

Form PVI (for renewable energy installations having a rated kWp ≤ 1,000 kWp and utilising solar photovoltaic as its renewable resource) dated 1 December 2011

This renewable energy power purchase agreement is made on _____¹
between

_____²

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

and

_____³

(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 _____⁴ bearing number _____⁵ (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 ascribed to them in the Recitals above and as set out below; and

¹ Insert date of renewable energy power purchase agreement.

² Insert name, company registration number and registered address of applicable distribution licensee.

³ Insert name and residential address, or in the case of a company, name, company registration number and registered address of applicable feed-in approval holder.

⁴ Insert date of applicable feed-in approval.

⁵ 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.

Agreement means this renewable energy power purchase agreement and the appendices hereto as may be amended from time to time in accordance with Clause 12.4;

Authorisation means:

- (a) in relation to the Feed-In Approval Holder, his Feed-In Approval; 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;

Connection Point means the connection point where the Renewable Energy Installation and the supply line are connected in accordance with the applicable provisions of the T&O Rules, as further described in the Appendix.

Declared Annual Availability 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;

Effective Date means the date on which all conditions precedent in Clause 4.1 have been satisfied or waived;

Feed-In Tariff Commencement Date means the date on which all of the conditions precedent set forth in Clause 4.2 shall have been satisfied;

Feed-in Tariff Rate 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 4.2(b);

Financing Documents means the loan agreements, security agreements and any other documents relating to the financing or refinancing and security arrangements for the development, construction and installation of the Renewable Energy Installation and associated facilities which have been or are to be entered into by the Feed-in Approval Holder;

Financing Parties means the Persons providing financing or refinancing to the Feed-in Approval Holder for the development, construction and installation of the Renewable Energy Installation and associated facilities;

Maximum Metered Renewable Energy	means the quantity (in MWh) of Metered Renewable Energy equivalent to 110% of the Declared Annual Availability of the applicable year;
Metered Renewable Energy	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;
Renewable Energy Installation	means the renewable energy installation owned by the Feed-In Approval Holder with all facilities necessary to enable the Distribution Licensee to receive and meter renewable energy from such installation, as described in the Appendix; and
T&O Rules	means the Renewable Energy (Technical and Operational Requirements) Rules 2011;

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 to a “Clause” or “Appendix” are to a clause or appendix in this Agreement;
- (d) 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; and
- (e) references to any statute or statutory provision 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.

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

The 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 Feed-In Tariff Commencement Date

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.

CLAUSE 5: SALE & PURCHASE OBLIGATIONS

5.1 Sale and purchase of Metered Renewable Energy

Starting on the Feed-In Tariff Commencement Date and continuing throughout the effective period, the Feed-In Approval Holder shall sell and deliver, and the Distribution Licensee shall purchase and accept, the Metered Renewable Energy.

5.2 Price

- (a) The price for the Metered Renewable Energy sold and delivered by the Feed-In Approval Holder and purchased and accepted by the Distribution Licensee from the Renewable Energy Installation shall be the Feed-in Tariff Rate.
- (b) The said price shall be fixed throughout the effective period, except when:
 - (i) the Feed-in Approval Holder sells and delivers and the Distribution Licensee purchases and accepts any Metered Renewable Energy in a year in excess of the Declared Annual Availability of such 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.

- (ii) 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.

5.3 Exceptions to the Distribution Licensee's obligation to accept Renewable Energy

Notwithstanding any other provision in this Agreement, the Distribution Licensee shall not be obligated to accept renewable energy from the Renewable Energy Installation if:

- (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; or
- (b) the Distribution Licensee is exempted from doing so by the Authority pursuant to subsection 14(2) of the Act.

5.4 Title and risk of loss

Title to and the risk of loss on 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.

CLAUSE 6: THE FEED-IN APPROVAL HOLDER'S OBLIGATION TO USE SOLAR PHOTOVOLTAIC TECHNOLOGY

The Feed-In Approval Holder undertakes that during the effective period the Feed-In Approval Holder shall operate the Renewable Energy Installation so as to be driven only by solar photovoltaic technology meeting the applicable criteria as set out in the Renewable Energy (Criteria for Renewable Resources) Regulations 2011.

CLAUSE 7: BILLING, PAYMENT ADVICE & PAYMENT

The Parties undertake and agree that the reading of meters, the preparation and issuance of bills or payment advice and payment pursuant thereto 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: TECHNICAL AND OPERATIONAL REQUIREMENTS

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

CLAUSE 9: FORCE MAJEURE EVENT

Neither Party shall be liable for any delays or omissions to the extent they result from events or circumstances beyond their control such as, but not limited to, natural disasters, strikes, war, riots etc. 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.

CLAUSE 10: DEFAULT AND TERMINATION

Without prejudice to any other right or remedy it may have and unless excused under another provision of this Agreement, either Party (the “**Non-Defaulting Party**”) may terminate this Agreement at any time by giving 14 days’ written notice to the other Party (the “**Defaulting Party**”):

- (a) if the Defaulting Party fails to make payments for undisputed amounts due under this Agreement to the Non-Defaulting Party within 60 days after receipt of written notice of such non-payment;
- (b) if the Defaulting Party’s Authorisation is revoked or terminated, and (i) all applicable appeal periods have expired, or (ii) a final decision on the appeal confirming such revocation or termination has been issued;
- (c) if the Defaulting Party fails to comply with any of its other material obligations under this Agreement, and such failure continues uncured for 90 days after notice thereof by the Non-Defaulting Party; or
- (d) if the Defaulting Party becomes bankrupt or insolvent, or if an order is made or a resolution is passed for the winding-up of such Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if a special administrator, receiver and manager or receiver is appointed in respect of such Party or in respect of the whole or any part of such Party’s assets or business, or if such Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.

CLAUSE 11: LIABILITY

11.1 Responsibility

Each Party shall be responsible and liable for all actions, claims, proceedings, costs (including legal costs) and damages arising out of any negligence or breach of the provisions of this Agreement by that Party and/or for personal injury, death or property damage arising out of or in connection with the performance or non-performance of any of that Party's obligations under this Agreement.

11.2 Consequential loss

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.

CLAUSE 12: MISCELLANEOUS PROVISIONS

12.1 Transfers and assignment

- (a) Except as required by the Financing Parties under the Financing Documents or as provided under Clauses 12.1 and 12.3, the Feed-In Approval Holder shall not sell, convey, transfer or otherwise dispose of the Renewable Energy Installation and associated facilities or any material part or any interest therein 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 development, construction and installation of the Renewable Energy Installation and associated facilities 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 Renewable Energy Installation and associated facilities upon a foreclosure sale conducted on behalf of the Financing Parties of the Feed-in Approval Holder's interest in the Renewable Energy Installation and associated facilities or of the issued share capital of the Feed-in Approval Holder; and
 - (dd) 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 Feed-in Approval Holder sells, conveys, transfers or otherwise disposes of the site or building to which the Renewable Energy Installation relates to a new owner, 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, provided that the novation agreement shall be conditional upon the Authority approving both the transfer of the Renewable Energy Installation and the transfer of the Feed-in Approval to such new owner.
- (e) 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.

12.2 Notices

Any notice or other communication required or authorized by this Agreement to be given to a Party shall be given in writing. The address for the delivery of notices, communications and invoices to each Party and the respective telephone and facsimile numbers are as follows:

(a) For the Feed-In Approval Holder:⁶

Attention : _____
Telephone: _____
Facsimile : _____

(b) For the Distribution Licensee:⁷

Attention : _____
Telephone: _____
Facsimile : _____

12.3 Successors and assigns

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

12.4 Modification and amendment

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

12.5 Stamp Duty

The stamp duty on this Agreement shall be borne by the Feed-In Approval Holder.

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

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

12.6 Governing law

This Agreement is governed by and construed in accordance with the laws of Malaysia and the Parties hereby submit to the exclusive jurisdiction of the courts of Malaysia.

12.7 Disputes

In the event of any difference of opinion or dispute between the Parties on any matter relating to this Agreement, either of them may refer such difference or dispute to the Authority and the determination of the Authority shall be final and binding on both of them.

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

SIGNED for and on behalf of)
The Distribution Licensee)
in the presence of:)
)
)
)
)
_____ 8) _____ 9

SIGNED for and on behalf of)
The Feed-In Approval Holder)
in the presence of:)
)
)
)
)
_____ 10) _____ 11

Appendix to Agreement

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⁸ Insert name, NRIC number and designation of witness for signatory/signatories for the distribution licensee.

⁹ Insert name(s), NRIC number(s) and designation(s) of signatory/signatories for the distribution licensee.

¹⁰ Insert name, NRIC number and designation of witness for signatory/signatories for the feed-in approval holder.

¹¹ Insert name(s), NRIC number(s) and designation(s) of signatory/signatories for the feed-in approval holder.

¹² Insert certified true copy of certificate of the feed-in approval, information on location and description of renewable energy installation owned by the feed-in approval holder with all facilities necessary to enable the distribution licensee to receive and meter renewable energy from such installation, including the description of the connection point.