

*Form BGI (for renewable energy installations having a net export capacity ≤ 10MW and utilising biogas as its renewable resource) dated 1 December 2011*

This renewable energy power purchase agreement is made on \_\_\_\_\_<sup>1</sup>  
between

\_\_\_\_\_  
\_\_\_\_\_<sup>2</sup>

(hereinafter referred to as the “**Distribution Licensee**”);

and

\_\_\_\_\_  
\_\_\_\_\_<sup>3</sup>

(hereinafter referred to as the “**Feed-in Approval Holder**”);

(The Distribution Licensee and the Feed-in Approval Holder are hereinafter collectively referred to as the “**Parties**”; and the term “**Party**” refers to either one of them, as the context may require).

**Recitals**

(A) The Feed-in Approval Holder has been granted a feed-in approval dated \_\_\_\_\_<sup>4</sup> bearing number \_\_\_\_\_<sup>5</sup>  
(hereinafter referred to as the “**Feed-in Approval**”) by the Sustainable Energy Development Authority Malaysia (hereinafter referred to as the “**Authority**”) pursuant to the Renewable Energy Act 2011 (hereinafter referred to as the “**Act**”).

(B) This Agreement is entered into pursuant to subsection 12(1) of the Act.

In consideration of the mutual covenants and agreements set forth in this Agreement, the Parties hereby agree as follows:

**CLAUSE 1: DEFINITIONS**

In this Agreement, unless the context otherwise requires:

- (a) capitalised expressions shall have the meanings assigned to them in the Recitals above and as set out below; and

<sup>1</sup> Insert date of renewable energy power purchase agreement.

<sup>2</sup> Insert name, company registration number and registered address of applicable distribution licensee.

<sup>3</sup> Insert name, company registration number and registered address of applicable feed-in approval holder.

<sup>4</sup> Insert date of applicable feed-in approval.

<sup>5</sup> Insert reference number of applicable feed-in approval

- (b) other expressions shall have the meanings ascribed to them in the Act and the Renewable Energy (Technical and Operational Requirements) Rules 2011, unless otherwise defined below.

**Abandons** means the failure by the Feed-in Approval Holder, after the feed-in tariff commencement date, to operate the Renewable Energy Installation for a continuous period of more than three (3) months unless:

- (i) the Distribution Licensee is in breach of a material obligation under this Agreement;
- (ii) the Renewable Energy Installation was during such period the subject of repair, rehabilitation or repowering; or
- (iii) the Feed-in Approval Holder is excused from doing so pursuant to the provisions of Clause 13;

**Access Rights** means all rights necessary to construct, install, commission, energise, test, operate, maintain, upgrade, replace and remove any part of the Project including all rights of way, easements and continuing access rights;

**Agreement** means this renewable energy power purchase agreement and the appendices and attachments hereto as the same may be amended from time to time in accordance with Clause 18.5;

**Authorisation** means:

- (a) in relation to the Feed-in Approval Holder, his (i) Feed-in Approval; and/or (ii) licence issued by the Commission under section 9 of the Electricity Supply Act 1990 to enable the Feed-in Approval Holder to own and operate the Renewable Energy Installation and supply renewable energy to the Distribution Licensee therefrom; and
- (b) in relation to the Distribution Licensee, its licence to distribute electricity issued by the Commission under section 9 of the Electricity Supply Act 1990;

**Business Day** means any day on which commercial banks are open for business in Kuala Lumpur, Wilayah Persekutuan but excludes public holidays in Kuala Lumpur, Wilayah Persekutuan and Sundays;

**Connection Point** means the connection point as shown in Appendix B;

<b>Contract Year</b>	means: <ul style="list-style-type: none"> <li>(a) in respect of the first Contract Year, the period which begins on the feed-in tariff commencement date and ends on 31 December of the year in which the feed-in tariff commencement date occurs;</li> <li>(b) in respect of the last Contract Year, the period of 12 months or less which begins on 1 January and ends on the last day of the Term; and</li> <li>(c) in respect of all other Contract Years, each period during the Term which begins on 1 January and ends on 31 December of the same year;</li> </ul>
<b>Communication Facilities</b>	means all the communication facilities as described in Appendix C;
<b>Debt Service</b>	means the periodic payment of a loan(s) under and in accordance with the Financing Documents for the principal sum and interest for such loan(s);
<b>Declared Annual Availability</b>	means the annual quantity (in MWh) of renewable energy to be generated by the Renewable Energy Installation (in MWh) for each year during the Term as set out in the Feed-in Approval;
<b>Effective Date</b>	means the date on which all conditions precedent listed in Clause 4.1 have been satisfied or waived;
<b>EPC Contract</b>	means all contracts to be entered into by the Feed-in Approval Holder and the EPC Contractor in connection with the design, engineering, procurement, construction, installation, testing and commissioning of the Renewable Energy Installation, the Interconnection Facilities and the Communication Facilities;
<b>EPC Contractor</b>	means any firm or firms retained by the Feed-in Approval Holder to provide services (other than consultancy or project management services) in connection with the design, engineering, procurement, construction, installation, testing and commissioning of the Renewable Energy Installation, the Interconnection Facilities and the Communication Facilities;
<b>Event of Default</b>	means the occurrence of any of the events described in Clause 14;
<b>Feed-in Tariff Rate</b>	means the rate (in RM/kWh) of the feed-in tariff as specified in the Feed-in Approval or such other rate as specified in the written confirmation from the Authority referred to in Clause 4.3(b);

<b>Financing Documents</b>	means the loan agreements (including agreements for any subordinated debt), notes, bonds, indenture, guarantees, security agreements and any other documents relating to the financing or refinancing and security arrangements of the Project which have been or are to be entered into by the Feed-in Approval Holder;
<b>Financing Parties</b>	means the Persons providing financing or refinancing to the Feed-in Approval Holder for the Project and includes an agent or trustee under a bond issue;
<b>Force Majeure Event</b>	means any event, condition or circumstance described in Clause 13.1;
<b>Fossil Fuel</b>	means a hydrocarbon deposit that consists of remains of animal or vegetable life from past geologic ages that is now in a combustible form which is suitable for use as fuel; for example, oil, coal, or natural gas;
<b>Governmental Authorisation</b>	means any authorisation, consent, licence, concession, permit, waiver, privilege, exemption and/or approval from, or filing with, or notice to any Government Entity;
<b>Government Entity</b>	means any national, state or local legislature of the government of Malaysia and any ministry, department, instrumentality, agency, authority or commission of the government of Malaysia or any other similar entity, including the Authority and the Commission;
<b>Interconnection Facilities</b>	means the interconnection facilities as described in Appendix B;
<b>kW</b>	means Kilowatt;
<b>kWh</b>	means Kilowatt-hour;
<b>Law</b>	means any (i) law, legislation, statute, act or regulation, or (ii) legally binding announcement or any interpretation thereof, enacted, issued or promulgated by any Government Entity or court;
<b>Maximum Metered Renewable Energy</b>	means the quantity (in MWh) of Metered Renewable Energy equivalent to 110% of the Declared Annual Availability of the applicable Contract Year;
<b>Metered Renewable Energy or MRE</b>	means the renewable energy generated and delivered from the Renewable Energy Installation and metered by the Distribution Licensee at the Connection Point on and after the feed-in tariff commencement date;
<b>MW</b>	means Megawatt;

<b>Person</b>	means any individual, corporation, partnership, joint venture, trust, unincorporated organisation or Government Entity;
<b>Project</b>	means the development, design, financing, insurance, procurement, construction, installation, testing, commissioning, ownership, operation, management and maintenance of the Renewable Energy Installation, the Interconnection Facilities and the Communication Facilities including ancillary buildings and associated activities related to this project, as more specifically described in Appendices A, B and C, and any modification thereof;
<b>Renewable Energy Fuel</b>	means biogas meeting the criteria prescribed in the Renewable Energy (Criteria for Renewable Resources) Regulations 2011;
<b>Renewable Energy Fuel Contract</b>	means the contract(s) to be entered into by the Feed-in Approval Holder and the supplier(s) of Renewable Energy Fuel for the operation of the Renewable Energy Installation;
<b>Renewable Energy Installation</b>	means the renewable energy installation owned by the Feed-in Approval Holder as described in Appendix A;
<b>Ringgit Malaysia or RM</b>	means the lawful currency of Malaysia;
<b>Scheduled Feed-in Tariff Commencement Date</b>	means the scheduled feed-in tariff commencement date for the Renewable Energy Installation as set out in the Feed-in Approval;
<b>Site</b>	means the parcels of land upon which the Renewable Energy Installation is to be constructed and located, and as more specifically described in Appendix A;
<b>T&amp;O Rules</b>	means the Renewable Energy (Technical and Operational Requirements) Rules 2011;
<b>Term</b>	means the period of this Agreement as specified in Clause 3.1; and
<b>Test Renewable Energy</b>	means the renewable energy generated and delivered from the Renewable Energy Installation and metered at the Connection Point associated with the start-up and commissioning of the Renewable Energy Installation from the initial operation date to the feed-in tariff commencement date.

## **CLAUSE 2: INTERPRETATION OF TERMS AND PHRASES**

Unless the context of this Agreement otherwise requires:

- (a) words of any gender include all genders;
- (b) words using the singular or plural number also include the plural or singular number, respectively;
- (c) references in this Agreement to any Act of Parliament includes references to any subsidiary legislation made pursuant to such Act;
- (d) references in this Agreement to a “Clause”, “Appendix” or “Attachment” are to a clause, appendix or attachment of this Agreement;
- (e) the words “include” or “including” shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases or words of like import;
- (f) references to any written law at any time shall be construed as a reference to the same as it may have been amended, modified or re-enacted and in effect as at such time;
- (g) references to “this Agreement” or any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies, or supplements it or is entered into, made or given pursuant to or in accordance with its terms;
- (h) whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified;
- (i) references to a year are to a calendar year unless Contract Year is specified; and
- (j) all accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles of Malaysia applied on a consistent basis.

## **CLAUSE 3: TERM**

This Agreement shall take effect on the Effective Date and continue in effect throughout the effective period as specified in the Feed-in Approval, unless earlier terminated in accordance with the provisions of this Agreement.

## **CLAUSE 4: CONDITIONS PRECEDENT**

### **4.1 Conditions precedent to the Effective Date**

This Effective Date shall only occur when this Agreement has been executed and delivered by each of the Parties and registered by the Authority pursuant to subsection 12(6) of the Act.

### **4.2 Conditions precedent to the initial operation date**

The initial operation date and the right of the Feed-in Approval Holder to commence generation of renewable energy at the Renewable Energy Installation and to supply, deliver and sell Test Renewable Energy to the Distribution Licensee shall only occur upon the satisfaction of the conditions as set out in subparagraph 6(7) of Schedule 3 of the T&O Rules.

### **4.3 Conditions precedent to the feed-in tariff commencement date**

Without limiting the requirements set forth in Clause 4.1 and Clause 4.2 but subject to Clause 10 and 13.3, the feed-in tariff commencement date shall only occur upon:

- (a) the satisfaction of the conditions as set out in subrule 15(1) of the T&O Rules; and
- (b) the submission by the Feed-in Approval Holder to the Distribution Licensee of the Authority's written confirmation of the Feed-in Tariff Rate.

### **4.4 Co-operation**

The Parties shall use their respective best endeavours and co-operate with each other to ensure that the feed-in tariff commencement date occurs by the Scheduled Feed-in Tariff Commencement Date.

## **CLAUSE 5: SALE & PURCHASE OBLIGATIONS**

### **5.1 Sale and purchase of Test Renewable Energy and Metered Renewable Energy**

- (a) Starting on the initial operation date, subject to the Act and the terms and conditions herein and continuing throughout the Term of this Agreement, the Feed-in Approval Holder shall sell and deliver and the Distribution Licensee shall purchase and accept Test Renewable Energy.
- (b) Starting on the feed-in tariff commencement date, subject to the Act and the terms and conditions herein and continuing throughout the Term of this Agreement, the Feed-in Approval Holder shall sell and deliver and the Distribution Licensee shall purchase and accept Metered Renewable Energy.

## 5.2 Price

- (a) The price for Test Renewable Energy sold and delivered by the Feed-in Approval Holder and purchased and accepted by the Distribution Licensee shall be the price equivalent to 30% of the prevailing displaced cost.
- (b) The price for Metered Renewable Energy sold and delivered by the Feed-in Approval Holder and purchased and accepted by the Distribution Licensee shall be the Feed-in Tariff Rate provided that the total Metered Renewable Energy generated in each Contract Year shall not exceed the Declared Annual Availability of such Contract Year.
- (c) The above price in Clause 5.2(b) shall be fixed throughout the Term of this Agreement, except when:
  - (i) the Feed-in Approval Holder sells and delivers and the Distribution Licensee purchases and accepts any Metered Renewable Energy in a Contract Year in excess of the Declared Annual Availability of such Contract Year, in which case the Feed-in Approval Holder shall instead be paid by the Distribution Licensee:
    - (aa) a price equivalent to the prevailing displaced cost for any Metered Renewable Energy in excess of the Declared Annual Availability up to the Maximum Metered Renewable Energy; and
    - (bb) a price as may be mutually agreed between the Parties and approved by the Authority for any Metered Renewable Energy in excess of the Maximum Metered Renewable Energy.
  - (i) the Authority determines that the Renewable Energy Installation has achieved grid parity pursuant to section 21 of the Act, in which case the Feed-in Approval Holder shall instead be paid by the Distribution Licensee a price that is based on the prevailing displaced cost for the remaining duration of the Term;
  - (ii) Clause 8.1 applies and the Feed-in Tariff Commencement Date occurs subsequent to the year of the Scheduled Feed-in Tariff Commencement Date, in which case the Feed-in Approval Holder shall instead be paid by the Distribution Licensee a reduced price as confirmed by the Authority to have been calculated in accordance with the Act based on the date of the delayed feed-in tariff commencement date;
  - (iii) Clause 13.4 or Clause 17 applies, in which case the Feed-in Approval Holder shall instead be paid by the Distribution Licensee a price that is determined under the relevant clause for the remaining duration of the Term.
- (d) The Distribution Licensee shall make payment for Test Renewable Energy and Metered Renewable Energy to the Feed-in Approval Holder at the times stipulated in Clause 7.



### **5.3 Exception to the Distribution Licensee’s obligation to accept renewable energy after the feed-in tariff commencement date**

Notwithstanding any other provision in this Agreement, the Distribution Licensee shall not be obligated to accept renewable energy from the Renewable Energy Installation if either of the events or circumstances described below occurs. Those events or circumstances are:

- (a) the Renewable Energy Installation has delivered to the Distribution Licensee renewable energy exceeding the Maximum Metered Renewable Energy and the Parties have not agreed or the Authority has not approved a price for such excess renewable energy;
- (b) the Distribution Licensee is exempted by the Authority from accepting renewable energy pursuant to subsection 14(2) of the Act;
- (c) an emergency condition occurs;
- (d) the Renewable Energy Installation delivers to the Distribution Licensee renewable energy which does not conform to the electrical characteristics consistent with prudent utility practices;
- (e) the Distribution Licensee intentionally interrupts the acceptance of renewable energy from the Renewable Energy Installation to conduct necessary maintenance of:
  - (i) the revenue meter, as directed by the Commission; or
  - (ii) the Distribution Licensee’s electricity distribution network;

after having submitted to the Feed-in Approval Holder the proposed schedule and description of such maintenance in accordance with the T&O Rules; or

- (f) any constraint in the Distribution Licensee’s electricity distribution network related to the Renewable Energy Installation which is beyond the control of the Distribution Licensee, as verified by the Commission.

### **5.4 Consequences of non purchase due to Distribution Licensee’s default**

If, in any Contract Year or part thereof, the Distribution Licensee fails or refuses to accept renewable energy delivered from the Renewable Energy Installation (other than under the circumstances described in 5.3 and 13.5) due to reasons not attributable to the Feed-in Approval Holder, the Feed-in Approval Holder shall be entitled to payments by the Distribution Licensee calculated as follows for each occurrence of non-purchase in such Contract Year:

$$P_{np} = \frac{(0.7 \times EAA)}{n_{np}} \times \text{Price} \times 1000 \times h_{np}$$

Where:

- $P_{np}$  = the payments in RM payable by the Distribution Licensee to the Feed-in Approval Holder;
- EAA = the estimated annual availability (in MWh) of the Renewable Energy Installation for the Contract Year being:  
(a) the Declared Annual Availability of the applicable Contract Year, for the first, second and third Contract Years in the Term; or  
(b) the lower of (i) the Declared Annual Availability of the applicable Contract Year; and (ii) the average annual quantity of Metered Renewable Energy purchased by the Distribution Licensee from the Feed-in Approval Holder in the 3 Contract Years immediately preceding that Contract Year; for the remaining Contract Years in the Term;
- $n_{np}$  = (a) the actual number of hours in the Contract Year, for the first and last Contract Years in the Term; or  
(b) 8760, for all intervening Contract Years;
- Price = (a) the Feed-in Tariff Rate; or  
(b) the prevailing displaced cost, if the Authority has determined that the Renewable Energy Installation has achieved grid parity pursuant to section 21 of the Act; and
- $h_{np}$  = the number of whole hours the Distribution Licensee fails or refuses to accept Metered Renewable Energy delivered from the Renewable Energy Installation during the relevant occurrence.

## **5.5 Title and risk of loss**

Title to and the risk of loss of any renewable energy generated from the Renewable Energy Installation and transmitted to the Distribution Licensee in accordance with this Agreement shall pass to the Distribution Licensee at the Connection Point.

## **5.6 Prudent utility practices**

All actions required or taken under this Agreement by either Party (including under this Clause 5) shall be in accordance with prudent utility practices.

## **CLAUSE 6: THE FEED-IN APPROVAL HOLDER'S OBLIGATION TO USE RENEWABLE RESOURCES**

### **6.1 Renewable Energy Fuel to be used**

Save as provided in Clause 6.2, during the effective period the Feed-in Approval Holder shall operate the Renewable Energy Installation so as to be fuelled or driven only by the Renewable Energy Fuel.

### **6.2 Permitted Fossil Fuel Use**

Fossil Fuels may be used for fuelling or driving the Renewable Energy Installation for one or more of the following purposes:

- (a) the ignition of gases of low or variable calorific value;
- (b) the heating of the combustion system to its normal operating temperature and/or the maintenance of that temperature;
- (c) during startups or shutdowns and shall not be used after steady state condition has been achieved.

Provided that the energy content of the Fossil Fuel used does not exceed 10% of the energy content of all the fuel used in the Renewable Energy Installation on a monthly basis.

## **CLAUSE 7: BILLING & PAYMENT**

The Parties agree that the reading of meters, issuance of bills and payment toward such bills shall be carried out in accordance with the applicable provisions of the T&O Rules.

Each Party shall be entitled to receive from the other Party interest on any due but unpaid amount owing to the first-mentioned Party pursuant to this Agreement and/or the T&O Rules, calculated at the rate of one per centum above the base lending rate then in effect at the principal office of Malayan Banking Berhad or its successors in title, from the date on which such amount became due, including such date, until the date full settlement is made, excluding such date.

## **CLAUSE 8: ANNUAL AVAILABILITY**

The Feed-in Approval Holder shall provide the Distribution Licensee with details of the Declared Annual Availability upon the execution of this Agreement.

The Feed-in Approval Holder shall use its best endeavours to generate sufficient renewable energy so that the Metered Renewable Energy from the Renewable Energy Installation for every hour of each day of a Contract Year, after taking into account scheduled outages, maintenance outages and unplanned outages (but excluding interruptions due to a Force Majeure Event, emergency condition or other condition caused by the Distribution Licensee or its electricity distribution network), results in at

least 70% of the Declared Annual Availability of such Contract Year (prorated in the case of the first and last Contract Years of the Term).

**CLAUSE 9: TECHNICAL AND OPERATIONAL REQUIREMENTS**

The Parties agree that the engineering, construction, testing and commissioning of the Renewable Energy Installation shall be carried out in accordance with the T&O Rules.

The Feed-in Approval Holder further agrees to provide the Distribution Licensee, its employees, officers and agents unrestricted access to the Interconnection Facilities and Communication Facilities at all reasonable times upon giving reasonable notice (other than in the case of an emergency condition when immediate access will be given) so as to enable the Distribution Licensee to comply with the provisions of this Agreement and applicable laws. The Distribution Licensee, its employees, officers and agents shall at all times be subject to the Feed-in Approval Holder’s safety rules and regulations and shall exercise such access rights in a manner that will not interfere with the operation of such facilities and the Renewable Energy Installation.

**CLAUSE 10: DELAY AND CONSEQUENCES**

If, due to the default or delay (other than a delay permitted by the Authority, a Force Majeure Event or any default or omission on the part of the Feed-in Approval Holder under this Agreement) of the Distribution Licensee, its agents, employees or contractors, the conditions as set out in subrule 15(1) of the T&O Rules are not fulfilled on or before the Scheduled Feed-in Tariff Commencement Date—

- (a) the Renewable Energy Installation shall be deemed to have achieved the feed-in tariff commencement date on the Scheduled Feed-in Tariff Commencement Date;
- (b) the Distribution Licensee shall make payment to the Feed-in Approval Holder calculated in the manner set forth below beginning from the Scheduled Feed-in Tariff Commencement Date until:
  - (i) the date the conditions as set out in subrule 15(1) of the T&O Rules are fulfilled;
  - (ii) the date on which this Agreement is terminated by the Feed-in Approval Holder in accordance with the provisions of this Agreement; or
  - (iii) 90 days after the Scheduled Feed-in Tariff Commencement Date,whichever the earlier.

$$P_{dd} = \frac{(0.7 \times DAA)}{n_{dd}} \times FiT \times 1000 \times h_{dd}$$

Where:

$P_{dd}$  = the payments in RM payable by the Distribution Licensee to the Feed-in Approval Holder;

DAA = the Declared Annual Availability (in MWh) of the year in which

the Scheduled Feed-in Tariff Commencement Date is scheduled, and if delay extends to the following year, the Declared Annual Availability of the following year;

- $n_{dd}$  = (a) the actual number of hours in the first Contract Year; or  
(b) 8760, for all subsequent Contract Years;
- FiT = the Feed-in Tariff rate (in RM/kWh) applicable to the FIAH; and
- $h_{dd}$  = the number of whole hours by which the fulfilment of the conditions as set out in subrule 15(1) of the T&O Rules is delayed beyond the Scheduled Feed-in Tariff Commencement Date

Notwithstanding the said payment from the Distribution Licensee to the Feed-in Approval Holder, the Parties shall expeditiously co-operate with each other and take all steps required to fulfil the conditions set out in Clause 4.3.

## **CLAUSE 11: TAXES AND FINES**

### **11.1 Taxes**

Each Party shall pay all present and future taxes (whether national, state or local) imposed on it, and except as otherwise specified below, shall pay all other duties, imposts, assignments, levies, fees, costs and expenses of any kind (whether or not to a Government Entity) necessary to assure the performance of its obligations under this Agreement.

### **11.2 Fines**

- (a) Any fines, penalties or other costs incurred by a Party (the “**Indemnifying Party**”) or its agents, employees or subcontractors for non-compliance by the Indemnifying Party, its agents, employees, or subcontractors with the requirements of any laws or any permits, approval or other Government Entity shall not be reimbursed by the other Party (the “**Indemnified Party**”) but shall be the sole responsibility of the Indemnifying Party unless the Indemnifying Party can prove that such non compliance is due to the Indemnified Party’s instructions or actions or inactions or attributable to the Indemnified Party.
- (b) If any such fines, penalties or other costs are assessed against the Indemnified Party by any Government Entity or court of competent jurisdiction due to the non-compliance by the Indemnifying Party with any laws or any permits, approval or other Governmental Authorisations due to no fault of the Indemnified Party, the Indemnifying Party shall indemnify and hold harmless the Indemnified Party against any and all losses, liabilities, damages and claims suffered or incurred because of the failure of the Indemnifying Party to comply therewith.

- (c) The Indemnifying Party shall also reimburse the Indemnified Party for any and all legal or other expenses (including attorneys' fees) reasonably incurred by the Indemnified Party in connection with such losses, liabilities, damages and claims.

## **CLAUSE 12: INSURANCE**

### **12.1 Scope of insurance**

- (a) Prior to the commencement of construction work at the Site, the Feed-in Approval Holder shall insure and maintain in effect throughout the execution of construction works of the Renewable Energy Installation, Interconnection Facilities and Communication Facilities an insurance coverage against any damage, malicious damage, loss or injury which may occur to any property (including that of the Distribution Licensee) or to any person (including any employee of the Distribution Licensee) by or arising out of and/or in carrying out construction, operation and maintenance activities relating to the Renewable Energy Installation, Interconnection Facilities and Communication Facilities.
- (b)
  - (i) Each Party (the “**Indemnifying Party**”) shall indemnify the other Party (the “**Indemnified Party**”) in respect of any damage, compensation or injury occurring to any person or to property and against all actions, claims, suits, demands, costs, charges and expenses arising and in connection therewith which shall be occasioned by the negligence of or breach of statutory duty by the Indemnifying Party (and/or any subcontractor of the Indemnifying Party), or by defective design, materials or workmanship, but not otherwise, or by the operation of the Workmen's Compensation Ordinance 1952, and/or the Employees Social Security Act 1969, and/or any statutory modification or re-enactment thereof for the time being in force, but not otherwise.
  - (ii) The Indemnifying Party shall insure against such liability and maintain in effect such insurance during the whole of the time that any persons are employed at the Site and/or Renewable Energy Installation and/or Interconnection Facilities.

### **12.2 Evidence of Insurance**

The Feed-in Approval Holder shall upon receiving a written request from the Distribution Licensee produce to the Distribution Licensee the policies of insurance and the receipts of payment of the current premiums and shall provide the Distribution Licensee with the certified true copy(s) of the said documents(s).

### **12.3 Failure To Insure**

Failure to insure shall not relieve the Feed-in Approval Holder of its obligations to maintain the insurance coverage described herein, nor shall failure to obtain or

maintain such insurances relieve, or in any way reduce, any obligation or liability imposed on the Feed-in Approval Holder elsewhere in this Agreement.

## **CLAUSE 13: FORCE MAJEURE EVENT**

### **13.1 Force Majeure Event Defined**

For the purposes of this Agreement, a Force Majeure Event shall mean an event, condition, or circumstance or its effect which:

- (a) is beyond the reasonable control of and occurs without fault or negligence on the part of the Party claiming it as a Force Majeure Event; and
- (b) causes a delay or disruption in the performance of any obligation under this Agreement despite all reasonable efforts of the Party claiming it as a Force Majeure Event to prevent it or mitigate its effects.

Subject to satisfying the foregoing criteria, Force Majeure Events include without limitation, the following:

- (i) strikes or lockouts and/or other work stoppages or industrial action (other than those solely affecting the Party claiming the same as a Force Majeure Event);
- (ii) acts of public enemies or terrorists or acts of war, whether or not war is declared, acts of force by a foreign nation or embargo;
- (iii) public disorders, insurrection, rebellion, sabotage, riots or violent demonstrations;
- (iv) explosions, fire, earthquakes, landslides, subsidence, sabotage, and/or other natural calamities and acts of God;
- (v) unusually severe weather conditions;
- (vi) expropriation or compulsory acquisition by any Government Entity;
- (vii) failure to obtain or renew any Governmental Authorisations; and
- (viii) any Force Majeure Event affecting the performance of any Person that is a party to the EPC Contract, Renewable Energy Fuel Contract or other contract between the Feed-in Approval Holder and such Person relating to the construction, operation or maintenance of the Renewable Energy Installation or the construction of the Interconnection Facilities.

### **13.2 Notification and Obligation to Remedy**

In the event of the occurrence of a Force Majeure Event that prevents any Party from performing its obligations hereunder, such Party shall:

- (i) as soon as reasonably practicable, give the other Party written notice of the Force Majeure Event, including full information about it and the actions and time estimated to be necessary to resume performance of the affected Party's obligations under this Agreement;
- (ii) afford the other Party reasonable access to its facilities for obtaining further information about the event;
- (iii) use all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable provided that such Party shall not be required by this paragraph to settle any strikes on terms that are adverse to such Party and not commercially reasonable,
- (iv) keep such other Party apprised of such efforts on a continuous basis, and
- (v) provide written notice of the resumption of the performance of its obligations under this Agreement.

**13.3 Force Majeure Event occurring before the feed-in tariff commencement date and affecting the Distribution Licensee**

In the event a Force Majeure Event affecting the Distribution Licensee occurs before the feed-in tariff commencement date, the Scheduled Feed-in Tariff Commencement Date shall be extended by 1 day for each day the feed-in tariff commencement date is delayed until the earlier of:

- (a) 60 days after the Scheduled Feed-in Tariff Commencement Date; and
- (b) 30 December of the year of the Scheduled Feed-in Tariff Commencement Date;

(hereinafter referred to as the “**Extension Cut Off Date**”).

If the Force Majeure Event continues thereafter to delay the occurrence of the feed-in tariff commencement date, the Renewable Energy Installation shall be deemed to have achieved the feed-in tariff commencement date on the day immediately after the Extension Cut Off Date. Upon the cessation of the Force Majeure Event, the Parties shall expeditiously co-operate with each other and take all steps required to fulfil the conditions referred to in Clauses 4.2 and 4.3. For the avoidance of doubt, Clauses 5.1 and 5.4 shall not be applicable until such conditions are fulfilled.

**13.4 Force Majeure Event occurring before the feed-in tariff commencement date and affecting the Feed-in Approval Holder**

If a Force Majeure Event affecting the Feed-in Approval Holder occurs before the feed-in tariff commencement date and delays the occurrence of the feed-in tariff commencement date past 31 December of the year of the Scheduled Feed-in Tariff Commencement Date, then upon the occurrence of the delayed feed-in tariff commencement date, the price for Metered Renewable Energy shall be the



reduced price as confirmed by the Authority to have been calculated in accordance with the Act based on the date of the delayed feed-in tariff commencement date.

### **13.5 Effect of Force Majeure Event**

Subject to the limitations set forth in this Agreement and Clauses 13.3 and 13.4, in the event that either Party is rendered unable by reason of a Force Majeure Event in effect after the Effective Date to perform, wholly or in part, any obligation set forth in this Agreement, then upon such Party's giving notice as specified in Clause 13.2 and full particulars of the Force Majeure Event, those obligations of that Party shall be suspended or excused to the extent their performance is affected by such Force Majeure Event.

### **13.6 Limitation of Force Majeure Events**

- (a) The availability of Clause 13.5 to excuse a Party's obligations under this Agreement due to a Force Majeure Event shall be subject to any limitations explicitly set forth in this Clause 13.6.
- (b) The Party claiming relief under Clause 13.5 shall suspend or be excused performance of its obligations under this Agreement to the minimum extent practicable in the circumstances.
- (c) Subject to the other provisions of this Agreement, including Clause 13.5, the obligation of the Parties to pay money due shall not be excused as a result of any Force Majeure Event.
- (d) The Parties shall only be able to claim the benefit of Clause 13.5 to excuse their obligations under this Agreement for any Force Majeure Event that occurs, or is in effect, after the Effective Date.
- (e) No obligations of the Parties hereunder that are required to be completely performed prior to the occurrence of a Force Majeure Event shall be excused as a result of such occurrence.
- (f) Neither Party shall be relieved of any obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred through the performance of such obligations of the Parties.

### **13.7 Right to Terminate**

If a Force Majeure Event results in the revocation of the Feed-in Approval due to the failure by the Feed-in Approval Holder to meet its minimum performance threshold as stipulated in such Feed-in Approval, this Agreement shall automatically terminate upon the date specified in a notice from the Authority to the Parties confirming such revocation.

### **13.8 Survival of Provisions**

The provisions of this Clause 13 shall survive the termination or expiry of this Agreement.

## **CLAUSE 14: DEFAULT AND TERMINATION**

### **14.1 Event of Default**

The occurrence of any one of the following shall constitute an Event of Default, unless excused under another provision of this Agreement:

- (a) any Party shall fail to make payments for undisputed amounts due under this Agreement to another Party within 60 days after receipt of written notice of such non-payment;
- (b) the Feed-in Approval Holder's Authorisation shall have been revoked or terminated, and (i) all applicable appeal periods shall have expired, or (ii) a final decision on the appeal confirming such suspension, revocation or termination shall have been issued;
- (c) any Party shall fail to comply with any of its other material obligations under this Agreement, and such failure shall continue un-remedied for 90 days after notice thereof by another Party, provided that if such failure cannot be remedied within such period of 90 days with the exercise of reasonable diligence, then such remedy period shall be extended for an additional period of 90 days so long as such failure is susceptible to remedy, and such Party is exercising reasonable diligence to remedy such failure;
- (d) the Feed-in Approval Holder Abandons the Project and fails to resume activities within a period of time determined by the Authority;
- (e)
  - (i) any Party becomes insolvent or suspends payment of its debts generally or is unable to pay its debts as they fall due;
  - (ii) a receiver, receiver and manager, administrator, liquidator, provisional liquidator, trustee, custodian or similar officer is validly appointed (other than one appointed by the Financiers) over all or a material part of the undertakings, property or assets of any Party or a security holder lawfully takes possession (and does not relinquish possession within 30 days) of the whole or a material part of the undertakings, property or assets of any Party or distress or any other form of execution is levied, enforced or adjudged against or upon any such assets and is not discharged within 30 days of being levied, enforced or adjudged;
  - (iii) an order is made or a resolution passed for the liquidation, winding-up or dissolution of any Party, save for a members' voluntary liquidation solely for the purpose of a solvent reconstruction or amalgamation, or a petition is presented for the winding up of a Party (which petition is not withdrawn or stayed or contested in good faith within 60 days); or

- (iv) any Party enters into a general assignment, arrangement or compositions with or for the benefit of its creditors pursuant to section 176 of the Companies Act 1965.

## **14.2 Right to terminate**

- (a) If an Event of Default occurs, the non-defaulting Party may, in addition to any rights described in specific clauses of this Agreement, terminate this Agreement by giving 14 days written notice to the defaulting Party. The termination of the Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
- (b) Nothing in this Clause 14 shall give any Party the right to terminate this Agreement for a breach of any obligation under this Agreement save and except an Event of Default described in Clause 14.1. The right of termination specified herein shall be in addition to all other rights and remedies available to such Party, at law or in equity or otherwise, for the breach of this Agreement by the other Party, which rights and remedies may include compensation for monetary damages, injunctive relief and specific performance.

## **14.3 Consequences of termination**

- (a) If the Distribution Licensee terminates this Agreement as a result of an Event of Default by the Feed-in Approval Holder, the Distribution Licensee shall have the option but not the obligation, exercisable by notice in writing to the Feed-in Approval Holder and the Authority within 60 days of the termination of this Agreement, to purchase the Project in the manner and for the purchase price determined in accordance with Appendix D. In the event the option is exercised, the Feed-in Approval Holder shall sell the Project (including the Feed-in Approval) to the Distribution Licensee.
- (b) If the Feed-in Approval Holder terminates this Agreement as a result of an Event of Default by the Distribution Licensee, the Feed-in Approval Holder shall have the option but not the obligation, exercisable by notice in writing to the Distribution Licensee and the Authority within 60 days of the termination of this Agreement, to sell the Project to the Distribution Licensee in the manner and for the purchase price determined in accordance with Appendix D. In the event the option is exercised, the Distribution Licensee shall purchase the Project (including the Feed-in Approval) from the Feed-in Approval Holder.
- (c) Any transfer of the Feed-in Approval to the Distribution Licensee shall be subject to any conditions of transfer contained in the Feed-in Approval.
- (d) The Feed-in Approval Holder shall ensure that the Financing Parties acknowledge and are bound by the Distribution Licensee's rights as set out in this Clause.

- (e) The provisions of this Clause 14.3 and Appendix D shall survive the termination of this Agreement.

## **CLAUSE 15: INDEMNITY**

### **15.1 Indemnification**

- (a) Except as otherwise specifically provided in this Agreement, or unless the damage or injury arises out of or results from or is caused by, the breach of this Agreement by a Party or by the negligence or misconduct of a Party's own officers, directors, employees, agents, contractors or sub-contractors, neither Party shall be liable to the other for any claims, judgments, liabilities, losses, costs, expenses or damages of any kind or character (including loss of use of property), in connection with damages or destruction of property or personal injury (including death) arising out of the performance of this Agreement, including the design, construction, maintenance or operation of property, facilities or equipment owned or used by the other Party, or the use or misuse of or contact with the renewable energy delivered hereunder.
- (b) Each Party shall indemnify and hold the other Party, and its officers, directors, affiliates, agents, employees, contractors, and sub-contractors, harmless from and against any and all claims, judgments, losses, liabilities, costs, expenses (including reasonable lawyers fees) and damages of any nature whatsoever for personal injury, death or property damage to third parties, except workers compensation claims, caused by any act or omission of the indemnifying Party's own officers, directors, affiliates, agents, employees, contractor or sub-contractors that arises out of or are in any manner connected with the performance of this Agreement, except to the extent such injury, death or damage is attributable to the negligence or misconduct of, or breach of this Agreement by, the Party seeking indemnification hereunder.
- (c) The Feed-in Approval Holder shall also defend, indemnify and hold the Distribution Licensee and its officers, directors, affiliates, agents, employees, contractors and sub-contractors, harmless from and against any and all claims, judgments, liabilities, losses, costs, expenses (including reasonable lawyers fees) and damages under every applicable environmental law or regulation arising out of the condition of the Site, or the Feed-in Approval Holder's ownership or operation of the Renewable Energy Installation including the discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances from the Renewable Energy Installation, the contamination of the soil, air, surface water or ground water at or around the site or any pollution abatement, replacement, removal, or other decontamination or monitoring obligations with respect thereto, except to the extent such damages are attributable to the negligence or misconduct of, or breach of this Agreement by the Distribution Licensee, its officers, directors, affiliates, agents employees, contractors or sub-contractors.

- (d) If either Party receives a claim from another Person (other than a Party to this Agreement) in respect of which it is entitled to the benefit of an indemnity under this Clause 15.1 and Clause 11.2(b), it shall notify the other Party within 14 days of receipt of the claim and shall not settle or pay the claim without the prior written approval of the other Party (which approval shall not be unreasonably withheld or delayed).
- (e) If the Party giving the indemnity wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Party to be indemnified, subject to such indemnified Party being secured against any costs, liabilities or damages to the reasonable satisfaction of such indemnified Party.

## **15.2 Consequential Damages**

Neither Party shall be liable to the other Party for any indirect, incidental, consequential or punitive damages as a result of the performance or non-performance of the obligations imposed pursuant to this Agreement including failure to deliver or purchase renewable energy hereunder, irrespective of the causes thereof.

## **15.3 Survival**

The obligations under this Clause 15 arising in connection with any event or circumstance occurring prior to the termination or expiration of this Agreement shall survive such termination or expiration.

## **CLAUSE 16: DISPUTE RESOLUTION AND ARBITRATION**

### **16.1 Representatives and senior officers**

- (a) The Feed-in Approval Holder and the Distribution Licensee shall each designate in writing to the other Party a representative who shall be authorised to resolve any Dispute (as defined in this paragraph) arising under this Agreement in an equitable manner and, unless otherwise expressly provided in this Agreement, to exercise the authority of the Party which appointed him to make decisions by mutual agreement. For the purposes of this Clause 16, a “**Dispute**” shall mean any dispute, controversy, claim or difference of whatever nature and howsoever arising under, out of or in connection with this Agreement, including the breach, termination, interpretation or validity thereof.
- (b) If the designated representatives are unable to resolve any Dispute arising under this Agreement, the Dispute shall be referred by the representatives, respectively, to a senior officer designated by the Feed-in Approval Holder and to a senior officer designated by the Distribution Licensee for resolution. If both senior officers agree, all or a part of the Dispute may be referred to an expert for advice or resolution on terms to be agreed by such officers.
- (c) The Parties agree to attempt to resolve all Disputes arising hereunder

promptly, equitably and in a good faith manner. The Parties further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Disputes.

- (d) If any decision on a Dispute is mutually agreed by the designated representatives of the Parties pursuant to Clauses 16.1(a) or 16.1(b), such decision shall be final and conclusive as to such Dispute.

## **16.2 Arbitration**

- (a) In the event of any such dispute, difference or question which may arise under, out of, in connection with or in relation to this Agreement cannot be resolved amicably under Clause 16.1 within 3 months (or such further periods as the Parties may agree) after it arises or, if either Party fails to designate a representative or to participate in any attempt to resolve any Dispute pursuant to Clause 16.1, then such dispute, difference or question shall be settled by arbitration before a single arbitrator under the auspices of the Kuala Lumpur Regional Arbitration Centre in accordance with the rules of the said Centre.
- (b) The language to be used in each arbitration shall be the English or Malay language.
- (c) Any decision or award of each arbitral tribunal appointed pursuant to this Clause 16.2 shall be final and binding upon the Parties. The Parties waive to the extent permitted by law any rights to appeal or any review of such award by any court or tribunal of competent jurisdiction. The Parties agree that any arbitration award made may be enforced by the Parties against assets of the relevant Party wherever they are located or may be found, and a judgement upon any arbitration award may be entered into by any court having jurisdiction thereof.
- (d) Pending the award of arbitration, the rights and obligations of both Parties under this Agreement shall continue in full force and effect.
- (e) For avoidance of doubt, all Disputes arising under or in connection with this Agreement shall be resolved in accordance with Clause 16 and nothing contained in this Agreement shall be construed as permitting either Party to commence proceedings in any court in any jurisdiction.

## **CLAUSE 17: CHANGE IN LAW**

- (a) If there is a Change-in-Law which requires the Feed-in Approval Holder to make any material capital improvement or other material modification to the Renewable Energy Installation and/or the Interconnection Facilities the cost of which is in excess of the Capital Improvement Threshold in any year, which material capital improvement or other material modification is required for the purpose of enabling the Feed-in Approval Holder to fulfil its obligations under this Agreement in compliance with such Change-in-

Law, the Feed-in Approval Holder shall consult with the Distribution Licensee regarding the extent of the modification which needs to be undertaken, the implementation of the modifications, the period of outages (if any) and the required expenditure and shall use all reasonable efforts to minimize such expenditure consistent with prudent utility practices and the Feed-in Approval Holder's obligations under this Agreement.

- (b) In the circumstances described in Clause 17(a), the Feed-in Approval Holder shall submit to the Distribution Licensee with a copy to the Authority and the Commission a certificate setting out in detail reasonably satisfactory to the Distribution Licensee the costs of such capital improvement or other modification, including operational and financing costs, if any, related thereto after having consulted the Distribution Licensee pursuant to Clause 17(a).
- (c) After receipt by the Distribution Licensee of the written approval of the Minister of Energy, Green Technology and Water upon recommendation by the Authority of:
  - (i) the costs of the material capital improvement or material modification to the Renewable Energy Installation and/or the Interconnection Facilities, as the case may be; and
  - (ii) such adjustment to the Feed-in Tariff Rate;

the Feed-in Tariff Rate shall be adjusted in a manner approved by the Minister of Energy Green Technology and Water.

- (d) For the purpose of Clause 17(a), the Capital Improvement Threshold shall be RM125,000.00.

## **CLAUSE 18: MISCELLANEOUS PROVISIONS**

### **18.1 Transfers and assignment**

- (a) Except as required by the Financing Parties under the Financing Documents or as provided under Clauses 14.3(a), 14.3(b), 18.1 and 18.4, the Feed-in Approval Holder shall not sell, convey, transfer or otherwise dispose of the Project or any material part or any interest in it to any other Person without the prior written consent of the Authority.
- (b) (i) If the Financing Documents so require, the Distribution Licensee shall:
  - (aa) provide its consent to assignments and acknowledgement of rights of the Financing Parties (including rights of remedy and the rights of the Financing Parties under the Financing Documents to be substituted for the Feed-in Approval Holder upon the occurrence of any default) as shall be necessary or reasonably appropriate in order to obtain

financing for the Project in a timely manner provided that such rights shall be subject to the terms of this Agreement and not inconsistent with the Distribution Licensee's rights hereunder;

- (bb) make payments to the Feed-in Approval Holder directly into a collateral security account established under the Financing Documents (subject to any claims or rights the Distribution Licensee may have against the Feed-in Approval Holder under this Agreement;
  - (cc) in the event of a default, accept as a substitute for the Feed-in Approval Holder under this Agreement, the agent for the Financing Parties, any designee or transferee of such agent or any purchaser of the Feed-in Approval Holder or the Project upon a foreclosure sale conducted on behalf of the Financing Parties of the Feed-in Approval Holder's interest in the Project or of the issued share capital of the Feed-in Approval Holder; and
  - (ee) afford the Financing Parties an opportunity to remedy any Event of Default by the Feed-in Approval Holder within the relevant remedy period hereunder before terminating this Agreement.
- (ii) The Feed-in Approval Holder acknowledges:
- (aa) that any assignment or transfer to a secured party pursuant to the Financing Documents shall not relieve the Feed-in Approval Holder of its obligations to the Distribution Licensee under this Agreement;
  - (bb) no such assignee or transferee shall be liable for the performance of the Feed-in Approval Holder's obligations under this Agreement; and
  - (cc) any exercise by any such assignee or transferee shall be subject to the terms of this Agreement.
- (c) In the event the Authority consents to both the transfer of the Renewable Energy Installation and the transfer or assignment of the Feed-In Approval to a new owner of the Renewable Energy Installation, the Parties undertake and agree that they will enter into a novation agreement (in a form approved by the Authority) to effect the novation of this Agreement to the new owner.
- (d) In the event the Distribution Licensee's Authorisation is due to expire or is expected to be revoked, the Parties undertake and agree that they will enter into a novation agreement (in a form approved by the Authority) to effect the novation of this Agreement to the party granted the licence by the



Commission under section 9 of the Electricity Supply Act 1990 to distribute electricity in place of the Distribution Licensee.

## 18.2 Notices

Except as otherwise specified in this Agreement, any notice, demand for information or documents required or authorized by this Agreement to be given to a Party shall be given in writing and shall be sufficiently given if delivered by registered mail, courier or hand delivered against written receipt, or if transmitted and clearly received by facsimile transmission addressed as set forth below, or if sent to such Party by registered mail, courier or hand delivered to such other address as such Party may designate for itself by notice given in accordance with this Clause 18.1.

All notices given by facsimile shall be confirmed in writing, delivered or sent as aforesaid, but the failure to so confirm shall not vitiate the original notice. The address for the delivery of notice and invoices to each Party and the respective telephone and facsimile numbers are as follows:

- (a) For the Feed-in Approval Holder:<sup>6</sup>

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

Attention : \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile : \_\_\_\_\_

- (b) For the Distribution Licensee:<sup>7</sup>

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

Attention : \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile : \_\_\_\_\_

## 18.3 Confidentiality

- (a) Subject to paragraphs (b) and (c) below, this Agreement and any information provided by either Party to the other Party pursuant to this Agreement and labelled "CONFIDENTIAL" shall be utilized by the receiving Party solely in connection with the purposes of this Agreement and shall not be disclosed by the receiving party to any third party, except

---

<sup>6</sup> Insert name, address for notices, designation of contact person, telephone and facsimile numbers of the feed-in approval holder.

<sup>7</sup> Insert name, address for notices, designation of contact person, telephone and facsimile numbers of the distribution licensee.

with the providing Party's consent, and upon request of the providing Party shall be returned thereto.

- (b) Notwithstanding paragraph (a) above, the Parties acknowledge and agree that such information may be disclosed on a "need to know" basis to the Financing Parties, potential financiers of the Project, suppliers and potential suppliers of Renewable Energy Fuel and Fossil Fuel and major equipment to the Renewable Energy Installation and other third parties as may be necessary for the parties hereto to perform their obligations under this Agreement, to the extent they shall endeavour in disclosing such information to seek to preserve the confidentiality of such disclosures.
- (c) The provisions of paragraph (a) above shall not prevent either Party from providing any confidential information received from the other Party to the Authority or any court as may be required by such court, provided that, if feasible, the disclosing Party shall have given prior notice to the other Party of such required disclosure and, if so requested by such other Party, shall have used all reasonable efforts to oppose the requested disclosure, as appropriate under the circumstances, or to otherwise make such disclosures pursuant to a protective order or other similar arrangement for confidentiality.

#### **18.4 Successors in title and assignment**

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and permitted assigns.

#### **18.5 Modification or amendment**

No modification, amendment or waiver of any provisions of this Agreement shall be valid unless it is in writing, signed by both Parties and receives the prior written approval of the Authority.

#### **18.6 Entire agreement**

This Agreement constitutes the entire understanding between the Parties and supersedes any and all previous agreements and understandings between the Parties with respect to the subject matter hereof.

#### **18.7 Governing law**

This Agreement shall be governed by, and construed in accordance with, the laws of Malaysia. Subject to clause 16.2, the Parties hereby submit to the exclusive jurisdiction of the courts of Malaysia.

#### **18.8 Further assurances**

If either Party determines in its reasonable discretion that any further instruments or other things are necessary or desirable to carry out the terms of this Agreement, the other Party shall, at the expense of the requesting Party, execute and deliver all

such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

#### **18.9 Relationship of the Parties**

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or principal/agent relationship between the Parties or to impose any partnership obligation or relationship of trust or of a fiduciary nature or liability upon either Party and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or on behalf of, or to act as an agent or representative of, or otherwise bind the other Party.

#### **18.10 Third parties**

This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty or liability to or standard of care with reference to any other person.

#### **18.11 Headings**

The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

#### **18.12 Time of the Essence**

Time wherever mentioned in this Agreement shall be of the essence thereof.

#### **18.13 Severability**

If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be declared invalid or unenforceable by any governmental authority or court of competent jurisdiction, the remainder of this Agreement or the application of such terms or provision to persons or circumstances other than those as to which it is declared invalid or unenforceable shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### **18.14 Waiver**

No waiver by either Party of the performance of any obligation under this Agreement or with respect to any default or any other matter arising in connection with this Agreement shall be deemed a waiver with respect to any subsequent performance, default or matter.

#### **18.15 Stamp duty**

The stamp duty on this Agreement shall be borne by the Feed-in Approval Holder. Each Party hereto shall bear its own solicitor's cost relating to this Agreement.

**18.16 Survival**

The expiry or termination of this Agreement shall not affect the accrued rights and obligations of the Parties under this Agreement nor shall it affect any continuing obligations which this Agreement provides, either expressly or by necessary implication, and shall survive its expiry or termination.

[END OF CLAUSES]

Executed as an Agreement the day and year first stated above.

SIGNED for and on behalf of )  
The Distribution Licensee )  
in the presence of: )  
 )  
 )

\_\_\_\_\_ 9

\_\_\_\_\_ 8

SIGNED for and on behalf of )  
The Feed-in Approval Holder )  
in the presence of: )  
 )  
 )

\_\_\_\_\_ 11

\_\_\_\_\_ 10

\_\_\_\_\_

<sup>8</sup> Insert name(s), NRIC number(s) and designation(s) of signatory/signatories for the distribution licensee.  
<sup>9</sup> Insert name, NRIC number and designation of witness for signatory/signatories for the distribution licensee.  
<sup>10</sup> Insert name(s), NRIC number(s) and designation(s) of signatory/signatories for the feed-in approval holder.  
<sup>11</sup> Insert name, NRIC number and designation of witness for signatory/signatories for the feed-in approval holder.

## Appendix A Renewable Energy Installation<sup>12</sup>

## Appendix B Interconnection Facilities<sup>13</sup>

## Appendix C Communication Facilities<sup>14</sup>

## Appendix D Consequences of Termination

- (a) All capitalised terms shall have the same meanings given to them in Clause 1 of this Agreement except as otherwise defined herein.
- (b) When used herein, the defined terms set forth below shall have the following meanings:

**“Affiliate”** means, in relation to any person at a particular time:

- (i) any person who directly or indirectly Controls, or who owns beneficially more than 50% of the issued share capital (or equivalent securities) of, that person; or
- (ii) any Subsidiary of that person; or
- (iii) any other person who is Controlled by any person described in (i) above;

**“Auditor”** means a firm of auditors to be selected in accordance with the provisions of Section D.3 of this Appendix D;

**“Base Case Financial Model”** means the base case financial model agreed by the Parties in writing as accurately representing the terms and conditions of the financing for the Project on a limited recourse or project finance basis and furnished by the Feed-in Approval Holder to the Distribution Licensee on or before the date of the Financial Closing Date for the Initial Financing Documents;

**“Calculation Date”** means the date of termination of this Agreement as specified in the Purchase Notice;

**“Control”** means the power (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) to appoint and/or remove all or such of the members of the board of directors or other governing body of a person as are able to cast a majority of the votes capable of being cast by the members of that board or otherwise to control or have the power to control the policies and affairs of that person; and for the purposes of this definition, a person (the “relevant person”) “Controls” a person if (i) it can exercise

---

<sup>12</sup> Insert description of renewable energy installation as per the description submitted to the Authority in the application for the feed-in approval.

<sup>13</sup> Insert description of interconnection facilities, including the description of the connection point.

<sup>14</sup> Insert description of communication facilities

the requisite power by acting in concert with one or more other persons pursuant to an agreement or understanding (whether formal or informal) and (ii) the relevant person owns 20% or more of the securities of the person who is Controlled having ordinary voting power for the election of the members of the board of directors or other governing body of that person, or if that person has no such board of directors or other governing body, 20% or more of the ownership interests in that person; and “Controls” and “Controlled” shall be construed accordingly;

**“Corporate Tax”** means, for any Financial Year, the aggregate income tax payable by the Feed-in Approval Holder on its income for that Financial Year, whether in Malaysia or elsewhere, excluding any provision for deferred taxation as determined in accordance with Section 6 of the Income Tax Act 1967;

**“Financial Closing Date”** means the date on which the Financing Documents relating to the financing or refinancing for the total construction costs of the Project have been entered into by the Feed-in Approval Holder and the Financing Parties, and all of the conditions precedent for the initial drawdown by the Feed-in Approval Holder under such Financing Documents have been satisfied by the Feed-in Approval Holder or waived by the Financing Parties thereunder;

**“Financial Year”** means the accounting period used by the Feed-in Approval Holder in respect of the operations of the Feed-in Approval Holder as agreed by its Board of Directors and as presented to its annual general meeting, irrespective of whether that accounting period is a calendar year or not;

**“Initial Financing Documents”** means the loan agreements (including agreements for any subordinate debt), notes, bonds, indenture, guarantees, security agreements and any other documents relating to the financing and security arrangements for the Project which are entered into between the Financing Parties and the Feed-in Approval Holder and reflecting accurately the Base Case Financial Model, excluding any agreements relating to the Sponsors Gross Equity Contribution;

**“Interest on Sponsors Gross Equity Contribution”** means the aggregate amount determined by applying the Default Rate to each amount comprising the Sponsors Gross Equity Contribution for the period from the date of injection of such amount of the Sponsors Gross Equity Contribution to the Calculation Date;

**“Outstanding Indebtedness”** means the lesser of:

- (i) the aggregate amount at the Calculation Date of all amounts owing to the Financing Parties (other than any amounts owing to the shareholders of the Feed-in Approval Holder and their respective Affiliates) as incurred by the Feed-in Approval Holder under the Initial Financing Documents and as amortised in accordance thereunder and reflected in the Base Case Financial Model; and
- (ii) the aggregate amount at the Calculation Date of all amounts owing to the Financing Parties (other than any amounts owing to the shareholders of the Feed-in Approval Holder and their respective Affiliates) as incurred by the Feed-in Approval Holder under the Financing Documents;

including any reasonable costs and fees related to accelerated repayment and other financing termination costs, but excluding any costs and fees relating to the Sponsors Gross Equity Contribution;

**“Purchase Notice”** means a notice given by the Distribution Licensee pursuant to Clause 14.3(a) or a notice given by the Feed-in Approval Holder pursuant to Clause 14.3(b) of this Agreement;

**“Retained Sum”** means an amount certified by the Auditor as being the aggregate of the cash balances at bank and in hand and liquid securities held by the Feed-in Approval Holder and to be retained by the Feed-in Approval Holder after the Calculation Date;

**“Sponsors Gross Equity Contribution”** means an amount certified by the Auditor as at the Calculation Date as being the lesser of:

- (i) the aggregate of all registered and paid-up share capital issued by the Feed-in Approval Holder and any share premia received by the Feed-in Approval Holder, the subscription price received by the Feed-in Approval Holder for all loan stocks, bonds and redeemable preferences shares issued by the Feed-in Approval Holder to its shareholders and their respective Affiliates, all loans (whether secured, unsecured or subordinated) received by the Feed-in Approval Holder from its shareholders and their respective Affiliates and all other forms of capital contributed on or before the Calculation Date by the shareholders of the Feed-in Approval Holder and their respective Affiliates for financing the Project, as committed by the Feed-in Approval Holder, its shareholders and their respective Affiliates at the Financial Closing Date in accordance with the Initial Financing Documents; and
- (ii) the aggregate of all registered and paid-up share capital issued by the Feed-in Approval Holder and any share premia received by the Feed-in Approval Holder, the subscription price received by the Feed-in Approval Holder for all loan stocks, bonds and redeemable preferences share issued by the Feed-in Approval Holder to its shareholders and their respective Affiliates, all loans (whether secured, unsecured or subordinated) received by the Feed-in Approval Holder from its shareholders and their respective Affiliates and all other forms of capital contributed on or before the Calculation Date by the shareholders of the Feed-in Approval Holder and their respective Affiliates for financing the Project, as outstanding as at the Calculation Date;

**“Sponsors Equity Repayment”** means an amount certified by the Auditor as being equal to the aggregate of:

- (i) the sum of all dividend, distribution, interest, profit, fee, premium, charges and other payments in respect of the Sponsors Gross Equity Contribution, actually paid by or on behalf of the Feed-in Approval Holder; and

- (ii) the sum of all re-payment, pre-payment, redemption, re-purchase, return, and other payments in respect of the Sponsors Gross Equity Contribution, actually paid by or on behalf of the Feed-in Approval Holder;

“**Subsidiary**” means, with respect to any person, at any particular time, any person which is directly or indirectly Controlled, or more than 50% of whose issued share capital (or equivalent securities) is then beneficially owned, by that person;

“**Taxes**” means any form of taxation, duty, levy, impost, charge or other similar contribution created or imposed by any state, federal or local government in Malaysia, including any related penalty, interest, fine or surcharge that become payable by the Feed-in Approval Holder as a result of the purchase of the Project by the Distribution Licensee, but excluding any Corporate Tax;

“**Transfer Costs**” means an amount equal to all reasonable costs and expenses of the Feed-in Approval Holder which are incurred or suffered as a result of the purchase of the Project by the Distribution Licensee, including any termination payments or novation fees on contracts in connection with the Project whose terms are reasonable and customary for private power projects such as the Project or were specifically approved by the Distribution Licensee, and all Taxes, any reasonable breakage costs and fees, any registration fees and other reasonable and necessary termination costs that become payable by the Feed-in Approval Holder as a result of the purchase of the Project by the Distribution Licensee, but excluding the Outstanding Indebtedness.

## **D.2 Purchase Price of Project**

### **D.2.1 Purchase after termination for a Feed-in Approval Holder Event of Default**

- (a) If the Distribution Licensee terminates this Agreement pursuant to Clause 14.2 of this Agreement and it has given a Purchase Notice Pursuant to Clause 14.3(a) of this Agreement, the Distribution Licensee shall pay an amount equal to:
  - (i) the Outstanding Indebtedness; **plus**
  - (ii) the “A” Purchase Price as set out in Attachment A of this Appendix D; **plus**
  - (iii) the Transfer Costs; **less**
  - (iv) the Retained Sum.
- (b) Upon payment in full by the Distribution Licensee of the amount set out in D.2.1(a), all the Feed-in Approval Holder’s rights, title and interest in the Project and the Site (including the Access Rights) shall simultaneously be transferred by the Feed-in Approval Holder to the Distribution Licensee (or its nominees) free from any encumbrance whatsoever.

### **D.2.2 Purchase after termination for a Distribution Licensee Event of Default**

- (a) If the Feed-in Approval Holder terminated this Agreement pursuant to Clause 14.2 of this Agreement and the Distribution Licensee is required to purchase the Project



pursuant to Clause 14.3(b) of this Agreement, the Distribution Licensee shall pay an amount equal to:

(A) Where termination occurs before the feed-in tariff commencement date:

- (i) the Outstanding Indebtedness; **plus**
- (ii) the Sponsors Gross Equity Contribution; **plus**
- (iii) the Interest on Sponsors Gross Equity Contribution; **plus**
- (iv) the Transfer Costs; **less**
- (v) the Retained Sum

B) Where termination occurs after the feed-in tariff commencement date:

- (i) the Outstanding Indebtedness; **plus**
- (ii) the “B” Purchase Price as determined in accordance with Attachment A of this Appendix D; **plus**
- (iii) the Transfer Costs.

- (b) Upon payment in full by the Distribution Licensee of the amount set out in D.2.2(a), all the Feed-in Approval Holder’s rights, title and interest in the Project and the Site (including the Access Rights) shall simultaneously be transferred by the Feed-in Approval Holder to the Distribution Licensee (or its nominees) free from any encumbrance whatsoever.

### **D.2.3 Transfer of Project**

- (a) When the Feed-in Approval Holder transfers all rights, title and interests in the Project and the Site (including the Access Rights) to the Distribution Licensee (or its nominees) pursuant to section D.2.1 or D.2.2 of this Appendix D, the transfer shall (to the extent practicable) include all of the Feed-in Approval Holder’s right, title and interest in:
  - (i) all raw materials, consumables and spare parts;
  - (ii) all tangible personal property;
  - (iii) all buildings and fixtures;
  - (iv) computerised and non-computerised records, reports, data, files and information;
  - (v) all drawings, test results and operation and maintenance manuals;
  - (vi) all warranties of equipment, materials and work;
  - (vii) all contract rights and insurance policies;

- (viii) all work in progress under contracts with vendors, suppliers, contractors and subcontractors;
  - (ix) all rights with respect to any insurance proceeds payable to or for the account of the Feed-in Approval Holder, but unpaid at the date of termination of this Agreement, in respect of the Feed-in Approval Holder's right, title and interest in the Project;
  - (x) all user rights, licences, sub-licences or other rights in respect of all patents, trade marks, registered designs, design rights, applications for any of the foregoing, copyrights, trade or business names, inventions, processes, know-how and other industrial property rights purported to be used or required by or in respect of the Renewable Energy Installation;
  - (xi) all fuel stocks either on or off site or any fuel stocks purchased under forward purchase agreement or similar contracts for which the Feed-in Approval Holder has already paid or incurred payment obligations; and
  - (xii) for the avoidance of doubt, the Renewable Energy Installation, the Interconnection Facilities, all plant, equipment and machinery including all power generation and transmission plant, equipment and machinery.
- (b) The Feed-in Approval Holder shall sign all assignments, agreements, licences, sub-licences and other documents in a form required by the Distribution Licensee and procure relevant third parties to sign such documents so as to transfer all rights, title and interest in the Project to the Distribution Licensee (or its nominees) free of encumbrances and the Feed-in Approval Holder shall take all reasonable steps and actions considered by the Distribution Licensee to be necessary or desirable to procure that these rights, title and interest in the Project are transferred to the Distribution Licensee (or its nominees) free of encumbrances.
- (c) Not later than the Financial Closing Date for the Initial Financing Documents, the Feed-in Approval Holder shall provide to the Distribution Licensee a hard copy of the Base Case Financial Model showing:
- (i) the principal amount of senior debt facilities to be provided by the Financing Parties as agreed in the Initial Financing Documents;
  - (ii) the repayment or amortisation schedule of senior debt facilities to be provided by the Financing Parties as agreed in the Initial Financing Documents;
  - (iii) the principal amount of the Sponsors Gross Equity Contribution to be committed by the Feed-in Approval Holder, its shareholders or their respective Affiliates as agreed with the Financing Parties in the Initial Financing Documents and the manner (including amounts of each tranche and the intervals at which the same is contributed) in which the Sponsors Gross Equity Contribution is contributed by the Feed-in Approval Holder, its shareholders or their respective Affiliates, as the case may be.

- (d) Not later than the Calculation Date, the Feed-in Approval Holder shall provide to the Auditor for verification, a statement setting out the following information as at the Calculation Date:
- (i) the actual outstanding principal amount of the senior debt facilities provided by the Financing Parties pursuant to the Financing Documents;
  - (ii) the sum of all dividend, distribution, interest, profit, fee, premium, charges and other payments paid by the Feed-in Approval Holder in respect of the Sponsors Gross Equity Contribution; and
  - (iv) the sum of all re-payment, redemption, re-purchase, return and other payments made by the Feed-in Approval Holder in respect of the Sponsors Gross Equity Contribution.

#### **D.2.5 Redemption of Encumbrance over the Project**

- (a) Where the Outstanding Indebtedness is payable pursuant to D.2.1 and D.2.2 , it shall be paid by the Distribution Licensee directly to the Financing Parties (other than the shareholders of the Feed-in Approval Holder and their respective Affiliates) whose receipt shall be a good discharge for the Distribution Licensee and the Outstanding Indebtedness shall thereby be deemed to have been paid to the Feed-in Approval Holder. Payment of the Outstanding Indebtedness shall, where required by the Distribution Licensee, be in exchange for a transfer or assignment to the Distribution Licensee (or its nominees) of all rights, title and interest in the Initial Financing Documents (other than those in respect of the Sponsors Gross Equity Contribution), documented and evidenced to the satisfaction of the Distribution Licensee.
- (b) Where required by the Distribution Licensee, the Feed-in Approval Holder shall procure that the Financing Parties discharge all securities and other encumbrances given by the Feed-in Approval Holder on or over the Project in exchange for the payment of the Outstanding Indebtedness. For this purpose, the Feed-in Approval Holder shall procure that the Financing Parties sign all re-assignments, discharge of charge, agreements, and other documents in a form required by the Distribution Licensee so as to transfer all rights, title and interest in the Project to the Distribution Licensee (or its nominees) free of encumbrances and the Feed-in Approval Holder shall procure that the Financing Parties shall take all steps and actions considered by the Distribution Licensee to be necessary or desirable to procure that all rights, title and interest in the Project are transferred to the Distribution Licensee (or its nominees) free of encumbrances.

#### **D.3 The Auditor**

- (a) The Auditor shall be appointed by agreement between the Parties or failing agreement by the President for the time being of the Malaysian Institute of Accountants upon an application made by any Party. The Auditor's cost and expenses shall be borne as to 50% by the Feed-in Approval Holder and 50% by the Distribution Licensee.

- (b) the Feed-in Approval Holder shall procure that the Auditor has access to all the books and records of the Feed-in Approval Holder for the purposed of enabling the Auditor to make the relevant certifications and decisions.
- (c) The Parties shall use their respective best endeavours to ensure that the Auditor certifies the amount of the Outstanding Indebtedness, the “B” Purchase Price, the Sponsors Gross Equity Contribution, the Interest on Sponsors Gross Equity Contribution, the Retained Sum or the Transfer Costs as required for the purposes of D2. The Auditor shall act as an expert and not as an arbitrator to the intent that the Auditor’s certification or decision in the absence of manifest error shall be final and binding upon the Parties.

Attachment A to Appendix D  
Determination of Purchase Prices

**DA.1 Purchase according to Section D.2.1**

The “A” Purchase Price shall be equal to ten Ringgit (RM10).

**DA.2 Purchase according to Sections D2.2 and D.2.3**

To determine the “B” Purchase Price, the following equation shall be used:

“B” Purchase Price = QR + SEC - SER - RS, provided that if it results in a negative number, the “B” Purchase Price shall be zero.

Where:

SEC = the sum of all Sponsors Gross Equity Contribution paid to the Feed-in Approval Holder prior to the Calculation Date.

SER = the sum of all Sponsors Gross Equity Repayment paid on or prior to the Calculation Date.

RS = the Retained Sum.

QR = the quarterly return on the SEC, calculated in accordance with the following formula:

$$QR = \sum_{n=1}^N [[(SEC_n - SER_n) \times (1 + X\%)^{(N-n)/4}] - [SEC_n - SER_n]]$$

Where:

SEC<sub>n</sub> = (i) the sum of all Sponsors Gross Equity Contribution paid to the Feed-in Approval Holder within calendar quarter *n*, or

(ii) zero (0), if the cumulative sum of all Sponsors Gross Equity Contribution paid to the Feed-in Approval Holder in each of the full calendar quarters prior to (and including) calendar quarter *n* is greater than SEC.

SER<sub>n</sub> = the sum of all Sponsors Gross Equity Repayment paid within calendar quarter *n*.

*n* = an index, from 1 through N, representing each of the full calendar quarters occurring since the Effective Date.

N = the aggregate number of full calendar quarters occurring between the Effective Date and the Calculation Date (both dates inclusive).

X = 11%

For this purpose, a calendar quarter means a period of three (3) months ending on 31 March, 30 June, 30 September and 31 December.

## Appendix E Feed-in Approval Certificate and Conditions<sup>15</sup>

---

<sup>15</sup> Insert certified true copy of certificate of the feed-in approval issued by the Authority to the feed-in approval holder.