance of the Expenditure Review Services, [] has received compensation for any service not yet undertaken or substantially progressed, such compensation shall be repaid to the **NGCP** within thirty (30) days of such termination.

11. GOVERNING LAW:

The performance of the Expenditure Review Services shall be governed by and construed in accordance with the laws of the Philippines.

12. CHANGE IN LAW:

Should the applicable law, rules or regulations of the Philippines be changed, enacted or reinterpreted after submission of []'s offer for the Expenditure Review Services in such a manner as to cause an increase or decrease in cost to [] or to delay the planned schedule, compensation and schedule shall be adjusted accordingly.

13. NOTICES:

Unless otherwise agreed, notices shall be served on the registered office of the relevant party. Notices may be served personally, by pre-paid mail or by facsimile. Notices shall be deemed served immediately if served personally or by facsimile or seven days from the date of the notice if served by pre-paid mail. Notice of termination may not be served by facsimile.

14. DISPUTES:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration administered by the Philippine Dispute Resolution Center, Inc. in accordance with its own International Arbitration Rules as at present in force. Any arbitration shall be conducted by a single arbitrator appointed by mutual agreement of the parties. Should the parties be unable to agree, the arbitrator shall be appointed by the National President of the Integrated Bar of the Philippines.

The place of arbitration shall be Manila.

The language to be used in the arbitral proceedings shall be English.

In case of civil action, in the event there is any violation of the terms and conditions of the contract, the Parties hereto agree that the venue of any action, which may arise from this Agreement, shall be exclusively filed in the proper courts of Quezon City, Philippines.

15. SPECIAL TERMS:

Any special terms shall be set out in the attached documentation hereto. In the event of conflict, such special terms shall take precedence over these standard terms.

16. SEPARABILITY

If a term or condition of this Agreement is held invalid or contrary to law, the validity of the other terms and conditions hereof shall not be affected thereby.

17. ENTIRE AGREEMENT:

These terms and the Schedules attached hereto constitute the entire agreement between the parties and no changes, modifications or amendments to these terms shall be valid unless agreed to by the parties in writing and signed by their authorized officers. Should there be any conflict between these terms and any other documentation or correspondence then these Terms shall prevail.

It is expressly understood that there exists no employer-employee relationship between the Parties.

IN WITNESS WHEREOF the above parties hereto have set their respective hands the day and year first above written.

Signed by Name (print).....
for and on behalf of
Geoff Brown & Associates Limited ([])

Signed by Name (print).....
for and on behalf of
National Grid Corporation of the Philippines (NGCP)

Signed in the presence of

REPUBLIC OF THE PHILIPPINES)
PASIG CITY) s.s.

ACKNOWLEDGEMENT

BEFORE ME, A Notary Public for and in _____, Philippines, personally appeared:

Name	CTC No./Passport No.	Issued on	Issued at
Walter W. Brown			

Known to me and to me known to be the same persons who executed the foregoing instrument consisting of [] pages, including this page whereon the acknowledgement is written, all pages signed by all parties and their instrumental witnesses and they acknowledged before me that the same is their free and voluntary act and deed and of the entities herein represented.

WITNESS MY HAND AND NOTARIAL SEAL on this _____ of _____, 2009 at _____, Philippines.

Doc. No. _____;

Page No. _____;

Book No. _____;

Series of 2009.

SPECIAL TERMS

S1. Confidentiality

The ERC will make the Confidential Information available to [] on the basis that the confidential nature of that information is preserved and otherwise on the terms and conditions of this Agreement. Nothing in this clause shall prevent [] from retaining one copy of all Confidential Information and all material relating to this Agreement but strictly on the basis that []'s obligations under this clause shall continue to apply to such information.

"Confidential Information" means all Information disclosed or communicated to [] by or on behalf of the ERC, but does not include:

- (a) Information which, at the time it is disclosed or communicated to []:
 - (i) is publicly known; or
 - (ii) is already known to or is in the possession of [] and was not acquired from the ERC; or
 - (iii) is required by law; or
- (b) Information which, after the time when it is disclosed or communicated to [], comes into the public domain other than as a result of any breach by [] of its obligations under this Agreement.

[] shall return to the ERC all Confidential Information provided by or on behalf of the ERC to [] within seven (7) days after the ERC gives [] notice in writing requiring [] to take such action and shall ensure that all copies of such information that was in []'s possession, whether in electronic or other format, is destroyed.

FIRST SCHEDULE: SCOPE OF SERVICES

[To be completed by the Expert based on the proposal as accepted by ERC]

SECOND SCHEDULE: PAYMENT TERMS, CONDITIONS AND TIMELINE

1. TIMELINE

The ERC is required to issue the final determination on the NGCP's revenue cap to apply for the third regulatory period on August 31, 2010. To achieve this, the following program will be implemented:

ACTIVITY	REQUIRED DATE

2. COST

The total fixed price cost of the project, as accepted by the ERC, is for PhP [] (*state amount in words*) Philippine Pesos).

The total fixed price includes [] fees, fees for subcontracted consultants engaged under the contract and all disbursements.

3. PAYMENT TERMS

Progress payments shall be made as follows: *[to be completed by expert]*.