

# PROFESSIONAL SERVICES AGREEMENT

between

**ROBERTS & SCHAEFER COMPANY**  
Salt Lake City, Utah

and

**BDH CO., LTD.**  
Seoul, Korea

**Roberts & Schaefer Company**  
10150 South Centennial Parkway, #400  
Sandy, Utah 84070  
801.984.0900  
Fax: 801.984.0909

**BDH CO., LTD.**  
13F Kolon Digital Tower Eston  
505-14, Gasan-dong  
Kumcheon-gu Seoul, Korea  
Ph: 82 2 2082 8890  
Fax: 82 2 2082 8895

5 April 2011

THIS AGREEMENT is made and entered into and effective as of the \_\_\_\_ day of April, 2011, by and between Roberts & Schaefer Company, hereinafter called "ENGINEER" and BDH CO., LTD., hereafter called "BUYER".

In consideration of the mutual promises and conditions contained in this Agreement, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

## SECTION I SCOPE OF WORK

- A. ENGINEER agrees to perform on the terms and conditions set forth herein for BUYER, professional engineering services which are described in the attached ***Exhibit 1, Scope of Work*** which are by this reference incorporated herein and made part of this Agreement.
- B. Work to be performed by ENGINEER shall consist of all that Work as specifically described in ***Exhibit 1*** and shall include no service or Work which is not specifically set forth therein. The performance of any item of Work not therein described shall be a change within the meaning of Section V, Changes in the Work, as hereinafter set forth, and shall entitle Engineer to additional compensation and/or a schedule adjustment.
- C. After written authorization to proceed, ENGINEER will obtain all the necessary information on conditions and circumstances which may affect its performance of the Services. ENGINEER will perform its Services based upon engineering design criteria and drawings (or other documents) of the Project furnished by the BUYER, and upon such other information and data as will be furnished by BUYER, and ENGINEER will be entitled to rely upon such information and data.
- D. ENGINEER will maintain suitable management and accounting procedures to monitor and control engineering man-hours and costs, providing monthly progress and status reports to the BUYER.
- E. In the performance of the Services, ENGINEER will exercise that degree of care, skill, diligence, and judgment that is normally exercised by professional firms in the performance of services of a similar nature.
- F. All bills of material, specifications, equipment lists, reports and other documents developed by ENGINEER under this Agreement will become the property of BUYER and will be delivered to BUYER at such times as BUYER will request. ENGINEER may retain and use generic copies thereof.

## SECTION II COMPENSATION

- A. Compensation for personnel and chargeable direct and indirect costs to the ENGINEER associated with the performance of the Scope of Work of this Agreement shall be invoiced in accordance with the ENGINEER'S fee schedules provided in ***Exhibit 2*** referred to in paragraph IIC below. The estimated cost of the work for: a) Phase 1 is USD\$85,000 and b) the estimated cost for Phase 2 is USD\$145,000. All payment shall be made in USD to the bank identified by ENGINEER. Upon reaching the estimated cost no further work will be performed by Roberts & Schaefer without signed authorization of

BUYER to increase the estimated amount to a newly established estimated cost. Roberts & Schaefer will provide a forecast of costs with each invoice.

- B. ENGINEER shall provide monthly invoices to BUYER. ENGINEER shall keep accurate records of the time and materials expended in the performance of the Work. Invoices submitted to the BUYER shall accurately describe services rendered during the invoice period. BUYER shall hereafter review and approve or reject such invoices, and, absent rejection, shall thereafter make payment of approved invoices within fifteen (15) days after receipt of said invoices from ENGINEER. If BUYER disputes an invoice or any portion thereof, BUYER must make payment of any undisputed amount.
- C. If BUYER requires changes in the Scope of Work hereunder, ENGINEER shall prepare and submit to BUYER an estimate of the cost of such changes as further described in **Section V, Changes in the Work**. These cost adjustments shall be based on the personnel time charges and direct expenses set forth in the attached ***Exhibit 2, Fee Schedules***.
- D. ENGINEER will submit to the BUYER, on a monthly basis, payable within fifteen (15) days, a monthly invoice with supporting documentation to:

**BDH CO., LTD.**  
13F Kolon Digital Tower Eston  
505-14, Gasan-dong  
Kumcheon-gu Seoul, Korea  
Ph: 82 2 2082 8890  
Fax: 82 2 2082 8895  
**Attn:** Kyong-Soo, Han

- E. The ENGINEER'S contract purchasing contact is:

Ms. Elisabeth Hanks, Purchasing Agent  
10150 South Centennial Parkway, Suite 400  
Sandy, Utah 84070  
USA  
Phone: +1 801 984 0900  
Fax: +1 801 984 0909

- F. Acceptance of payment does not constitute waiver of any claim ENGINEER might have under this Agreement.

### **SECTION III**

#### **SCHEDULE OF THE WORK**

- A. The period of this Agreement shall run from Effective date of this Agreement for 12 weeks or other date agreed in writing between the Parties.
- B. ENGINEER agrees to use its best efforts to complete the Services as expeditiously as possible, to meet the specific milestone dates for the project, however ENGINEER does

not guarantee the schedule. A project schedule will be developed following receipt of the necessary project information from the BUYER.

- C. If the ENGINEER is delayed at any time in progress of the Work by an act or neglect of the BUYER or one of BUYER's agents, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the ENGINEER's reasonable control, or by delay authorized by the BUYER, or by other causes which may justify delay, then the Agreement Period, it shall be treated as a change in the Scope of Work and the provisions as hereinafter set forth in **Section V** shall apply thereto.
- D. This section does not preclude recovery of damages for delay by either party under other provisions of this Agreement.

#### **SECTION IV TERMINATION**

- A. Termination by BUYER. In the event that the BUYER terminates the Work or any portion thereof for any reason other than default of the ENGINEER, ENGINEER shall recover the reasonable value of all Work performed through the effective date of such termination, including overhead and profit. Such termination shall be by written notice from BUYER to ENGINEER. Upon receipt of said notice ENGINEER shall immediately cease all activities underway, shall demobilize its forces and protect its work, and shall thereafter submit an invoice for all Work performed, but not paid for, in accordance with the procedure set forth in paragraph II.B.
- B. Suspension of the Work. From time to time, BUYER may suspend all or portions of the Work hereunder. Such suspension shall be by written notice from BUYER to ENGINEER. Upon receipt of said written notice, ENGINEER shall immediately suspend all activities underway, shall demobilize its forces and protect its work, and shall be allowed a reasonable extension in the Schedule of Work as indicated in paragraph III.A, as well as payment of all expenses resulting from the suspension. Once a suspension of the Work has been in effect for thirty (30) consecutive days, such suspension shall be considered a termination for convenience and subject to the terms set forth in paragraph IV.A.
- C. Default. In the event of the default by either party of any provision of this Agreement, the non-defaulting party shall recover the cost associated with enforcement of the Agreement including, without limitation, court costs and attorney's fees. ENGINEER shall also be entitled to payment for the work it has performed as of the date of termination. Termination for default by either party shall not act as a waiver of any other rights provided hereunder, or by law, against the defaulting party.

#### **SECTION V CHANGES AND EXTRA WORK**

- A. Changes in the Work. From time to time BUYER or its authorized representative may direct or otherwise authorize certain changes in the Work hereunder. In the event such change occurs, ENGINEER shall promptly submit in writing an estimate of the cost of such change, together with a proposed revision in the Schedule of Work. BUYER will thereafter accept or reject such proposal within a reasonable time. ENGINEER will

proceed with such change in Work in advance of BUYER acceptance of the proposed cost and scheduling adjustment only on written authorization by BUYER.

- B. Extra Work. From time to time field conditions or other matters may result in additional Work not contemplated by ***Exhibit 1, Scope of Work.*** ENGINEER shall promptly submit to BUYER in writing, a detailed description of such actual Work after which the procedures outlined in paragraph V.A above shall thereafter submit a change order for additional compensation and a schedule extension.
- C. Changes in Regulations. The plans, plan review, and specifications covered by this Agreement are agreed by both parties to be those necessary to meet the requirements of federal, state, and local laws and ordinances governing the Work. In the event such requirements are changed or modified in any way by the appropriate legislative or administrative agency requiring additional services to be thereafter performed by ENGINEER, such Work shall be considered Extra Work, as set forth in paragraph V.B above.
- D. Changes in Plans and Specifications. If changes are made in the plans or specifications by the BUYER or persons other than the ENGINEER, which affects ENGINEER's Work, any and all liability arising out of such changes is waived against ENGINEER, and BUYER assumes full responsibility for such changes, unless BUYER has given ENGINEER prior notice and has received from ENGINEER written consent for such changes.

## **SECTION VI**

### **NOTICES AND CLAIMS**

- A. Notices. All notices required to be given by the parties shall be sufficient if in writing and deposited in the United States Mail and addressed as follows:

Buyer  
BDH CO., LTD.  
13F Kolon Digital Tower Eston  
505-14, Gasan-dong  
Kumcheon-gu Seoul, Korea  
Ph: 82 2 2082 8890  
Fax: 82 2 2082 8895  
Attn: Kyong-Soo, Han

ENGINEER  
Roberts & Schaefer Company  
10150 South Centennial Parkway  
Suite 400  
Sandy, Utah 84070  
USA  
Attn: Dan Schilaty

Or to such other address as either party may from time to time designate to the other party in writing. Unless notified in writing to the other party subsequent to the date of this Agreement, the only representatives of the parties hereto authorized to issue or receive notices, issue or accept orders for Extra Work or changes in the Work, modify or change any aspect of the design of the project, or to give or receive any writings related to the terms and conditions of this Agreement shall be:

BUYER

Name: Kyong-Soo, Han  
Title: Technology Institute Managing  
Director

ENGINEER

Name: Dan Schilaty  
Title: VP Roberts & Schaefer – Project

- B. Notice of Nonconformance. BUYER shall give prompt written notice to ENGINEER of any fault or defect in the Work. BUYER shall provide ENGINEER with a written notice of the fault or defect, setting forth all basis for its claim. ENGINEER's sole and exclusive liability shall be to re-perform the specific applicable portion of its Services to the extent required to correct any defects or non-conformances solely caused by ENGINEER. ENGINEER is not responsible for the ultimate cost or production throughput, (including production quantity, quality of performance, or characteristics of ultimate end products) of any Project which may incorporate the Services. ENGINEER is not responsible for any other corrective construction, redesign, "rip and tear", dismantling, removal, reinstallation, re-fabrication, replacement costs, reconstruction or repair. ENGINEER DISCLAIMS, AND BUYER WAIVES, ANY OTHER EXPRESS, STATUTORY OR IMPLIED WARRANTIES OR GUARANTEES WITH RESPECT TO THE SERVICES OR ANY DELIVERABLES, INCLUDING FOR ANY INTENDED OR SUBSEQUENT USE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. BUYER WAIVES AND RELEASES ENGINEER FROM ANY OTHER LIABILITY FOR THE WORK, WHETHER BASED ON NEGLIGENCE OR FAULT OF ANY PERSON, AND WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE RELATING TO THE SERVICES OR THIS AGREEMENT.
- C. Claims by Parties. If, in the opinion of either Party, a decision made by the other Party is not in accordance with the meaning and intent of this Agreement, a written claim may be submitted to the other Party, detailing the extent to which such decision does not conform to the Agreement and the proposed remedy therefore. The Parties shall then attempt to mutually agree on a resolution to the issues in question. In the event mutual agreement cannot be reached, Parties agree to proceed in accordance with paragraph VI.E
- D. Continuance of the Work. If any dispute shall arise under this Agreement, the ENGINEER shall continue to prosecute the Work pending determination thereof unless requested by the BUYER to suspend or terminate the Work or any portion thereof. However, ENGINEER may, upon giving the BUYER seven (7) days' notice, stop Work if the BUYER withholds payment under Article II of this Agreement, or fails to pay the ENGINEER the amount owed the ENGINEER for an application for payment within the time allotted in Article II of this Agreement. Upon the resolution of the dispute, ENGINEER shall promptly recommence the Work.
- E. Dispute Resolution. Any dispute that may arise between ENGINEER and BUYER shall be first submitted for resolution to the project management of each of the Parties. If the project managers cannot resolve the dispute or agree upon action within 15 days following such submission, then the dispute shall be submitted to senior management representatives of each of the parties. If such senior management representatives cannot resolve the dispute or agree upon action within 30 days following such submission, then the parties may pursue legal remedies in accordance with this agreement. The forum for any legal action shall be exclusively in the federal, county and state courts of Houston, Harris County, Texas.

## SECTION VII

### RESPONSIBILITIES OF BUYER

- A. Access to Project Site. BUYER shall at all times ensure that ENGINEER has access to the work site and to adjoining properties owned by third parties to the extent that the same is necessary for the full and complete performance of the Work as specified in *Exhibit 1, Scope of Work*.
- B. Project Information. BUYER will provide to ENGINEER any and all information known to BUYER to be relevant to the project, and will transmit to ENGINEER any new information that becomes available to BUYER during the course of the Agreement.
- C. Site Conditions. BUYER will provide to ENGINEER complete and accurate information regarding the site conditions, including but not limited to physical characteristics, legal limitations, local conditions, design criteria, and any other data or documentation necessary for ENGINEER to adequately perform its work under this Agreement.
- D. Financial Information. BUYER shall, at the request of ENGINEER, prior to execution of the Agreement and promptly from time to time thereafter, furnish to ENGINEER reasonable evidence that financial arrangements have been made to fulfill BUYER's obligations under the Agreement.
- E. Information or services under BUYER's control that is necessary for ENGINEER to fulfill its obligations under this Agreement shall be furnished by the BUYER with reasonable promptness to avoid delay in the orderly progress of the Work.

## SECTION VIII

### MISCELLANEOUS PROVISIONS

- A. Legal Compliance. The parties agree to comply with all applicable laws in their respective performances under this Agreement, provided that nothing in any such law will require any party to violate or fail to comply with any law of the United States. Company understands that the provision of Deliverables under this Agreement is subject to United States export and re-export laws. BUYER agrees to abide by any restrictions or conditions respecting the export, reexport, or other transfer of the deliverables that are in effect now or are hereafter imposed by the U.S. Government, and will not export, reexport or otherwise transfer the deliverables except in full compliance with all relevant U.S. laws and regulations. These restrictions and conditions include, but are not limited to, (a) restrictions and export licensing requirements governing the export, reexport, or other transfer to other persons, entities, or countries of the deliverables, (b) restrictions and export licensing requirements governing the export or other transfer of foreign-developed information that incorporates the deliverables, (c) any applicable U.S. restrictions on the export, reexport, or other transfer of the deliverables to countries, entities and persons that are subject to U.S. sanctions, embargoes, or other prohibitions, and (d) any applicable U.S. restrictions on the export or other transfer of the direct product of U.S. origin technical data. **Any violation of this Article 8 shall be deemed a material breach of the Agreement, and BUYER shall release, defend, indemnify and hold ENGINEER, its affiliates and their respective officers, directors, employees and shareholders harmless from any costs, expenses, fines, penalties or loss arising from its failure to comply with such applicable governmental laws and regulations.**
- B. Indemnification. **BUYER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD ENGINEER AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY LIABILITY**

**FOR (i) CLAIMS OF PERSONAL INJURIES, INCLUDING ILLNESS AND DEATH, TO PERSONNEL OF BUYER, ITS AFFILIATES, OPERATORS, CO-VENTURERS, PARTNERS, OWNER OR OTHER CO-PARTICIPANTS, AND ANY OTHER PERSONS AT THE PROJECT OR FACILITY TO WHICH THE SERVICES PERTAIN, AND (ii) CLAIMS OF DAMAGES TO OR LOSS OF ANY PROPERTY OF BUYER OR ITS AFFILIATES, OPERATORS, CO-VENTURERS, PARTNERS, OWNER OR OTHER CO-PARTICIPANTS (INCLUDING THE PROJECT OR FACILITY TO WHICH THE SERVICES PERTAIN, OR ANY ADJACENT PROPERTY OR FACILITIES) AND THE PROPERTY OF ANY OF THEIR RESPECTIVE PERSONNEL, REGARDLESS OF CAUSE, INCLUDING SPECIFICALLY THE SOLE OR PARTIAL NEGLIGENCE, FAULT OR STRICT LIABILITY OF ENGINEER.**

**ENGINEER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS BUYER AND ITS AFFILIATES AND CO-PARTICIPANTS FROM AND AGAINST ANY LIABILITY FOR (i) CLAIMS OF PERSONAL INJURIES, INCLUDING ILLNESS AND DEATH, TO ENGINEER'S PERSONNEL, AND (ii) CLAIMS OF DAMAGES TO OR LOSS OF ENGINEER'S PROPERTY AND THE PROPERTY OF ITS PERSONNEL, REGARDLESS OF CAUSE, INCLUDING SPECIFICALLY THE SOLE OR PARTIAL NEGLIGENCE, FAULT, OR STRICT LIABILITY OF BUYER.** This indemnity shall be subject to the limitation of liability provision.

- C. Status of Engineer. ENGINEER will perform the Services as an independent contractor in accordance with its own methods, the terms of this Agreement, and applicable laws, codes, and regulations. ENGINEER is not an agent or employee of BUYER and maintains complete control over and responsibility for its own forces and operations in connection with the services under this Agreement.
- D. Insurance. ENGINEER will comply with all applicable social security, workmen's compensation, and unemployment insurance laws. ENGINEER will provide and keep in force until the Services are completed and accepted by BUYER and final payment made to ENGINEER, the following insurance:
1. Worker's Compensation Insurance in accordance with statutory requirements.
  2. Comprehensive General Liability Insurance covering both bodily injury and property damage liability with a combined single limit of US \$1,000,000 for each occurrence and US \$5,000,000 in the aggregate;
  3. Automobile Liability Insurance with a combined single limit for bodily injury and property damage with limits as per local statutory requirements of US \$1,000,000 per accident; and
  4. Professional Liability Insurance coverage for each occurrence of \$1,000,000, with an aggregate of US \$1,000,000.

The ENGINEER agrees to furnish the BUYER certificates of such insurance which will be in company's possession and in form satisfactory to BUYER during the term of this Agreement herein, and such certificates will provide that 30 days written notice will be given to BUYER prior to cancellation of or material changes in the coverage. The ENGINEER will maintain in full force and effect the above policies. ENGINEER is to provide a waiver of subrogation to the extent of liabilities assumed under this agreement in all of the above mentioned insurance policies except Professional Liability.



Comprehensive General Liability and Automobile Liability shall be endorsed to Buyer as an additional insured to the extent of liabilities assumed under this Agreement.

E. Consequential Damages WHETHER DUE TO DELAY, BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER CAUSE, NEITHER ENGINEER NOR ITS VENDORS OR SUBCONTRACTORS OF ANY TIER SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING BUT NOT LIMITED TO BUYER'S LOSS OF ACTUAL OR ANTICIPATED PROFITS, REVENUES, OR PRODUCT, LOSS BY REASON OF SHUTDOWN, NON-OPERATION, OR INCREASED EXPENSE OF MANUFACTURING OR OPERATION, COSTS IN EXCESS OF ESTIMATED COSTS, OR FOR ANY COSTS, LABOR, OR MATERIALS REQUIRED FOR RECONSTRUCTION OR REPAIRS, LOSS OF USE, COSTS OF CAPITAL, DAMAGE TO OR LOSS OF PROPERTY OR EQUIPMENT OF BUYER OR CLAIMS OF CUSTOMERS OF BUYER.

F. Limitation of Liability ENGINEER'S TOTAL COLLECTIVE LIABILITY TO BUYER FOR ANY AND ALL DAMAGES OF ANY KIND (INCLUDING, BUT IN NO WAY LIMITED TO LIQUIDATED DAMAGES) ARISING OUT OF OR RELATED, IN WHOLE OR IN PART, TO THE PROJECT, THE AGREEMENT AND/OR ANY WORK PERFORMED BY ENGINEER UNDER THE AGREEMENT IS LIMITED TO 15% OF THE AGREEMENT PRICE. THIS LIMITATION SHALL APPLY REGARDLESS OF THE THEORY OF RECOVERY AND REGARDLESS OF WHETHER LIABILITY ARISES IN TORT OR CONTRACT, AT LAW OR EQUITY. IN APPLYING THIS LIMITATION, ENGINEER SHALL BE ENTITLED TO A CREDIT FOR ANY MONEY BUYER RECOVERS FROM ANY OF THE POLICIES OF INSURANCE SUPPLIED BY ENGINEER.

**ANY LIMITATIONS ON LIABILITY AFFORDED TO A PARTY HEREIN SHALL ALSO APPLY TO AND BE BINDING UPON (I) THAT PARTY'S AFFILIATED ENTITIES OF ALL TIERS, INCLUDING ANY PARENT, SUBSIDIARY OR AFFILIATED CORPORATION, MEMBER COMPANIES, COVENTURERS, SHAREHOLDERS AND PARTNERS; (II) ENGINEER CONTRACTORS AND LICENSORS OF ALL TIERS, AND (III) ALL OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES AND INSURERS OF THE FOREGOING ENTITIES IN (I) AND (II). EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO THIRD PARTY BENEFICIARIES OF THIS AGREEMENT, AND BOTH PARTIES AGREE TO WAIVE THEIR SUBROGATION RIGHTS.**

G. Assignment. Neither party hereunder shall assign any portion or all of their various rights and liabilities under this Agreement without the prior written consent of the other party thereto.

H. Warranty for Services. ENGINEER warrants that the services performed hereunder, beginning on the date ENGINEER begins its Work and terminating one year from its final release of deliverables, will be in accordance with that degree of care and skill ordinarily exercised by members of the engineering profession existing as of the date that such services are performed. ENGINEER's sole liability to BUYER for any non-conforming Work shall be to correct the item of defective Work, written notice of which must be promptly given by BUYER to ENGINEER within the warranty period. The only warranties made by ENGINEER are those expressly enumerated in this provision. Any

other statements of fact or descriptions expressed in the Agreement or any attachments thereto shall not be deemed to constitute a warranty of the Work or any part thereof.

ENGINEER shall not be responsible for the construction means, methods, techniques, sequences, or procedures or safety precautions (including without limitation and by way of example, any duty imposed by any occupational safety and health legislation), and programs incident thereto; or for the acts or omissions of BUYER or any of the BUYER's agents, employees, or subcontractors; or for the acts or omissions of material or equipment manufacturers or suppliers.

Any goods or equipment supplied by ENGINEER through the use of a Subcontractor shall carry a written warranty that the supplied item is fit for its intended purpose under normal operating conditions for a period of 12 months. Such warranty shall be issued directly by the supplier/subcontractor and shall be directly assignable to BUYER.

The warranties set forth in this provision are exclusive and in lieu of all other warranties, whether statutory, express or implied (including all warranties of merchantability and fitness for particular purpose and all warranties arising from course of dealing and usage of trade). The remedies provided above are BUYER's sole remedies for any failure of ENGINEER to comply with its obligations.

- I. Use of Subcontractors. ENGINEER may employ or subcontract to other qualified personnel such portions of the Work required by BUYER as ENGINEER deems necessary.
- J. Non-Solicitation / Non-Competition. Unless authorized by ENGINEER in writing, BUYER agrees, for the duration of this Agreement and for a period of two (2) years thereafter, not to solicit, hire, engage, induce or recruit in any manner, whether directly or indirectly, employees of ENGINEER with whom he may have been in contact or been put in contact in relation to the performance of this Agreement.

Should BUYER contravene the above provision, BUYER agrees such contravention shall constitute a material breach of this Agreement, and a serious irreparable prejudice to ENGINEER to the extent necessary for the issuance of interlocutory and permanent injunctive relief by ENGINEER against BUYER, without prejudice to ENGINEER's other rights and resources, including damages.

- 1. K. Confidentiality. BUYER agrees to protect as confidential all commercial, business and technical data, know-how, estimates, drawings, designs, specifications, and other information obtained, disclosed or furnished in any form by or on behalf of ENGINEER pursuant to this Agreement, including this Agreement, any Deliverables and any other work products (collectively "**ENGINEER Confidential Information**"), except for any such information already available to the general public, independently developed, or which can be reasonably shown to have been known by BUYER prior to the effective date of this Agreement. BUYER agrees not to disclose any such ENGINEER Confidential Information to any third party (including any affiliates, partners, lenders, co-venturers, vendors or contractors) without ENGINEER's prior written consent. ENGINEER agrees to keep any business or technical data or information of BUYER pertaining to the Project which is marked and identified as confidential and not otherwise publicly available ("**BUYER Confidential Information**") protected from disclosure to third parties, except for ENGINEER affiliates and contractors who may be performing all or part of the Services

hereunder. BUYER agrees to limit access to ENGINEER Confidential Information to only those employees necessary to the performance of this Agreement who have undertaken contractual obligations of confidentiality and limited use consistent with those hereunder, and agrees to inform each individual of the confidentiality obligations of this Agreement.

- K. ENGINEER owns and reserves all intellectual property rights pertaining to its Services and the Deliverables, except to the extent of any BUYER Confidential Information contained therein. ENGINEER's Deliverables shall not be deemed "works for hire". BUYER may only use the Deliverables for the Project, and shall release, defend, indemnify and hold harmless ENGINEER from any other use or distribution. ENGINEER owns any inventions, modifications, or improvements deriving from the ENGINEER Confidential Information which are conceived under this Agreement. Unavoidable Delays. Unavoidable delays in the prosecution or completion of the Work under this Agreement shall include all delays which may result through cause beyond the control of ENGINEER or BUYER which neither could have provided against by the exercise of care, prudence, foresight, and diligence, which delays shall include, without limitation, strikes, lockouts, accidents, acts of God and other delays resulting from or caused by shortages or unavailability of labor. Neither party will be held to have defaulted on its contractual obligations, except an obligation to make a payment under the Agreement, to the extent that its performance has been hindered or prevented by an unavoidable delay. The party invoking the delay will (i) promptly notify the other party, (ii) make every effort to remedy the cause of non-performance, and (iii) perform the entirety of its obligations as soon as the cause no longer exists, the other party being released from its contractual obligations until such time as the cause no longer exists. The performing party shall not have the right to terminate the Agreement by reason of the requesting party having invoked this clause.
- L. Availability of Goods and Services. All agreements in the Agreement are contingent upon normal availability of goods and services. Delays beyond the control of the ENGINEER or BUYER shall be a valid reason for adjustments. This shall include, but not be limited to, delays caused by: 1) inclement weather conditions; 2) failure of BUYER to provide relevant background materials in a timely manner; or 3) denial of access to said property by affected or adjacent property owners.
- M. Binding Effect. This document, including all Exhibits and Attachments, constitutes the entire Agreement of the parties and there are no conditions or parties except as expressed herein. This Agreement binds ENGINEER and BUYER and their successors, assigns, agents, and other associates of whatever kind or nature. This Agreement may be amended or modified only by a written document executed by both parties.
- N. Governing Law. Performance of this Agreement and its terms and conditions shall be construed in accordance with and governed by the applicable law of the State of Texas in the United States of America.
- O. Validity of Provisions. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
- P. Attorney's Fees. Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

- Q. No Third Party Beneficiary. No provision of this Agreement shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third party beneficiary under this Agreement or of any one or more of the terms hereof or otherwise give rise to any cause of action in any person not a party hereto.
- R. This Agreement may be signed in counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. The parties intend that fax or scanned and emailed signatures constitute original signatures and that a faxed or scanned and emailed agreement containing the signatures (original or faxed or emailed) of all the parties is binding on the parties.

The above is mutually agreed as of the day and year first above written.

**(ENGINEER)**

By \_\_\_\_\_

Title \_\_\_\_\_

**(BUYER)**

By \_\_\_\_\_

Title \_\_\_\_\_

# EXHIBIT 1 – SCOPE OF WORK

## PHASE 1

- Roberts & Schaefer will work with BDH Technologies for the development of a proposal for a fluidized bed dryer for the Hadong Power Station R&D project.
- BDH is sending coal samples to Hazen Research and Tra-det for Testing for coal characteristics and explosivity.
- As Phase 1 of the study R&S will prepare conceptual design and evaluate viability giving special consideration to explosivity and coal stability.
  - Under Phase 1 R&S will assemble the technical personnel of our in-house staff with those of our exclusive consultants to review and analyze the results of the laboratory testing performed by Hazen Research and Tra-Det laboratories.
  - Deliverables of Phase 1 will be a basic block flow diagram with possible options for pre-drying and/or post-drying coal handling that will address the concerns of explosivity and coal stability in a proposed drying system that can safely operate and meet the operational needs of Hadong Power Station.
- If Phase 1 activities prove viable the project will proceed to Phase 2, if not viable the work will stop.

## PHASE 2

- Deliverables Phase 2 Study will include:
  - Basic Design
  - Estimate of quantities (concrete, structural, mechanical, electrical & instrumentation)
  - Equipment / motor list
  - Instrument list
  - Estimate of Items to be provided by R&S
    - Engineering
    - Foreign Equipment
    - Instruments
    - Commissioning / Training Assistance

## ESTIMATED SCHEDULE

- Phase 1 & Phase 2 of the study is estimated to be 9 to 12 weeks

**EXHIBIT 2 – FEE SCHEDULES**  
**ENGINEERING RATE SCHEDULE**

EFFECTIVE THRU DECEMBER 31, 2011

This Fee Schedule provides a current listing of direct labor rates that will apply to **Work** performed by Roberts & Schaefer Company. The rates are all inclusive, including burden, overhead, and fee. The following list identifies personnel by classifications and provides hourly rates for each:

<b>Personnel Classification</b>		<b>Hourly Rates</b>
General Manager / Operations Manager		175.00
Senior Manager (Projects/Estimating)		165.00
Project Manager / Project Engineer		157.00
Engineering Manager		136.00
Senior Engineer	Process/Environmental	130.00
Engineer	Process/Environmental	120.00
Automation/Programmer		130.00
Senior Engineer	Electrical/Cost Estimating	130.00
Engineer	Electrical/Cost Estimating	120.00
Senior Engineer	Structural/Mechanical/Civil	130.00
Engineer	Structural/Mechanical/Civil	120.00
Senior Designer		115.00
Designer		105.00
Drafter		95.00
Project Scheduler / Project Accountant / IT Manager		130.00
Project Administrator		110.00
Engineering Secretary		70.00
Project Clerk (Office)		65.00
Construction Manager / Technical Advisor / Start-Up Specialist		155.00
Assistant Construction Manager		130.00
Field Engineer		125.00
Field Clerk		95.00
Senior Consultant		155.00

**Overtime:**

All office and field personnel except the engineering secretary, service people, field clerks, and shop detailers are invoiced straight time for overtime. Engineering secretary, service people, field clerks, and shop detailers are invoiced one and one-half times the normal rate for overtime.

## **DIRECT COST SCHEDULE**

Direct Costs will be invoiced by Roberts & Schaefer Company at their actual cost plus 15% charge for handling. Included as Direct Costs are charges of the type listed below.

- Approved employee transportation,
- Approved lodging,
- Approved daily living expenses or subsistence allowance (varies based on location),
- Premium delivery services,
- Toll communication charges,
- Costs arising from suspension of the work,
- Premiums for bonds,
- Applicable state sales, use and related taxes,
- Special forms and reproductions.

Third party subcontract services will be invoiced at their actual cost plus a 15% mark-up.

Company vehicles when available and used for approved transportation will be charged at the current IRS mileage rate.

Photocopying documents is charged at a rate of 10¢ per copy.

Drawing reproduction is charged at a rate of \$1.50 per copy irrespective of drawing size. Plotter prints are charged similarly at a rate of \$2.50 per copy.

Color reproductions will be will be charged at the following rates:

Laser reproduction (8.5 x 11, bond paper)	\$1.00 each
Laser reproduction (8.5 x 11, 90# card stock)	\$2.00 each
Laser reproduction (8.5 x 11, transparencies)	\$3.00 each
Large Media AutoCAD reproduction (bond, coated)	2.00 per SF
Large Media AutoCAD reproduction (gloss)	\$10.00 per SF
Rendering (bond, coated)	8.00 per SF
Rendering (gloss)	\$10.00 per SF