

DATED _____ **DAY OF** _____ **201[•]**

BETWEEN

**TENAGA NASIONAL BERHAD
(COMPANY REGISTRATION NO. 200866-W)
("TNB")**

AND

**[•]
(COMPANY REGISTRATION NO: [•])
("SPS OWNER")**

AND

**[•]
(COMPANY REGISTRATION NO: [•])
("CONSUMER")**

SUPPLY AGREEMENT – RENEWABLE ENERGY

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SAMPLE

SUPPLY AGREEMENT RENEWABLE ENERGY

THIS SUPPLY AGREEMENT RENEWABLE ENERGY is made on the day of 2018;

BETWEEN:

- (1) **TENAGA NASIONAL BERHAD (Company Registration No. 200866-W)**, a public limited liability company incorporated in Malaysia and having its registered office at Pejabat Setiausaha Syarikat, Tingkat 2, Ibu Pejabat Tenaga Nasional Berhad, No. 129, Jalan Bangsar, 59200 Kuala Lumpur, Wilayah Persekutuan (hereinafter referred to as "**TNB**") of the first part;

AND

- (2) **[•] (Company Registration No. [•])**, a private limited liability company incorporated in Malaysia and having its registered office at [•] (hereinafter referred to as the "**SPS Owner**") of the second part;

AND

- (3) **[•] (Company Registration No. [•])**, a private limited liability company incorporated in Malaysia and having its registered office at [•] (hereinafter referred to as the "**Consumer**") of the last part;

(each, a **Party** and, collectively, the **Parties**).

WHEREAS:

- (A) TNB is primarily involved in the business of generation, transmission and distribution of electricity and such other electricity and energy related businesses.
- (B) TNB and the Consumer had entered into the electricity supply contract (Contract No. [•]) (Account No. [•]) dated [•] (hereinafter referred to as the "**Electricity Supply Contract**") for the normal supply of electricity to the Said Premises (as hereinafter defined).
- (C) The SPS Owner proposes to design, construct, install, own, operate and maintain a solar photovoltaic energy generating system with a DC capacity of **[•] kWp** to be located on the Site at the Said Premises to generate and supply solar photovoltaic energy to the Consumer. The Consumer is desirous of purchasing and accepting the solar photovoltaic energy as may be generated by the Solar PV System.
- (D) The Parties hereby agree to enter into this Agreement to record their rights and obligations in relation to the Net Electrical Output generated by the Solar PV System and delivered to and accepted by the Consumer in accordance with the terms and conditions set out in this Agreement.

IT IS HEREBY AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In this Agreement, the following terms shall have the meanings set out against them below:

Act means the Electricity Supply Act 1990 and/or any regulations made thereunder;

Agreement means this Supply Agreement Renewable Energy and the appendices and exhibits attached to it;

Billing Invoice shall have the meaning given to it in Clause 5.1(a);

Billing Period means (i) the period beginning on the Commencement Date and ending on the last day of the month in which the Commencement Date occurs, (ii) each one (1) month period thereafter during the Term, and (iii) the period beginning on the first (1st) day of the month in which the Term expires and ending on the day the Term expires;

Business Day means any day on which commercial banks are open for business in Kuala Lumpur, Wilayah Persekutuan and the state where the Said Premises is situated but excludes public holidays, Saturdays and Sundays;

Commencement Date means the date notified by TNB to the Consumer on which the SPS Owner shall supply and deliver the Net Electrical Output and the Consumer shall accept and purchase the Net Electrical Output from the Solar PV System and make Solar Energy Payments to TNB for the Net Electrical Output from the Solar PV System;

Corporate Authorisation means any authorisation, resolution, approval or consent required under the constituent documents or other internal procedures of a Party;

Emergency Condition means a condition or situation that is in the judgement of TNB, either (a) presents an imminent physical threat of danger to life or property, or (b) threatens the safety, integrity, stability or security of the Solar PV System, or (c) could reasonably be expected to adversely affect the provision of safe, adequate and reliable solar photovoltaic energy supply to the Consumer;

<i>Event of Default</i>	means the occurrence of any of the events described in Clause 12.1 or 12.2, as the case may be;
<i>Execution Date</i>	means the date of execution of this Agreement;
<i>Force Majeure Event</i>	shall have the meaning given to it in Clause 11.1;
<i>Government Authorisation</i>	means any authorisation, consent, concession, decree, permit, waiver, privilege, exemption and approval from, or filing with, or notice to, any Government Entity;
<i>Government Entity</i>	means any national, state or local government of Malaysia and any ministry, department, agency, authority, commission or any such other entity of any national, state or local government of Malaysia;
<i>kW</i>	means kilowatt;
<i>kWac</i>	means kilowatt in alternating current;
<i>kWh</i>	means kilowatt-hour;
<i>kWp</i>	means kilowatt peak;
<i>Late Payment Rate</i>	means a rate equal to one per cent (1%) per month;
<i>Law</i>	means any law, legislation, statute, rule, order, code, regulation, directive, guideline or judgment by court or tribunal thereof which is enacted, issued, promulgated or made by any Government Entity or by any court or tribunal, including any Government Authorisation;
<i>Minimum Energy Payment</i>	means the minimum payment in accordance with Appendix C to be made by the Consumer to TNB in the Billing Period;
<i>Net Electrical Output</i>	means the solar photovoltaic energy generated and delivered to the Consumer from the Solar PV System as measured in kWh by the Solar Energy Meter;
<i>Person</i>	means any individual, corporation, partnership, joint venture, trust, unincorporated organisation or Government Entity;

<i>Purchase Notice</i>	means a notice given by the Consumer pursuant to Clause 12.6(a) or a notice given by the SPS Owner pursuant to Clause 12.6(b);
<i>Ringgit Malaysia</i> or <i>RM</i>	means the lawful currency of Malaysia;
<i>Said Premises</i>	means the premises owned and occupied by the Consumer erected on the piece of land held under [●] bearing the postal address of [●];
<i>Site</i>	means the rooftop of the Said Premises upon which the Solar PV System is to be located, as more specifically described in Appendix D ;
<i>Solar Energy Meter</i>	means the Solar Energy Meter and devices as further described in Appendix B installed within the Said Premises and owned by TNB for the measurement of Net Electrical Output;
<i>Solar Energy Payment</i>	means a payment determined in accordance with Appendix C to be made by the Consumer to TNB for the Net Electrical Output generated and delivered from the Solar PV System;
<i>Solar Energy Rate</i>	Means the rate as described at Appendix C ;
<i>Solar PV System</i>	means the solar photovoltaic energy generating system located on the Site at the Said Premises with a DC capacity of [●] kWp and ancillary equipment and facilities as illustrated in the diagram as attached Appendix A ;
<i>SPS Owner Licence</i>	means the licence to be obtained by the SPS Owner in accordance with and if required by the applicable Law; and
<i>Term</i>	means the period of this Agreement as specified in Clause 2.1.

1.2 Interpretation

Unless the context of this Agreement otherwise requires:

- (a) words of any gender include the other gender;
- (b) words using the singular or plural number also include the plural or singular number, respectively;
- (c) the terms "hereof", "herein", "hereunder", "hereby", "hereto" and similar words refer to this entire Agreement and not any particular Clause, Exhibit, Appendix or any other subdivision of this Agreement;

- (d) a reference to a "Clause", "Exhibit", or "Appendix" are to a clause, exhibit or appendix to 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 statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (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) where provision is made for the giving of notice, certificate, determination, consent or approval by any person that notice, certificate, determination, consent or approval shall be in writing, and the words "notifies," "certifies," "determined," "consent" or "approved" shall be construed accordingly;
- (i) whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. All accounting terms used in this Agreement and not expressly defined shall have the meanings given to them under generally accepted accounting principles of Malaysia applied on a consistent basis; and
- (j) this Agreement shall not be construed adversely to a Party solely because that Party was responsible for preparing it.

2. TERM

2.1 Term

This Agreement shall take effect on the Execution Date and continue in effect for a term of **25 years** which expires on the day before the 25th anniversary of the Commencement Date (including such day), unless otherwise terminated in accordance with the provisions of this Agreement.

2.2 Transfer of the Solar PV System

Upon the expiry of the Term:

- (a) the SPS Owner and TNB shall transfer to the Consumer and take all actions necessary to effect the transfer of all rights, title and interest to the Solar PV System and the Solar Energy Meter respectively so that the Consumer shall become the owner thereof. Upon such transfer, all property and title in the Solar PV System and the Solar Energy Meter shall pass to the Consumer.

- (b) in the event that the Consumer requests for TNB to remove the Solar Energy Meter from the Said Premises, the Consumer hereby agrees that the cost for removing the Solar Energy Meter shall be borne by the Consumer.

3. ELECTRICITY SUPPLY CONTRACT

3.1 Applicability of Electricity Supply Contract

The Parties hereby agree that the terms and conditions as specified in the Electricity Supply Contract shall continue in full force and effect during the Term. It is further agreed that the terms and conditions of the Electricity Supply Contract shall be applicable concurrently with the terms and conditions set out in this Agreement.

3.2 Priority of Agreements

The Parties hereby agree that in the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Electricity Supply Contract, the terms and conditions of the Electricity Supply Contract shall prevail.

4. SUPPLY AND PURCHASE OBLIGATIONS

4.1 Supply and Purchase of Net Electrical Output

Starting on the Commencement Date and continuing throughout the Term:

- (a) the SPS Owner shall deliver and supply to the Consumer and the Consumer shall accept and purchase the Net Electrical Output which is generated by the Solar PV System; and
- (b) the Consumer shall make Solar Energy Payments in full to TNB for such Net Electrical Output at the times stipulated in Clause 5 and in amounts calculated in accordance with **Appendix C**.

4.2 Failure to Accept Net Electrical Output or Vacated Premises

Starting on the Commencement Date and continuing throughout the Term, if the Consumer:

- (a) fails to accept the Net Electrical Output as may be generated and delivered by the Solar PV System or
- (b) vacates the Said Premises, the Consumer shall continue to make Solar Energy Payments to TNB as calculated in accordance with **Appendix C**.

4.3 Temporary Disconnection of Supply

Notwithstanding any provisions to the contrary in this Agreement and in

addition to Clause 11, TNB may temporarily disconnect the supply of solar photovoltaic energy to the Said Premises because of an Emergency Condition or for the purposes of maintenance, repairs, replacements, inspection and/or testing or any other purposes whatsoever connected with or in relation to the proper working of the Solar Energy Meter.

5. BILLING AND PAYMENT

5.1 Billing Invoices

- (a) TNB shall prepare and deliver to the Consumer a monthly bill (a ***Billing Invoice***), either separately or together with the monthly bill issued pursuant to the Electricity Supply Contract, setting out details of the meter reading of the Solar Energy Meter, TNB's calculation of the Solar Energy Payment due to TNB for the immediately preceding Billing Period and the appropriate charges and taxes.
- (b) In the event that TNB has miscalculated or omitted charges for solar photovoltaic energy supplied to the Said Premises, TNB shall be entitled to claim the full amount of the omitted or miscalculated charges in a later Billing Invoice.

5.2 Payment

- (a) The Consumer shall, within thirty (30) days of the date of the Billing Invoice, pay to TNB the amount invoiced in such Billing Invoice.
- (b) If any amount is not paid by the Consumer when due, TNB may impose or levy a surcharge on the amount outstanding, calculated at the Late Payment Rate, from the date such amount became due (including such date) until the date such amount is paid in full (excluding such date).

5.3 No Set-Off

- (a) All payments by the Consumer to TNB under this Agreement shall be made free of any restriction or condition and without deduction on account of any amount disputed or claimed under this Agreement or otherwise.
- (b) All payments by the Consumer to TNB under this Agreement shall be made free of any set-off whether or not the amount is disputed or claimed under this Agreement or otherwise and the Consumer shall pay in full all the amount due and owing.

5.4 Consequence of Non-Compliance

In the event of non-compliance by the Consumer of the provisions under this Clause 5, TNB may, in its absolute right as provided under the Act without any liability whatsoever to the Consumer, disconnect the supply of solar photovoltaic energy and/or electricity to the Said Premises as provided in this Agreement and/or the Electricity Supply Contract which is registered under the Consumer's name.

6. METERING

6.1 Solar Energy Meter Devices

- (a) The Net Electrical Output supplied to the Said Premises under this Agreement shall be measured by the Solar Energy Meter, the space for which shall be prepared and provided for by the Consumer at the location as described in **Appendix B**.
- (b) The SPS Owner shall, at its own cost and expense, install or procure the installation of the Solar Energy Meter as set out in **Appendix B**.
- (c) The Consumer shall provide a secure space of such specifications as advised by TNB specifically for the purpose of installing the Solar Energy Meter at the Said Premises. Access to the space shall only be given to the authorised personnel of the Parties.
- (d) The specifications for the Solar Energy Meter shall be as set out in **Appendix B**. The Solar Energy Meter shall be sealed by TNB and the seal shall not be broken for any reason whatsoever except when the Solar Energy Meter is to be inspected and tested by TNB in accordance with Clause 6.3.
- (e) At all times, the Consumer agrees to keep all locations associated with the Solar Energy Meter clean, clear and accessible to TNB and its authorised agents.

6.2 Transfer of Solar Energy Meter

- (a) Upon the installation of the Solar Energy Meter at the location as described in **Appendix B**, the SPS Owner shall, prior to the Commencement Date, transfer to TNB and take all actions necessary to effect the transfer of all rights, title and interest of the Solar Energy Meter to TNB. Subject to Clauses 2.2 and 6.3, TNB shall thereafter be responsible to inspect, maintain, calibrate and/or test the Solar Energy Meter at its own cost and expense.
- (b) The Consumer warrants that the Consumer and any of its employees, agents, contractors or subcontractors of any tier shall not tamper with or in any manner whatsoever do any harm or damage to or modify or adjust or work on or repair or maintain or interfere with the Solar Energy Meter.

6.3 Inspection or Testing of Solar Energy Meter Devices

- (a) TNB may inspect and test the Solar Energy Meter at its own cost and expense. TNB shall provide the Consumer with reasonable advance written notice of any inspection and tests to be conducted. TNB shall permit a representative of the Consumer to witness and verify all inspections and tests.

- (b) In the event the Consumer or the SPS Owner is of the opinion that the Solar Energy Meter is not functioning properly or registering accurately, the Consumer may request TNB to inspect and test the Solar Energy Meter. TNB shall inspect and test the Solar Energy Meter as soon as practicable after receipt of the written request from the Consumer. The results of any such test by TNB on the Solar Energy Meter shall be deemed final and conclusive. All costs and expenses incurred by TNB for such inspection or testing shall be borne by the Consumer unless, upon such inspection or testing, it is confirmed that the Solar Energy Meter is not functioning in compliance with the specification and standard as set out in **Appendix B** or required under the Act, in which event the cost and expense of such inspection or testing shall be borne by TNB.

7. DISCONNECTION OF SUPPLY

7.1 TNB's Rights to Disconnect Supply

- (a) TNB shall have the sole and absolute rights to disconnect the supply of solar photovoltaic energy to the Consumer (including TNB's rights to disconnect electricity supply to the Consumer under the Electricity Supply Contract) upon the occurrence of any of the circumstances set out in Clauses 4.3, 5.4 and 12 and/or any breach of any provisions of the Act.
- (b) The rights of disconnection of TNB and the exercise of such rights of disconnection shall be without prejudice to TNB's rights and powers under this Agreement, the Electricity Supply Contract and the Act.

7.2 No Liability

TNB shall not be liable for any cessation, interruption, reduction or defect in the supply of solar photovoltaic energy or for any loss of profits, business, opportunity, revenue or goodwill, costs or expenses or for any indirect, consequential, incidental, special, punitive or exemplary damages of any kind whatsoever, suffered or incurred by the Consumer such as, but not limited to, delay, disruption, loss of product, loss of anticipated profits or revenue, loss of use of the equipment or system, non-operation or increased expense of operation of other equipment or systems, cost of capital or cost of purchase or replacement of equipment.

8. REPRESENTATIONS AND WARRANTIES AND ADDITIONAL COVENANTS

8.1 Representations and Warranties of the Consumer

The Consumer represents and warrants to TNB and the SPS Owner that as at the Execution Date:

- (a) the Consumer is a private limited liability company duly organised and validly existing under the laws of Malaysia and the Consumer has all

requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement;

- (b) The execution, delivery and performance by the Consumer of this Agreement has been duly authorised by all necessary action, including applicable Corporate Authorisations, and does not and will not (i) require any consent or approval of the Consumer's Board of Directors or shareholders, other than those that have been obtained, or (ii) result in a breach of, or constitute a default under, any provisions of the Consumer's constitution or incorporation documents, any indenture, contract or agreement to which it is a party or by which it or its assets may be bound, or violate any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Consumer;
- (c) This Agreement constitutes a legal, valid and binding obligation of the Consumer; and
- (d) There is no pending action or proceeding affecting the Consumer before any court, Government Entity or arbitrator that is likely to affect materially and adversely the financial condition or operations of the Consumer and the ability of the Consumer to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

8.2 Representations and Warranties of SPS Owner

The SPS Owner represents and warrants to TNB and the Consumer that as at the Execution Date:

- (a) the SPS Owner is a private limited liability company duly organised and validly existing under the laws of Malaysia and the SPS Owner has all requisite power and authority to conduct its business, to own its properties and to execute, deliver, and perform its obligations under, this Agreement.
- (b) The execution, delivery and performance by the SPS Owner of this Agreement has been duly authorised by all necessary action, including applicable Corporate Authorisations, and does not and will not (i) require any consent or approval of the SPS Owner's Board of Directors other than those that have been obtained, or (ii) result in a breach of, or constitute a default under any provisions of the SPS Owner's constitution or enabling documents, any indenture, contract or agreement to which it is a party or by which it or its assets may be bound, or violate any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the SPS Owner.
- (c) This Agreement constitutes a legal, valid and binding obligation of the SPS Owner.
- (d) There is no pending action or proceeding affecting the SPS Owner

before any court, Government Entity or arbitrator that is likely to affect materially and adversely the financial condition or operations of the SPS Owner and the ability of the SPS Owner to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

8.3 Full Control and Possession of the Said Premises and the Site

- (a) Throughout the Term, the Consumer shall have full control and possession of the Said Premises and the Site, including all necessary ownership rights, title and/or interest of the Said Premises and the Site. The Consumer shall effect and maintain sufficient and adequate insurance on the Said Premises at all times during the Term.
- (b) In the event that the Consumer wishes to sell the Said Premises and the Site to any third party at any time during the Term, the Consumer shall execute a novation agreement in a form required by TNB and the SPS Owner and procure such third party to execute such novation agreement so as to novate all of its rights and obligations under this Agreement to such third party. The Consumer specifically acknowledges that the Consumer shall remain to be bound by the provisions of this Agreement in circumstances where the Consumer leases the Said Premises to a third party.
- (c) In the event that the Consumer wishes to pledge, mortgage, charge, encumber or create any lien on the Said Premises and the Site, in favour of commercial bank or such other financial institution (the **Consumer's Financier**), the Consumer shall, prior to effecting the same, provide TNB and the SPS Owner with at least one (1) month's written notice and procure the Consumer's Financier to provide the SPS Owner and TNB with a written acknowledgement in a form required by the SPS Owner and TNB to expressly acknowledge that:
 - (i) the Solar PV System shall, at all times during the Term, be the property of the SPS Owner and the legal and beneficial ownership in and to the Solar PV System shall, at all times during the Term, remain vested in and with the SPS Owner; and
 - (ii) the Solar Energy Meter shall, at all times, be the property of TNB and the legal and beneficial ownership in and to the Solar Energy Meter shall, at all times, remain vested in and with TNB.
- (d) Where there is existing pledge, mortgage, charge, encumbrance or lien already created on the Said Premises and the Site, the Consumer shall procure that the Consumer's Financier to provide the SPS Owner and TNB with the written acknowledgement as described in Clause 8.3(c) above not later than thirty (30) days from the Execution Date.
- (e) The Consumer shall not create any obstruction and/or undertake any activity in the vicinity of the Said Premises which may interfere, hinder or impact the production of solar photovoltaic energy by the Solar PV System. TNB and/or the SPS Owner shall, at the cost and expense of the Consumer, be entitled to take any reasonable actions to remove

any obstruction created by the Consumer in the vicinity of the Said Premises which may interfere, hinder or impact the production of solar photovoltaic energy by the Solar PV System. For the avoidance of doubt, TNB and/or the SPS Owner shall not be liable to pay any compensation for any losses and/or damages to the Consumer due to the aforesaid removal of obstruction created by the Consumer.

- (f) The Consumer shall, prior to making any proposed extensions or alterations to the Said Premises and/or the Site, inform TNB and the SPS Owner in writing of any such proposed extensions or alterations to the Said Premises and/or the Site. TNB and/or the SPS Owner may recommend modifications or revisions to such proposed extensions or alterations to the Said Premises and/or the Site and the Consumer shall comply with the recommendations made by TNB and/or the SPS Owner if such recommendations relate to the safe operation of the Solar PV System and/or the Solar Energy Meter. For the avoidance of doubt, TNB and/or the SPS Owner shall be entitled to inspect the extension or alteration made the Said Premises and/or the Site if TNB and/or the SPS Owner so desires.
- (g) Notwithstanding any provision in this Agreement to the contrary, in no event shall TNB be liable for any damage or destruction of the Said Premises, property, facilities or equipment owned by the Consumer as a result of any review, recommendation, verification, acceptance, endorsement or approval of any material, documents, studies, designs, drawings, schedules, design data, control and protection settings, test procedures, test results, test reports or other information submitted by the Consumer concerning the proposed extensions or alterations to the Said Premises and/or the Site under this Agreement, or any presence of TNB to witness or inspect any extension or alteration made the Said Premises and/or the Site.
- (h) The Consumer shall comply with the provisions of all statutes, ordinances, by-laws, regulations and rules for the time being in force affecting the Said Premises and the Site or any constructions, improvements, installations, additions or alterations thereon or the Consumer's occupation on the Said Premises and the Site and forthwith to satisfy all requirements of the municipality or any other local authority with respect to the Said Premises and the Site.

8.4 **Ownership of the Solar PV System and the Solar Energy Meter**

- (a) The Consumer irrevocably and unconditionally acknowledges and agrees that the Solar PV System shall, at all times during the Term, be the property of the SPS Owner and the legal and beneficial ownership in and to the Solar PV System shall, at all times during the Term, remain vested in and with the SPS Owner. For the avoidance of doubt, the SPS Owner shall affix labels, plates or other markings on the Solar PV System to indicate that the Solar PV System is owned by the SPS Owner.
- (b) The Consumer further acknowledges and agrees that the Solar Energy Meter shall, during the Term, be the property of TNB and the legal and

beneficial ownership in and to the Solar Energy Meter shall, during the Term, remain vested in and with TNB. For the avoidance of doubt, TNB shall affix labels, plates or other markings on the Solar Energy Meter to indicate that the Solar Energy Meter is owned by TNB during the Term.

- (c) The Consumer shall have no right or interest in the Solar PV System and the Solar Energy Meter and the Consumer shall not during the Term:
 - (i) transfer, sell or otherwise dispose of the Solar PV System or the Solar Energy Meter or do any other act that may infringe upon the SPS Owner's ownership of the Solar PV System and TNB's ownership of the Solar Energy Meter; or
 - (ii) permit or cause the Solar PV System or the Solar Energy Meter to be possessed, modified, altered or used by any third party.
- (d) If, at any time, the title of the SPS Owner or TNB, as the case may be, to the Solar PV System and/or the Solar Energy Meter is impeached, infringed or jeopardised, in consequence of anything done by the Consumer or as a result of the foreclosure of the Said Premises and the Site by the Consumer's Financier, the Consumer shall indemnify all costs and expenses that the SPS Owner or TNB, as the case may be, may incur in removing such impeachment, infringement or jeopardy.

8.5 Inspection of the Solar PV System

- (a) TNB shall, at all times during the Term, be entitled to inspect the Solar PV System.
- (b) Notwithstanding any provision in this Agreement, any inspection by TNB of the Solar PV System or any presence of TNB to witness any test performed on the Solar PV System shall not be deemed to constitute an endorsement of the Solar PV System nor a warranty or other assurance by TNB of the safety, durability or reliability of the Solar PV System or the suitability of the Solar PV System for the Consumer's purposes.
- (c) The SPS Owner shall ensure that the Solar PV System shall conform with the technical requirements as set out in **Appendix A** in all material respects and operated in a safe manner. The Parties agree that it is the responsibility of the registered electrical contractor appointed or engaged or employed by the SPS Owner to ensure that the Solar PV System is safe and in no event shall TNB be liable for damage or destruction or any damage or destruction of the Said Premises, property, facilities or equipment owned by the Consumer as a result of the operation of the Solar PV System.

8.6 Access to the Solar PV System and the Solar Energy Meter

- (a) The Consumer shall, at all times during the Term, provide to TNB and the SPS Owner or their employees, agents or contractors all access rights to the Said Premises and the Site to the Solar PV System and the

Solar Energy Meter for the purposes of carrying out the construction, installation, inspection, testing, operation, maintenance, replacement, removal and/or reading of the Solar PV System and/or the Solar Energy Meter or other relevant things relevant to the supply of solar photovoltaic energy to the Consumer.

- (b) At all times during the Term, the Consumer agrees to keep the location associated with the Solar PV System and the Solar Energy Meter clean, clear and accessible to TNB and the SPS Owner or their employees, agents or contractors.
- (c) The Consumer shall not create any obstruction and/or undertake any activity or place any equipment in the vicinity of the Solar PV System and the Solar Energy Meter which may endanger life or properties and/or to make any electrical wiring and/or installation to the Solar PV System and the Solar Energy Meter. TNB and/or the SPS Owner shall have the right to take any reasonable actions to remove any obstruction created by the Consumer at the cost and expense of the Consumer. For the avoidance of doubt, TNB and/or the SPS Owner shall not be liable to pay any compensation for any losses and/or damages to the Consumer due to the aforesaid removal of obstruction created by the Consumer.

8.7 Upkeep of the Solar PV System and the Solar Energy Meter

The Consumer shall take all steps necessary to ensure that no damage or tampering is caused to the Solar PV System and the Solar Energy Meter. The Consumer shall be liable to TNB and the SPS Owner for any damage caused to the Solar PV System and the Solar Energy Meter due to the fault of the Consumer or any persons under the Consumer's control.

8.8 Permits: Compliance with Laws

- (a) Each Party shall, at its own expense, acquire and maintain in effect, from any and all Government Entities with jurisdiction over such Party, all Government Authorisation.
- (b) The Consumer shall, at all times during the Term, comply with all Laws applicable to it and/or to the Said Premises.
- (c) The SPS Owner shall, at all times during the Term, comply with the terms and conditions of the SPS Owner Licence (if applicable) and all Laws applicable to it and/or to the Solar PV System.

8.9 Continuity of Existence

Each Party shall preserve and keep in full force and effect its corporate existence and all Government Authorisations necessary for the proper conduct of its business.

9. TAXES AND FINES

9.1 Taxes and Fees

The Consumer and the SPS Owner shall pay all present and future taxes (whether national, state or local) imposed in connection with the supply and purchase of solar photovoltaic energy and the ownership, operation and maintenance of the Solar PV System, and, except as otherwise specified below, shall pay all other duties, impositions, assignments, levies, fees, costs and expenses (reasonably incurred) of any kind (whether or not to a Government Entity) necessary to assure the performance of its obligations under this Agreement.

9.2 Fines

- (a) Save as provided in Clause 9.2(b) below, any fines, penalties or other costs incurred by the Consumer or the SPS Owner for non-compliance by the Consumer or the SPS Owner with the requirements of any Law or Government Authorisation shall not be the sole responsibility of the Consumer or the SPS Owner respectively, as the case may be.
- (b) If such fines, penalties or other costs are assessed against TNB by any Government Entity or court of competent jurisdiction due to the non-compliance by the Consumer or the SPS Owner with any Law or Government Authorisation, the Consumer or the SPS Owner respectively, as the case may be, shall indemnify and hold harmless TNB against any and all losses, liabilities, damages and claims suffered or incurred because of the failure of the Consumer or the SPS Owner to comply therewith. The Consumer or the SPS Owner shall also reimburse TNB for any and all legal or other expenses (including lawyers' fees) reasonably incurred by TNB in connection with such losses, liabilities, damages and claims.

10. INSURANCE

10.1 Insurance Required for the Solar PV System

The SPS Owner undertakes to TNB that it shall procure and maintain all relevant insurance(s) as required by TNB against any potential liability, loss or damage arising at common law and/or all relevant laws of Malaysia at its own cost and expense for the purpose of the Solar PV System.

10.2 Scope of Insurance

The SPS Owner shall cause the insurer(s) providing the relevant insurance coverage as described in Clause 10.1:

- (a) to contain a severability of interest provision; and
- (b) to provide for at least sixty (60) days' written notice to TNB prior to the cancellation, termination, non-renewal or material change of any such insurance coverage.

10.3 Premium

The SPS Owner shall ensure that TNB, its directors, officers or employees shall not in any way whatsoever be liable for the payment of any relevant insurance premium(s) required to be procured and maintained in relation to the insurance coverage as described in Clause 10.1.

10.4 Evidence of Insurance

The SPS Owner shall cause such insurer(s) thereof to provide TNB with all relevant certificates of insurance evidencing the policy coverage as described in Clause 10.1. Failure to provide such certificates shall not relieve the SPS Owner of its obligation to procure and maintain all relevant insurance coverage as described in this Agreement, nor shall failure to procure and maintain such insurance coverage or recover any amount from such insurance relieve, or in any way reduce, any obligation or liability imposed on the SPS Owner elsewhere in this Agreement. The SPS Owner shall forthwith upon receipt thereof provide to TNB certificates of insurance coverage as required by this Clause 10 in totality. These certificates shall be made available to TNB within thirty (30) days of inception and/or renewal, as the case may be.

10.5 Nothing in this Clause 10 in totality shall limit the obligations, liabilities and/or responsibilities of the SPS Owner under the terms and conditions of this Agreement. Any amount not insured and/or not recovered from the insurer(s) shall be fully borne by the SPS Owner in accordance with the SPS Owner's obligations, liabilities and responsibilities under this Agreement.

10.6 Notwithstanding any provision in this Agreement to the contrary, in no event shall TNB be liable or responsible to procure and maintain any insurance coverage as described in this Agreement with respect to the Solar PV System which the SPS Owner may fail to procure and maintain.

11. FORCE MAJEURE

11.1 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; and
- (vii) failure to obtain or renew any Government Authorisations.

11.2 **Effect of Force Majeure Event**

Subject to the limitations set out in this Agreement, if a Party is rendered unable by reason of a Force Majeure Event to perform, wholly or in part, any obligation set out in this Agreement, then upon that Party giving notice as specified in Clause 11.3 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 the Force Majeure Event.

11.3 **Notice of Force Majeure and Consequences**

If a Force Majeure Event occurs, the Party affected by it shall:

- (a) as soon as reasonably practicable, give the other Parties 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;
- (b) afford the other Parties reasonable access to its facilities for obtaining further information about the event;
- (c) use, at its own cost, all reasonable efforts to remedy its inability to perform and to resume full performance of its obligations under this Agreement as soon as practicable (provided that such Party shall not be required by this Clause 11.3(c) to settle any strikes on terms that are adverse to such Party and not commercially reasonable);
- (d) keep the other Parties reasonably apprised of such efforts; and
- (e) provide written notice when it resumes the performance of its obligations under this Agreement.

11.4 **Limitations**

- (a) The Party claiming relief under Clause 11.2 shall suspend or be excused

from performance of its obligations under this Agreement to the minimum extent practicable in the circumstances but the Parties shall continue to perform their obligations as to the payment of monies due and payable under this Agreement when such payment becomes due and payable or the giving of any notices which may be required under this Agreement.

- (b) Any relief of a Party's obligations under this Agreement given by Clause 11.2 shall be subject to any limitations explicitly set out in this Agreement.
- (c) The Parties shall only be able to claim the benefit of Clause 11.2 to excuse their obligations under this Agreement for any Force Majeure Event that occurs, or is in effect, after the Execution Date.
- (d) Obligations of the Parties that are required to be completely performed before the occurrence of a Force Majeure Event shall not be excused as a result of it occurring.

11.5 Force Majeure Event Occurring Post-Commencement Date

If a Force Majeure Event affecting the Consumer occurs after the Commencement Date and for the duration such Force Majeure Event persists, the Consumer shall continue to pay the Minimum Solar Energy Payment to TNB in accordance with this Agreement.

11.6 Right to Terminate

- (a) If a Force Majeure Event prevents a Party from substantially performing any material obligation under this Agreement for a period which exceeds one hundred and eighty (180) days, any Party may terminate this Agreement by giving thirty (30) days' written notice of termination.
- (b) In the event of termination of this Agreement under this Clause 11.6, this Agreement shall cease to have any further force or effect and no Party shall have any obligation or liability (save in respect of any antecedent breach) to the other Parties whether at law, hereunder or otherwise.
- (c) Upon termination of this Agreement under this Clause 11.6, TNB and the SPS Owner shall be entitled to remove the Solar Energy Meter and the Solar PV System respectively from the Said Premises within a period as TNB and the SPS Owner reasonably determines necessary.

11.7 Survival of Provisions

The provisions of this Clause 11 shall survive the termination or expiry of this Agreement.

12. DEFAULT AND TERMINATION

12.1 SPS Owner Events of Default

Each of the following events shall constitute an Event of Default by the SPS Owner, unless excused under another provision of this Agreement:

- (a) the SPS Owner fails to comply with or operate in conformity with any obligation of this Agreement and such failure, if capable of remedy, continues uncured for a period of thirty (30) days, after receipt of notice of such failure from the other Party;
- (b) any warranty, representation or covenant made by the SPS Owner in this Agreement is false or inaccurate in any material respect;
- (c) if applicable, the SPS Owner Licence is suspended or revoked or terminated or expired due to the SPS Owner's default, and the SPS Owner has not caused the SPS Owner Licence to be reinstated or renewed within the legally permissible period for such reinstatement or renewal or (ii) after having exhausted all available administrative or legal appeals and applications for such reinstatement or renewal; or
- (d)
 - (i) the SPS Owner is dissolved or liquidated, other than for the purpose of a voluntary dissolution or liquidation as part of a reorganisation or reincorporation;
 - (ii) the SPS Owner applies for or consents to a receiver, manager, custodian, trustee or liquidator being appointed over or taking possession of all or a substantial part of its assets;
 - (iii) the SPS Owner admits in writing its inability to pay its debts as they fall due;
 - (iv) the SPS Owner makes a general assignment or an arrangement or composition with or for the benefit of its creditors;
 - (v) the SPS Owner commences a voluntary case or files a petition seeking to take advantage of any law relating to bankruptcy, insolvency, reorganisation of its debts, winding-up or composition or re-adjustment of its debts;
 - (vi) the SPS Owner fails to dispute in a timely manner, or acquiesces in writing to, any petition filed against it in an involuntary case under any bankruptcy or similar law; or
 - (vii) the SPS Owner takes any action for the purpose of effecting any of the events described in paragraphs (d)(i) through (v) above.

12.2 Consumer Events of Default

Each of the following events shall constitute an Event of Default by the Consumer, unless excused under another provision of this Agreement:

- (a) the Consumer fails to make a payment of any amount of substantial nature which is due and payable under this Agreement within thirty (30) days after receipt of notice of non-payment from the other Party;
- (b) the Consumer fails to comply with or operate in conformity with any obligation of this Agreement (other than a payment obligation) and such failure, if capable of remedy, continues uncured for a period of thirty (30) days, after receipt of notice of such failure from the other Party;
- (c) any warranty, representation or covenant made by the Consumer in this Agreement is false or inaccurate in any material respect; or
- (d)
 - (i) the Consumer is dissolved or liquidated, other than voluntary dissolution or liquidation as part of a reorganisation or reincorporation;
 - (ii) the Consumer applies for or consents to a receiver, manager, custodian, trustee or liquidator being appointed over or taking possession of all or a substantial part of its assets;
 - (iii) the Consumer admits in writing its inability to pay its debts as they fall due;
 - (iv) the Consumer makes a general assignment or an arrangement or composition with or for the benefit of its creditors;
 - (v) the Consumer commences a voluntary case or files a petition seeking to take advantage of any law relating to bankruptcy, insolvency, reorganisation of its debts, winding-up or composition or re-adjustment of its debts;
 - (vi) the Consumer fails to dispute in a timely manner, or acquiesces in writing to, any petition filed against it in an involuntary case under any bankruptcy or similar law; or
 - (vii) the Consumer takes any action for the purpose of effecting any of the events described in paragraphs (d)(i) through (v) above.

12.3 Termination upon Default

If an Event of Default occurs, the non-defaulting Party may terminate this Agreement by giving written notice to the defaulting Party whereupon the effective date of termination of this Agreement shall be thirty (30) days following the date of the written notice. Upon termination of this Agreement under this Clause 12.3, the non-defaulting Party shall be excused and relieved of all obligations and liabilities under this Agreement, except for payment of any amount due and owing by it before the effective date of termination of this Agreement.

12.4 Termination for Convenience

A Party may terminate this Agreement at any time by giving a written notice of not less than thirty (30) days to the other Parties.

12.5 Other Rights and Remedies

- (a) The right of termination shall be in addition to all other rights and remedies available to the non-defaulting Party, at law or in equity or otherwise, for the breach of this Agreement by the other Party and without prejudice to TNB's rights and powers under this Agreement, the Electricity Supply Contract and the Act. Such rights and remedies may include compensation for monetary damages, injunctive relief and specific performance.
- (b) For the avoidance of doubt, upon termination of this Agreement, the Consumer shall be subject to the terms and conditions of the Electricity Supply Contract.
- (c) The provisions of this Clause 12.5 shall survive termination of this Agreement.

12.6 Consequences of Termination

- (a) If the Consumer terminates this Agreement as a result of (i) an Event of Default by the SPS Owner or (ii) the SPS Owner or TNB terminates this Agreement pursuant to Clause 12.4, the Consumer shall have the option but not the obligation, exercisable by prior notice in writing within thirty (30) days of the termination of this Agreement, to purchase the Solar PV System in the manner and for the purchase price determined in accordance with the provisions of **Appendix E**. In the event that the option is exercised, the SPS Owner shall sell the Solar PV System to the Consumer.
- (b) If the SPS Owner or TNB terminates this Agreement as a result of (i) an Event of Default by the Consumer or (ii) the Consumer terminates this Agreement pursuant to Clause 12.4, the SPS Owner shall have the option but not the obligation, exercisable by prior notice in writing within thirty (30) days of the termination of this Agreement, to sell the Solar PV System to the Consumer, in the manner and for the purchase price determined in accordance with the provisions of **Appendix E**. In the event that the option is exercised, the Consumer shall purchase the Solar PV System from the SPS Owner.
- (c) In the event of termination of this Agreement under this Clause 12 and no Purchase Notice is issued, the SPS Owner shall be entitled to remove the Solar PV System from the Said Premises within a period as the SPS Owner reasonably determines necessary.
- (d) Notwithstanding any provision in this Agreement, TNB shall, upon termination of this Agreement under this Clause 12, have the absolute right to remove or to leave the Solar Energy Meter at the Said Premises within a period as TNB reasonably considers necessary and appropriate irrespective of whether a Purchase Notice is issued or not. In the event that the Consumer requests for TNB to remove the Solar Energy Meter

from the Said Premises, the Consumer hereby agrees that the cost for removing the Solar Energy Meter shall be borne by the Consumer.

- (e) The provisions of this Clause 12.6 and **Appendix E** shall survive termination of this Agreement.

13. INDEMNIFICATION AND LIABILITY

13.1 Indemnification

- (a) No 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), which are the consequence of damage to or destruction of property or personal injury (including death) resulting from the performance of this Agreement, unless:
 - (i) otherwise specifically provided in this Agreement, or
 - (ii) the damage or injury arises out of 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 subcontractors.
- (b) The exclusion stipulated in the preceding paragraph shall include 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 solar photovoltaic energy delivered hereunder.
- (c) The Consumer or the SPS Owner shall be liable for and shall indemnify and hold TNB, and its officers, directors, agents, employees, contractors, and subcontractors, 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, resulting from:
 - (i) any act, omission, neglect or default of the Consumer or the SPS Owner or their employees, agents or contractor that arises out of or are in any manner connected with the performance of this Agreement; or
 - (ii) a breach of this Agreement or any applicable Law by the Consumer or the SPS Owner or their employees, agents or contractor that arises out of or are connected with the Building or the design, construction, installation, maintenance or operation of the Solar PV System.
- (d) Notwithstanding any provision in this Agreement to the contrary, in no event shall TNB be liable for any damage or destruction of the Said Premises, property, facilities or equipment owned by the Consumer arising from or in connection with the design, construction, installation, maintenance or operation of the Solar PV System by the SPS Owner or the delivery or supply of solar photovoltaic energy generated by the

Solar PV System or the use or misuse of or contact with the solar photovoltaic energy delivered hereunder.

13.2 **Consequential Damages**

No 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 supply solar photovoltaic energy hereunder, irrespective of the causes of such damages, including fault or negligence.

13.3 **Survival**

The obligations under this Clause 13 arising in connection with any event or circumstances occurring before the termination or expiration of this Agreement shall survive such termination or expiration.

14. **DISPUTE RESOLUTION**

14.1 Each Party shall designate in writing to the other Parties a representative who shall be authorised to resolve a Dispute (as defined in this paragraph) 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 14, 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 or validity thereof.

14.2 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 each Party for resolution. The Parties agree to attempt to resolve all Disputes arising hereunder promptly, equitably and in a good faith manner.

14.3 If any decision on a Dispute is mutually agreed by the designated representatives of the Parties pursuant to Clauses 14.1 or 14.2, such decision shall be final and conclusive as to such Dispute.

14.4 If any Dispute cannot be resolved between the Parties pursuant to Clauses 14.1 or 14.2 above within sixty (60) months (or such further periods as the Parties may agree) after it arises or, if a Party fails to designate a representative or to participate in any attempt to resolve any Dispute pursuant to Clauses 14.1 or 14.2, then any Party may commence the court process in accordance with Clause 16.4.

15. **THE ACT AND TNB NOTICES**

15.1 Nothing in this Agreement shall prejudice or in any manner whatsoever affect any of the rights and powers of TNB as provided in this Agreement, the Electricity Supply Contract and the Act.

- 15.2 The Parties shall at all material time throughout the Term adhere and be bound to or by the Act.
- 15.3 The Consumer and the SPS Owner shall at all times comply with all notices issued by TNB to its consumers from time to time.

16. MISCELLANEOUS

16.1 Transfers and Assignment

- (a) Subject to Clause 8.3(b), the Consumer shall not sell, convey, transfer or otherwise dispose of the Said Premises or any material part or any interest in the Said Premises to any other Person without the prior written notice to TNB and the SPS Owner.
- (b) The SPS Owner shall not sell, convey, transfer or otherwise dispose of the Solar PV System or any material part or any interest in the Solar PV System to any other Person without the prior written consent of TNB.
- (c) Without prejudice to the other provisions of this Agreement, the Consumer or the SPS Owner shall not assign or novate any of its rights and obligations under this Agreement without the prior written consent of TNB.
- (d) TNB shall be entitled to assign, novate or transfer any of its interest, rights and obligations in whole or in part under this Agreement without the prior written consent of the Consumer or the SPS Owner and the Consumer and the SPS Owner hereby agree to execute such agreement and do such things as may be required by TNB to give effect to such assignment, novation and/or transfer.

16.2 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.

16.3 Notices

- (a) Except as otherwise specified in this Agreement, any notice, demand for information or documents required or authorised 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 out below, or if sent to such Party by registered mail, courier or hand delivery to such other address as such Party may designate for itself by notice given in accordance with this Clause 16.3. Any such notice shall be effective only if given by such Party (and not on its behalf by an agent) and upon actual delivery or receipt thereof. 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.

(b) The address for the delivery of notices and bills to each Party and the respective telephone and facsimile numbers are as follows:

(i) For TNB:

Chief Retail Officer

Tenaga Nasional Berhad
Aras 8, Wisma Averis, Avenue 5
Tower 2, Bangsar South City
Off Jalan Kerinchi
59200 Kuala Lumpur
Wilayah Persekutuan

Attention: Ir Megat Jalaluddin Megat Hassan
Telephone: 03 7967 9301
Facsimile: 03 7960 0331

(ii) For the SPS Owner:

[•]

Attention: [•]
Telephone: [•]
Facsimile: [•]

(iii) For the Consumer:

[•]

Attention: [•]
Telephone: [•]
Facsimile: [•]

(c) If a Party changes its notice details as set out in Clause 16.3(b), such Party shall provide the other Parties with prompt notice of any such changes prior to effecting the same.

16.4 **Choice of Law**

This Agreement shall be 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.

16.5 **Entire Agreement**

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

16.6 **Further Assurances**

If a 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 Parties 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.

16.7 Waiver

No waiver by a 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.

16.8 Modification or Amendment

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

16.9 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 Malaysian authority or court of competent jurisdiction, the remainder of this Agreement or the application of such term 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.

16.10 Counterparts

This Agreement may be executed in counterparts all of which shall constitute one agreement binding on the Parties and shall have the same force and effect as an original instrument, notwithstanding that the Parties may not be signatories to the same original or the same counterpart.

16.11 Confidential Information

This Agreement and any information provided by a Party to the other Parties pursuant to this Agreement and labelled "CONFIDENTIAL" shall be utilised 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 with the providing Party's consent, and upon request of the providing Party shall be returned thereto. To the extent that such disclosures are necessary, the Parties also agree that they shall endeavour in disclosing such information to seek to preserve the confidentiality of such disclosures. This provision shall not prevent a Party from providing any confidential information received from the other Parties to any court or government authority as may be required by such court or government authority, provided that, if feasible, the disclosing Party shall have given prior notice to the other Parties of such required disclosure and, if so requested by such other Parties, 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. This provision shall continue for a

period of three (3) years following termination or expiration of this Agreement.

16.12 **Independent Contractors**

The Parties are independent contractors. Nothing contained in this Agreement shall be deemed to create an association, joint venture, partnership or principal/agent relationship between the Parties or to impose any partnership obligation or liability on a Party. No Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Parties in any way.

16.13 **Third Parties**

This Agreement is intended solely for the benefit of the Parties. Save as otherwise expressly stated, nothing in this Agreement shall be construed to create any duty or liability to or standard of care owing to any other Person.

16.14 **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.

16.15 **Language**

- (a) The official text of this Agreement shall be in the English language.
- (b) Except as otherwise specifically provided to the contrary, all documents, notices, waivers and all other communications, written or otherwise, between the Parties in connection with this Agreement shall be in the English language.

16.16 **Time of the Essence**

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

16.17 **Stamp Duties**

This Agreement shall be duly stamped and all stamp duties in relation thereto shall be borne by the Consumer.

16.18 **Personal Data Protection**

- (a) The Parties agree to comply and have adequate measures in place to ensure compliance at all times with the provisions and obligations contained in all applicable laws and regulations in Malaysia, including but not limited to the Personal Data Protection Act 2010, its subsidiary legislation and associated code of practice as amended from time to time in order to collect, use, process, record, hold, store, share and/or disclose any or all information related to the performance and obligations under this Agreement.

- (b) The Consumer and the SPS Owner shall not transfer any Personal Data of a data subject to transferred place outside Malaysia unless:
 - (i) the prior written consent of TNB has been obtained; and
 - (ii) the Consumer or the SPS Owner, as the case may be, shall ensure that such transferred place outside Malaysia must have in force legislation that serves the same purpose or which is at least equivalent to the level of protection afforded by the Personal Data Protection Act 2010.
- (c) The Consumer and the SPS Owner shall implement adequate technical and organisational security measures to protect the Personal Data from any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction.
- (d) The Consumer and the SPS Owner shall have the obligation to securely dispose of all Personal Data whether in written, electronic or other form or media given by TNB, and certify in writing to TNB that such Personal Data has been disposed of securely upon request by TNB at any time during the term or upon termination of this Agreement if it is no longer required for the purpose for which it was to be processed. For avoidance of doubt, the Personal Data Protection Act 2010 does not override other applicable laws in Malaysia that allows retention of documents for a specified period, upon the expiry or termination of this Agreement
- (e) Upon default, the defaulting party shall be liable for and shall indemnify (and keep indemnified) against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor client basis) and demands incurred by the aggrieved party which arise directly or in connection with the defaulting party's processing of Personal Data pursuant to this Agreement, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the data protection legislation by the defaulting party or its employees, servants, agents or representatives.
- (f) For the purpose of information and notification, the Consumer and the SPS Owner hereby warrant and represent that they have read and fully understood TNB's Personal Data Protection Policy at <https://www.tnb.com.my/pdpa>.
- (g) The Consumer and the SPS Owner shall provide assistance as reasonably requested by TNB in relation to any complaint or request made, including by:
 - (i) providing any information reasonably requested by TNB; and
 - (ii) providing TNB with full details of the complaint or request (if any).

- (h) For the purpose of this Clause 16.18, the term “Personal Data” shall have the meaning given to it in TNB’s Personal Data Protection Policy.

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SAMPLE

EXECUTION PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on the day and year first above written.

TNB

Signed for and on behalf of)
TENAGA NASIONAL BERHAD)
in the presence of:)
)
)

.....)
.....)

SPS OWNER

Signed for and on behalf of)
[•])
in the presence of:)
)
)

.....)
.....)

CONSUMER

Signed for and on behalf of)
[•])
in the presence of:)
)
)

.....)
.....)

APPENDIX A

Technical Requirements of Solar PV System

A.1 GENERAL DESCRIPTION

The solar PV system is a [●] kWac photovoltaic (PV) System with the installed capacity of [●] kWdc. The solar PV system is located at [●]. The PV modules are roof mounted with fixed tilt and are connected in series to form strings. The strings are subsequently feed into inverters. The direct current (DC) power produced by the PV modules is converted into Alternating Current (AC) by the inverters.

A.2 MAIN EQUIPMENT DESCRIPTIONS

A.2.1 Photovoltaic Modules

Photovoltaic modules with the following specification, or equivalent, shall be installed in the solar PV system:

Item	PV Module
Manufacturer	JA Solar / Canadian Solar / Jinko Solar
Model Type	Crystalline based modules
Certifications and Standards	Refer to item 4.
Power Tolerance (W)	≥ +0 W
System Voltage	1000 V or 1500 V
Module Efficiency (%)	≥ 16%
Min Nominal Power at STC (PMPP) per module	≥ 300 W
Type of photovoltaic module mounting (fixed or with tracking)	Fixed roof mounted

A.2.2 Inverter

Inverter with the following specification, or equivalent, shall be installed in the solar PV system:

Item	Inverter
Manufacturer	SMA / Huawei / Sungrow
Model Type	String
Rated frequency	50 Hz
Rated Power	230 V / 400 V
Connection Phases	3 phase
Certifications and standards	Refer to item 4.
Protection Rating	IP 65
Efficiency (%)	≥ 97.5%
Anti – islanding Protection	Yes

A.2.3 Operating Requirements

The solar PV system shall operate in accordance with the requirements specified in the Distribution Code and this Agreement.

A.3 PROJECT CODES AND STANDARDS

A.3.1 Compliance with all relevant Malaysian laws, regulations, codes and standards are mandatory for the Project.

(A) The following codes and standards or their equivalent will also be utilized in the design and construction of the Facility:

- i. Crystalline silicon solar PV modules IEC 61215;
 - ii. Thin film PV modules IEC 61646;
 - iii. PV module safety qualification IEC 61730;
 - iv. PV module protection against electric shock IEC 60364-4-41;
 - v. PV module resistance to salt mist and corrosion IEC 61701;
 - vi. PV module performance testing and energy rating IEC 61853-1;
 - vii. Inverter IEC 62109-1 & 2, IEC 61727, IEC 62116;
 - viii. Test procedure of islanding prevention measures for utility-interconnected photovoltaic inverters IEC 62116;
 - ix. Power Conditioning Units IEC61683;
 - x. Balance of system components for photovoltaic system IEC 62093;
- and
- xi. Relevant Malaysian Standards or IEC standards or other international accepted national standards.

(B) SPS Owner shall comply with any revision of the code and standards set out in 4.2 above, where relevant and applicable. Unless a higher or stricter standard or requirement is expressly provided in this Agreement and/or Appendices, the Malaysian standards and regulations shall prevail in the event of a conflict between the Malaysian standards and regulations and any recognised international codes and standards, including those codes and standards set out in 4.2 above, utilised by SPS Owner in the design and construction of the Facility

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APPENDIX B

Description of Solar Energy Meter

B1. Metering Location & Arrangement

The Net Energy Output (kWh) delivered to the Consumer shall be measured by the Solar Energy Meter. The Solar Energy Meter shall be located at [•]. The point of metering shall be connected to the Consumer's distribution board.

B2. Installation of Metering System

As part of the design of Solar PV System, the Solar Energy Meter shall be verified upon commissioning by a qualified calibration institution and shall be procured and installed by The SPS Owner.

B3. Meter Reading

B3.1 In order to verify the quantity of electrical energy delivered to Consumer in each Billing Period, a half (1/2) hourly reading shall be obtained.

B3.2 The Consumer shall at all times give TNB/SPS Owner all access to the location where the Solar Energy Meter is installed for witnessing of meter testing, verification of test result and meter readings at regular schedules agreed by both parties. The metering location shall only be accessed by TNB/SPS Owner with the presence of Consumer's representatives.

B4. Sealing

After verification of the meter, TNB/SPS Owner shall seal the Solar Energy Meter as per current TNB's Practice.

B5. Metering Room

The Solar Energy Meter shall be installed at a mutually agreed location. The specification of the location of the meter shall be in accordance with TNB Electricity Supply Application Handbook (ESAH).

B6. Meter Inspection and Testing

The Solar Energy Meter shall be tested by TNB at a regular schedule determined by TNB in accordance with Prudent Utility Practices. The costs and expense for any additional inspections and tests shall be borne by the requestor.

B7. Custody of Solar Energy Meter

The metering equipment shall be the rights of TNB throughout the contracted period.

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APPENDIX C**Calculation of Solar Energy Payment****C1.0 Definitions**

All capitalised terms shall have the meanings given to them in Clause 1.1 of this Agreement except as otherwise defined herein.

C1.1 Calculations of Solar Energy Payments

The Solar Energy Payments under this Agreement shall be calculated in accordance with the terms of this Appendix C. This Appendix C shall be read in conjunction with and subject to the provisions of Clauses 4 and 5 of this Agreement.

C1.2 Energy Payment

- (A)** Subject to paragraph C1.2(B) below, the Solar Energy Payment for Net Electrical Output delivered in each Billing Period shall be calculated as follows:

SOLAR ENERGY PAYMENT	SEP = NEO x SER
-----------------------------	------------------------

where:

- SEP = the Solar Energy Payment (in RM) in such Billing Period;
- SER = the Solar Energy Rate (at RM0. [●]/kWh); and
- NEO = the Net Electrical Output (in kWh) delivered in such Billing Period.

- (B)** If the Solar Energy Payment relates to a Billing Period which does not comprise a full calendar month, the Consumer agrees that the Solar Energy Payment for such Billing Period shall be determined in accordance with C1.2(A) above.
- (C)** The Minimum Solar Energy Payment = RM 0

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APPENDIX D

Description of the Site

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APPENDIX E

Purchase Price of the Solar PV System

E.1 Definitions

- (a) All capitalised terms shall have the same meanings given to them in Clause 1.1 of this Agreement except as otherwise defined herein.
- (b) When used herein, the defined terms set forth below shall have the following meanings:

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

“**Corporate Tax**” means, for any Financial Year, the aggregate tax payable by the SPS Owner 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 Year**” means the accounting period used by the SPS Owner in respect of the operations of the SPS Owner 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;

“**Taxes**” means any tax, charge, impost, tariff, duty or fee of any kind which is charged, imposed or levied by any Government Entity, including any value added tax, customs duties, sales tax, stamp duty, withholding tax, excise tax, property tax or registration or licence fee, but excluding Corporate Tax; and

“**Transfer Costs**” means an amount equal to all reasonable costs and expenses of the SPS Owner which are incurred or suffered as a result of the purchase of the Solar PV System by the Consumer, including any termination payments or novation fees on contracts in connection with the Solar PV System whose terms are reasonable for private solar photovoltaic power projects such as the Solar PV System, and all Taxes, any reasonable breakage costs and fees, any registration fees and other reasonable and necessary termination costs that become payable by the SPS Owner as a result of the purchase of the Solar PV System by the Consumer.

E.2 Purchase Price of Solar PV System

- (a) If the Consumer gives a Purchase Notice pursuant to Clause 12.6(a) of this Agreement to purchase the Solar PV System, the Consumer shall pay an amount equal to:
- (i) the Said Purchase Price as determined in accordance with Attachment A of this Appendix E; **minus**
 - (ii) the Transfer Costs.

- (b) If the SPS Owner gives a Purchase Notice pursuant to Clause 12.6 (b) of this Agreement to require the Consumer to purchase the Solar PV System, the Consumer shall pay an amount equal to:
 - (i) the Said Purchase Price as determined in accordance with Attachment A of this Appendix E; **plus**
 - (ii) the Transfer Costs.

- (c) Upon payment in full by the Consumer of the amount set out in paragraph E.2(a) and E.2 (b), all rights, title and interest of the SPS Owner in the Solar PV System shall simultaneously be transferred by the SPS Owner to the Consumer (or its nominees) free from any encumbrance whatsoever.

E.3 Transfer of the Solar PV System

- (a) When the SPS Owner transfers all rights, title and interests in the Solar PV System to the Consumer (or its nominees) pursuant to paragraph E.2(b) of this Appendix E, the transfer shall (to the extent practicable) include all of the SPS Owner's right, title and interest in:
 - (i) computerised and non-computerised records, reports, data, files and information;
 - (ii) all drawings, test results and operation and maintenance manuals;
 - (iii) all warranties of equipment, materials and work;
 - (iv) all contract rights and insurance policies;
 - (v) all work in progress under contracts with vendors, suppliers, contractors and subcontractors;
 - (vi) all rights with respect to any insurance proceeds payable to or for the account of the SPS Owner, but unpaid at the date of termination of this Agreement, in respect of the SPS Owner's right, title and interest in the Solar PV System; and
 - (vii) 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 Solar PV System.

- (b) The SPS Owner shall sign all assignments, agreements, licences, sub-licences and other documents in a form required by the Consumer and procure relevant third parties to sign such documents so as to transfer all rights, title and interest in the Solar PV System to the Consumer (or its nominees) free of encumbrances and the SPS Owner shall take all reasonable steps and actions considered by the Consumer to be necessary or desirable to procure that these rights, title and interest in the Solar PV System are transferred to the Consumer (or its nominees) free of encumbrances.

E.4 Said Purchase Price and Transfer Costs

- (a) The SPS Owner and the Consumer shall use their respective best endeavours to reach an agreement in respect of the amount of the Said Purchase Price and the Transfer Costs as required for the purposes of paragraph E.2.
- (b) If the SPS Owner and the Consumer cannot reach agreement on the amount of the Said Purchase Price and the Transfer Costs within thirty (30) days from the date of the Purchase Notice, then the matter shall be determined in accordance with Clause 14.

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Attachment A to Appendix E**Determination of Said Purchase Price**

- (a) The Said Purchase Price shall be determined by reference to the following table:

Assumed Calculation Date	Value of the Said Purchase Price as at the Assumed Calculation Date (in RM million)
Commencement Date	NA
1 st CD Anniversary Date	
2 nd CD Anniversary Date	
3 rd CD Anniversary Date	
4 th CD Anniversary Date	
5 th CD Anniversary Date	
6 th CD Anniversary Date	
7 th CD Anniversary Date	
8 th CD Anniversary Date	
9 th CD Anniversary Date	
10 th CD Anniversary Date	
11 th CD Anniversary Date	
12 th CD Anniversary Date	
13 th CD Anniversary Date	
14 th CD Anniversary Date	
15 th CD Anniversary Date	
16 th CD Anniversary Date	
17 th CD Anniversary Date	
18 th CD Anniversary Date	
19 th CD Anniversary Date	
20 th CD Anniversary Date	
21 st CD Anniversary Date	
22 nd CD Anniversary Date	
23 rd CD Anniversary Date	
24 th CD Anniversary Date	
25 th CD Anniversary Date	

“CD Anniversary Date” means a date falling on the anniversary of the Commencement Date.

- (b) The value of the Said Purchase Price set out above has been determined on the basis that the Calculation Date falls on the Commencement Date or on a CD Anniversary Date. In the event the Calculation Date does not fall on any such date, the value of the Said Purchase Price corresponding to the Assumed Calculation Date immediately prior to the Calculation Date as set out in the table above shall be adjusted in a prorated manner to take into account the number of days between the Calculation Date and such Assumed Calculation Date using the difference between the Said Purchase Price corresponding to the Assumed Calculation Date immediately prior to the Calculation Date and

the Said Purchase Price corresponding to the Assumed Calculation Date immediately following the Calculation Date.

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