

DATED THIS DAY OF , 200 .

BETWEEN

AND

.....

AGREEMENT

AND

GENERAL CONDITIONS OF CONTRACT

.....

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AGREEMENT

The Employer is NUR Generation Sdn. Bhd (Company Number 407808-K), located at the Central Control Building (CCB), Lot 30, Jalan Hi-Tech 4, Kulim Hi-Tech Park, 09000 Kulim, Kedah Darul Aman, Malaysia.

NUR Generation is the power generating arm of NUR Power Sdn. Bhd. (Company No. 807660-K), a company incorporated in Malaysia with its registered office at Unit A1-3-9, Solaris Dutamas, Mont Kiara, 50480Kuala Lumpur.

The Contractor is [].

The Employer desires the provision of [specify services required] and the undertaking of [specify works] in connection therewith at the Kulim Hi-Tech Industrial Park (collectively the “Works”).

OFFER

The Contractor has examined the documents listed in the Appendix which forms part of the Agreement and offers to execute the Works in conformity with the Agreement for the sum of

(in words) _____

(in figures) _____ or such other sum as may be ascertained under the Agreement.

This offer, of which the Contractor has submitted two signed originals, may be accepted by the Employer by signing and returning one original of this document to the Contractor before

_____ (date).

Signature : _____ Date : _____

Name : _____

Capacity : _____

ACCEPTANCE

The Employer has, by signing below, accepted the Contractor's offer and agrees that in consideration for the execution of the Works by the Contractor, the Employer shall pay the Contractor in accordance with the Agreement. The Agreement comes into effect on the date stated below against the signature of the Employer's signatory.

Signature : _____ Date : _____

Name : _____

Capacity : _____

APPENDIX

This Appendix forms part of the Agreement.

Documents forming the Agreement, listed in the order of priority

Document (delete if not applicable)	Document Identification
(a) General Conditions	Schedule One
(b) Contractor Safety Procedure KPP-G-024	Schedule Two
(c) The Invitation to Tender for the Works	Schedule Three
(d) Description of Services & Scope of Work	Schedule Four
(e) Technical Data	Schedule Five
(f) Schedule of Charges	Schedule Six
(g) Implementation Program	Schedule Seven
(h) Insurance	Schedule Eight
(i) Repair Costs - Time & Material Basis	Schedule Nine

<u>Item</u>	<u>(Sub-Clause)</u>	<u>Data</u>
Time for Completion	(7)	
Language	(1.4)	English
Provision of Site	(2.1)	
Authorised person	(3.1)	
Implementation Programme	(7.2)	With the Tender. Dates may be varied later by agreement.
Amount payable due to failure to complete within the Time for Completion	(7.4)	0.4% per day up to a maximum 100% of the contract value of the Works.

Period for notifying defects (9.1) 90 days calculated from the date
of completion of the works

Day work rates (10.2) _____

(details) _____

Valuation of the Works

Re-measurement with bill of quantities (11.1) _____
(details)

Percentage of value of Materials (11.2)

Percentage of retention (11.4)

Insurances (14.1)–

Type of cover _____

Amount of cover _____

Exclusions _____

The Work and Materials for the sum of [RM _____]^{1[1]} plus 15%

Contractor's Equipment Full for it replacement cost _____

Third Party injury to persons and damage to property _____

Workers _____

Other cover: The Employer and the Employer's Operations, Maintenance and Management Company shall be covered as Additional Insureds

^{1[1]} This agreement has no fixed sum stated

SCHEDULE ONE

1 GENERAL CONDITIONS

1.1 Definitions As set out in the Agreement and inclusive of the following:-

The Agreement

1.1.1 **“Agreement”** means the Agreement and the other documents listed in the Appendix thereto, including this General Conditions.

1.1.2 **“Specification”** means the document as listed in Schedule Four including the Employer’s requirements in respect of Works to be carried out by the Contractor, if any, and any Variation to such document.

Persons

1.1.3 **“Employer”** means the person named in the Agreement and the legal successors in title to this person and any assignee of the Employer of whom notice of an assignment in favour of such assignee has been given to the Contractor.

1.1.4 **“Contractor”** means the person named in the Agreement and the legal successors in title to this person, but not (except with the consent of the Employer) any assignee.

1.1.5 **“Party”** means either the Employer or the Contractor.

Dates, Times and Periods

1.1.6 **“Commencement Date”** means the date fourteen (14) days after the date the Agreement comes into effect or any other date agreed between the Parties.

1.1.7 **“day”** means a calendar day.

1.1.8 **“Time for Completion”** means the time for completing the Works as stated in the Appendix (or as extended under Sub-Clause 7.3), calculated from the Commencement Date.

Money and Payments

1.1.9 **“Cost”** means all expenditure properly incurred by the Contractor, whether on or off the Site, including overheads and similar charges, but does not include profit.

Other Definitions

1.1.10 **“Contractor’s Equipment”** means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works but does not include Materials.

1.1.11 “**Country**” means the country in which the Site is located.

1.1.12 “**Employer’s Liabilities**” means those matters listed in Sub-Clause 6.1.

1.1.13 “**Force Majeure**” means any event or circumstance (whether arising from Acts of God, natural causes, human agency or otherwise and including an event of Force Majeure under the Agreement) beyond the control of the Contractor and/or the Employer and including but without prejudice to the generality of the foregoing expression any event not within the control of the Contractor which delays the due performance of the Agreement or which renders the Agreement incapable of being performed and which, by the exercise of due diligence the Contractor is not able to overcome.

1.1.14 “**Good Industry Practice**” means, in relation to a particular undertaking or task to be performed, the exercise of that degree of skill, diligence, prudence and foresight which can reasonably be expected from a fully skilled, experienced and competent contractor who is engaged in the same type of undertaking or task under the same or similar circumstances in a manner consistent with all applicable laws, enactment, orders, regulations and other similar instruments (including but not limited to all applicable health and safety legislation) from time to time in force and with all applicable and generally recognised practices in the relevant industry and includes, but is not limited to, taking steps to ensure that in the undertaking or performance of a task or work:-

- (a) Proper and quality materials, resources and equipment are used;
- (b) Sufficient numbers of personnel, who are adequately experienced and properly trained, are available; and
- (c) Adequate and effective monitoring, supervision, co-ordination and testing are undertaken.

1.1.15 “**Materials**” means things of all kinds intended to form or forming part of the permanent work.

1.1.16 “**Services**” means all those services described in Schedule Four to be provided to the Employer by the Contractor and includes all services as may reasonably be inferred to be required for the provision of the Services consistent with Good Industry Practice.

1.1.17 “**Site**” means the places specified by the Employer where the Works are to be executed, and any other places specified in the Agreement as forming part of the Site.

1.1.18 “**Variation**” means a change to the Specification and/or Site which is instructed by the Employer under Sub-Clause 10.1(Right to Vary).

1.1.19 “**Works**” includes the Services and all the work to be performed by the Contractor, including temporary work and any Variation.

1.2 Interpretation Words importing persons or parties shall include firms and organisations. Words importing singular or one gender shall include plural or the other gender where the context requires.

1.3 Priority of Documents The documents forming the Agreement are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents, the Employer shall issue any necessary instructions to the Contractor, and the priority of the documents shall be in accordance with the order as listed in the Appendix.

1.4 Communications Wherever provision is made for the giving or issue of any notice, instruction, or other communication by any person, unless otherwise specified such communication shall be in the language of the Agreement and shall not be unreasonably withheld or delayed.

2 THE EMPLOYER

2.1 Provision of Site; The Employer shall provide the Site and right of access thereto at the time indicated in the Appendix.

2.2 Permits and Licences The Employer shall, if requested by the Contractor, assist the Contractor in applying for permits, licences or approvals which are required for the Works but the liability and responsibility to obtain any such permits, licences or approvals shall lie with the Contractor.

2.3 Employer's Instructions The Contractor shall comply with all instructions given by the Employer in respect of the Works, including the suspension of all or part of the Works.

2.4 Approvals No approval or consent or absence of comment by the Employer or the Employer's representative shall affect the Contractor's obligations.

2.5 Scope of Authority The Contractor shall not be the Employer's agent and shall not make any contracts, agreements, representations or promises on the Employer's behalf and further shall not bind the Employer to any obligation whatsoever or in any way act as an agent of the Employer.

The Contractor shall not, without the prior written approval of the Employer, represent itself as being in anyway connected with or interested in the business of the Employer.

3 EMPLOYER'S REPRESENTATIVES

3.1 Authorised Person ; One of the Employer's personnel or agents shall have authority to act for him. This authorised person shall be as stated in the Appendix, or as otherwise notified by the Employer to the Contractor.

References in the Agreement to instructions being given by the Employer in respect of the Works shall include any instructions given by the Employer's representative.

4 THE CONTRACTOR

4.1 General Obligations; The Contractor shall carry out the Works properly in accordance with Good Industry Practice and subject always to the terms of the Agreement. The Contractor shall provide all supervision, labour, Materials, and

Contractor's Equipment which may be required. All Materials on Site shall be deemed to be the property of the Employer.

The Contractor shall use its best efforts to ensure that it employs in the execution of the Agreement only Malaysian citizens as workmen. If in any particular trade or skill required to complete the Works or provide the Services, the Contractor can show to the satisfaction of the Employer that Malaysian citizens are not available, then the Contractor may employ non-Malaysian citizens subject to the approval of the relevant Malaysian Government authorities

The Contractor shall, upon the Employer's written instruction, remove from the Works any person employed by the Contractor in the execution of the Works who, in the opinion of the Employer, misconducts himself or is incompetent or negligent.

4.2 Contractor's Representative The Contractor shall submit to the Employer for its consent the name and particulars of the person authorised to receive instructions on behalf of the Contractor. The **Contractor's representative** shall be fluent in Bahasa Malaysia and English.

Any instruction or notice which the Employer gives to the Contractor's representative shall be deemed to have been given to the Contractor.

4.3 Subcontracting The Contractor shall not sub-contract the whole of the Works. The Contractor shall not sub-contract any part of the Works without the consent of the Employer.

4.4 Warranties The Contractor warrants to the Employer that:-

- (i) they are fully experienced and qualified to perform the duties and responsibilities necessary to carry out the Works in accordance with this Agreement and they possess the required professional expertise, organisation, knowledge and availability of able, skilled and experienced personnel, for the purpose of providing the Works to the Employer;
- (ii) they will exercise in the performance of the Works, that degree of skill, care and diligence as may be expected of a qualified and competent Contractor in the provision of like services for works of similar type, size, scope, complexity to and monetary value of the Works;
- (iii) they have been provided with sufficient information in the documents provided to them to ascertain the scope and nature of the Works;
- (iv) they have performed and will continue to perform their obligation promptly and in a proper and efficient manner and in accordance with all applicable laws, enactment, orders, regulations and other similar instruments (including but not limited to all applicable health and safety legislation) from time to time in force and in accordance with Good Industry Practice;
- (v) they are fully conversant with all technical and commercial requirements for the proper implementation of the Specifications;

- (vi) they have the full capacity and authority and all necessary licence, permits and consents to enter into and provide the Works under the Agreement;
- (vii) this Agreement constitutes valid, binding and enforceable obligations of the Contractor in accordance with its terms;
- (viii) all Material supplied and/or Work done in the course of the provision of the Works shall be in accordance with the terms and conditions of the Agreement; and
- (ix) all statements and representation in the offer made by the Contractor to the Employer are, to the best of the Contractor's knowledge, information and belief, true and accurate and it has and will advise the Employer of any fact, matter or circumstance of which it has become aware since the offer which would render any such statement or representation made therein to be false or misleading.

5 WORKS BY CONTRACTOR

5.1 Contractor's Works The Contractor shall carry out the Works to the extent specified, in accordance with the Specifications in Schedule Four, within the time frame stipulated by the Appendix and under the terms and conditions of the Agreement.

5.2 Responsibility for Works The Contractor shall remain responsible for the Works and the Services under the Agreement, both of which shall be fit for the intended purposes required by the Agreement and the Contractor shall also remain responsible for any infringement of any patent, registered design, copyright, trade mark or trade name or other intellectual property rights. The Contractor shall indemnify the Employer against all claims of infringement of any patent, registered design, copyright, trade mark or trade name or other intellectual property rights provided that all of the following conditions are satisfied:

- (a) the claim or proceedings arise out of the design, construction, manufacture or use of the Works undertaken by the Contractor.
- (b) the right was protected at the date of the Agreement in the Contractor's country or the Country.
- (c) the infringement or allegation or infringement was not caused by the use of any of the Works otherwise than for the purpose indicated by or reasonably to be inferred from the Specifications for the Works (Schedule Four).

The infringement or allegation of infringement was not caused by the Contractor following the design or instructions of the Employer or the Employer's representative.

5.3 Suspension of Works The Employer may at any time by notice in writing to the Contractor require the Contractor forthwith to suspend performance of all or any part of the Works under this Agreement.

If the Employer does not require the Contractor to resume performance of the Works so suspended within a period of nine (9) months from the date of the notice then upon expiry of the said nine (9) months period either party may terminate the Contractor's

employment by giving the other written notice to that effect, such termination having effect from the date of the notice.

In any case in which the Employer has required the Contractor to suspend all or any part of the Works under this clause the Employer may, within nine (9) months require the Contractor by notice in writing, to resume the performance of the Works in accordance with the provisions of the Agreement.

6 EMPLOYER'S LIABILITIES

6.1 Employer's Liabilities In this Agreement, Employer's Liabilities mean :

- (a) any operation of the forces of nature affecting the Site and/or the Works, which was unforeseeable or against which an experienced contractor could not reasonably have been expected to take precautions;
- (b) a suspension under Sub-Clause 5.3 unless it is attributable to the Contractor's failure;
- (c) any delay or disruption caused by any Variation not attributable to the Contractor's failure;
- (d) any change to the law of the Agreement as stated in the Agreement; and
- (e) losses arising out of the Employer's right to have the permanent work executed on, over, under, in or through any land, and to occupy the Site.

7 TIME FOR COMPLETION

7.1 Execution of the Works The Contractor shall commence the Works on the Commencement Date and shall proceed expeditiously and without delay and shall complete the Works within the Time for Completion.

7.2 Implementation Programme Within the timeframe stated in the Appendix, the Contractor shall submit to the Employer for its approval a programme for the Works in the form stated in Schedule Six. No material alteration to the approved programme shall be made without the approval of the Employer or the Employer's representative.

7.3 Extension of Time Subject to Sub-Clause 10.3 (Early Warning), the Contractor shall be entitled to an extension to the Time for Completion if it is or will be delayed by any of the Employer Liabilities as set out in Clause. 6.1 above.

On receipt of an application from the Contractor, the Employer shall consider all supporting details provided by the Contractor and shall extend the Time for Completion as appropriate or reject any application for such extension.

7.4 Late Completion If the Contractor fails to complete the Works within the Time for Completion, the Contractor's liability to the Employer for such failure shall be to pay the amount stated in the Appendix for each day by which he fails to complete the Works.

8 TAKE-OVER

8.1 Completion The Contractor shall notify the Employer when it considers that the Works are complete.

8.2 Taking-Over Notice The Employer shall, upon its being satisfied that the Works are complete, take over the Works by issue of a notice taking over the works. The issue of this notice shall be at the Employer's discretion. The Contractor shall promptly upon issue of this notice complete any outstanding work and, subject to Clause 9, clear the Site.

9 REMEDYING DEFECTS

9.1 Remedying Defects The Employer may at any time, prior to the expiry of the period stated in the Appendix, notify the Contractor of any defects or outstanding work. The Contractor shall remedy at no cost to the Employer any defects due to the Contractor's Material supplied or workmanship not being in accordance with the Agreement.

Failure to remedy any defects or complete outstanding work within a reasonable time of the Employer's notice shall entitle the Employer to carry out all necessary work at the Contractor's cost.

9.2 Uncovering and Testing The Employer may give instruction as to the uncovering and/or testing of any work. Unless as a result of any uncovering and/or testing it is established that the Contractor's Materials or workmanship are not in accordance with the Agreement, the Contractor shall be paid for such uncovering and/or testing as a Variation in accordance with Sub-Clause 10.2.

10 VARIATION AND CLAIMS

10.1 Right to Vary The Employer may instruct Variations.

The Contractor shall not vary or alter any of the Works, except in accordance with a Variation instructed by the Employer.

On receipt of a Variation instruction, the Contractor shall forthwith proceed to carry out the Variation and be bound in so doing as if such Variation was stated in the Agreement.

The Works and Services shall not be delayed pending any agreement or determination of the valuation of the Variation or any extension to the Time for Completion that may be requested by the Contractor.

10.2 Valuation of Variations Variations shall be valued as follows:

- (a) at a lump sum price agreed between the Parties;
- (b) where appropriate, at rates in the Agreement;

- (c) in the absence of appropriate rates, the rates in the Agreement shall be used as the basis for valuation, or failing which at appropriate new rates, as may be agreed or which the Employer considers appropriate; or
- (d) if the Employer so instructs, at day work rates set out in Schedule Nine, for which the Contractor shall keep records of hours of labour and Contractor's Equipment, and of Materials used.

10.3 Early Warning A Party shall notify the other as soon as the other is aware of any circumstance which may delay or disrupt the Works, or which may give rise to a claim for additional payment. The Contractor shall take all reasonable steps to minimise these effects.

The Contractor's entitlement to extension to the Time for Completion or additional payment shall be limited to the time and payment which would have been due if the Contractor had given prompt notice and had taken all reasonable steps.

10.4 Right to Claim If the Contractor incurs Cost as a result of any of the Employer's Liabilities, the Contractor shall be entitled to the amount of such Cost. If as a result of any of the Employer's Liabilities, it is necessary to change the Works, this shall be dealt with as a Variation.

10.5 Variation and Claim

Procedure The Contractor shall submit to the Employer an itemised make-up of the value of Variations and claims within 28 days of the instruction or of the event giving rise to the claim. The Employer shall check and if possible agree the value. In the absence of agreement, the Employer shall determine the value.

11 AGREEMENT PRICE AND PAYMENT

11.1 Valuation of the Works The Works shall be valued as provided for in Schedule Six, subject to Clause 10.

11.2 Monthly Statements The Contractor shall be entitled to be paid at monthly intervals:

- (a) the value of the Works executed; and
- (b) the percentage stated in the Appendix of the value of Materials delivered to the Sites at a reasonable time

subject to any additions or deductions which may be due.

The Contractor shall submit each month to the Employer a statement showing the amounts to which it considers itself entitled.

11.3 Interim Payments Within 28 days of delivery of each statement, the Employer shall pay to the Contractor the amount shown in the Contractor's statement less retention at the rate stated in the Appendix, and less any amount for which the Employer has specified its

reasons for disagreement. The Employer shall not be bound by any sum previously considered by it to be due to the Contractor.

11.4 Payment of First Half of Retention One half of the retention shall be paid by the Employer to the Contractor within 14 days after issuing the notice under Sub-Clause 8.2.

11.5 Payment of Second Half of Retention The remainder of the retention shall be paid by the Employer to the Contractor within 14 days after either the expiry of the period stated in the Appendix, or the remedying of notified defects or the completion of outstanding work, all as referred to in Sub-Clause 9.1, whichever is the later.

11.6 Final Payment Within 42 days of the latest of the events listed in Sub-Clause 11.5 above, the Contractor shall submit a final account to the Employer together with any documentation reasonably required to enable the Employer to ascertain the final value.

Within 28 days after the submission of this final account, the Employer shall pay to the Contractor any amount due. If the Employer disagrees with any part of the Contractor's final account, he shall specify his reasons for disagreement when making payment.

11.7 Currency Payment of any amounts due under the Agreement shall be in Malaysian Ringgit unless with the prior agreement of the Employer.

11.8 Taxes All taxes, duties, and charges imposed or levied in Malaysia or overseas in connection with the performance by the Contractor of its obligations under the Agreement are included in the sum stated in the Agreement and shall be borne by the Contractor.

12 DEFAULT

12.1 Default by Either Party If either Party (the “**Defaulting Party**”)

- (i) commits a material breach of the Agreement which is incapable of being remedied or being capable of remedy is not remedied within 60 days from the date on which notice requiring it to do so shall have been given to it by the other Party hereto;
- (ii) permits whether with its concurrence or by default or otherwise an order to be made or an effective resolution to be passed for its winding up (except for the purposes of a reconstruction or amalgamation) and such order or resolution is not rescinded or rendered ineffective within 30 days from the date it is made;
- (iii) is unable to pay its debts as they fall due or makes an assignment for the benefit of or enter into any arrangement or composition with its creditors, then the other party hereto (the “**Non-Defaulting Party**”) may (in addition to seeking contractual damages or remedies permitted by law), by 7 days' notice in writing, terminate the Agreement. In such event the Contractor shall vacate the Site and deliver possession of the same to the Employer.

12.2 Consequences of Suspension or Termination

Upon suspension of the Works or upon any termination of the Contractor's engagement the Contractor shall take immediate steps to bring to an end the Works or such part thereof as is suspended in an orderly manner but with all reasonable speed and economy and shall discontinue making commitments and shall cause to be delivered to the Employer all documentation (including any computer accessible medium) in the Contractor's possession (whether in the course of preparation or completed) relating to the Works or the relevant part thereof to the Employer or to whomever else the Employer shall direct and within seven (7) days of such other period as the Employer may reasonably direct.

If the Works is terminated otherwise than by reason of some default of the Contractor or some other matter for which the Contractor is responsible under the terms of this Agreement the Contractor shall be paid:-

- (i) all amounts which shall have accrued or been certified as due up to the date of termination;
- (ii) all reasonable costs and expenses incurred by the Contractor in respect of all Materials and works-in progress as verified by the Employer;
- (iii) all reasonable costs and expenses reasonably incurred in connection with the termination of the Agreement including termination costs payable to advisers, contractors, consultants and managers engaged by the Contractor for earlier termination of their contracts with the Contractor; and
- (iv) compensation for loss of profits suffered by the Contractor for that particular year in which the termination occurs, being a sum to be agreed between the parties or decided and awarded by a Court of law or arbitration.

In the case of suspension of the whole or part of the Works otherwise than by reason of some default of the Contractor or some other matter for which the Contractor is responsible under the terms of this Agreement the Employer in addition shall pay:-

- (i) such cost which are reasonably, properly and not prematurely incurred as the Employer may have agreed should be continued for the period of any suspension;
- (ii) in the case of partial suspension only, such further installments of the payment as they fall due (for the avoidance of doubt, ascertained with respect only to those Works not suspended); and
- (ii) the reasonable costs properly and not prematurely incurred by the Contractor to resume performance of the Works (or any part thereof in the case of partial suspension) to the extent so instructed by the Employer.

If the Contractor's appointment is suspended or terminated by reason of some default of the Contractor, the Employer may (but is not obliged to) employ and pay other persons to carry out and complete the Works as may be necessary for the proper carrying out and

completion of the Works. Until completion by the other persons, the Employer shall not be bound by any provision of this Agreement to any further payment to the Contractor but upon such completion, and the verification within a reasonable time of the accounts therefor, the Employer shall determine the amount of expenses (including the amount of any loss and/or damage) properly incurred by the Employer as a result of the termination or suspension and, if such amounts when added to the monies paid to the Contractor before the date of the termination or suspension exceed the total amount which would have been paid on due completion if the Works in accordance with this Agreement the difference shall be a debt payable to the Employer by the Contractor; and if the said amounts when added to the said monies be less than the said total amount the difference shall be a debt due by the Employer to the Contractor. Where the Employer elects not to employ and pay other persons to carry out and complete the Works, the provisions of this paragraph shall *mutatis mutandis* apply as if the Employer had employed and paid such other persons but it shall be for the Employer to determine the amount of expenses (including the amount of any loss and/or damage) that might be or might have been incurred by the Employer as a result of the termination or suspension.

In the event that the Employer instructs the Contractor to resume the Works after suspension in whole or in part as a result of some default of the Contractor, then the Contractor shall not be entitled to any payments whatsoever in respect of the period of suspension save in respect of any Works not so suspended.

Upon suspension or termination of the Contractor's appointment howsoever rising the Employer shall not be liable to the Contractor for any loss or profit, loss of contracts, or other losses and/or expenses arising out of or in connection with such suspension or termination.

Termination of the Contractor's engagement shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other howsoever arising prior to such termination.

If so required by the Employer the Contractor shall, upon termination of their employment under the Agreement for whatever reason, assign to the Employer or its nominee without payment the benefit of any agreement which the Contractor has entered into for performance of any of the Works or novate without payment such agreements to the Employer or its nominee and the Contractor shall execute all documents and perform all acts necessary to perfect such assignment or novation as the case may be.

13 RISK AND RESPONSIBILITY

13.1 Risk The Contractor shall be responsible for the care of the Works and bear the risk of any loss or damage to the same from the Commencement Date until the issuing of the notice under Sub-Clause 8.2.

13.2 Force Majeure Either Party shall notify the other in writing of the occurrence of any event of Force Majeure and of the cessation of such event.

If the event continues for a period of 184 days, either Party may then give a notice of termination which shall take effect 28 days after the giving of the notice.

After termination, the Contractor shall be entitled to payment of the unpaid balance for the value of the Works executed and of the Materials reasonably delivered to the Site, adjusted by the following:

- (a) any sums to which the Contractor is entitled under Sub-Clause 10.4 (Right to Claim);
- (b) the Cost of the Contractor's suspension and demobilisation; and
- (c) any sums to which the Employer is entitled.

The net balance due shall be paid or repaid within 28 days of the notice of termination.

14 INSURANCE

14.1 Extent of Cover The Contractor shall, prior to commencing the Works, effect and thereafter maintain insurances in the joint names of the Parties until the Works are complete and (if applicable) until the expiry of the period stated in the Appendix, for the remedy by the Contractor pursuant to Clause 9 of any defects or outstanding work:

- (a) for loss and damage to the Works, Materials, and the Contractor's Equipment;
- (b) for liability of both Parties for loss, damage, death or injury to third parties or their property arising out of the Contractor's performance of the Agreement, including the Contractor's liability for damage to the Employer's property other than the Works; and
- (c) for liability of both Parties and of any Employer's representative for death or injury to the Contractor's personnel except to the extent that liability arises from the negligence of the Employer, any Employer's representative or employees.

14.2 Arrangements All insurances shall conform with any requirements detailed in Schedule Eight. The policies shall be issued by insurers and in terms approved by the Employer. The Contractor shall provide the Employer with evidence that any required policy is in force and that the premiums have been paid.

All payments received from insurers relating to loss or damage to the Works shall be paid to and held by the Employer to be used for the repair of the loss or damage or as compensation for loss or damage that is not to be repaired.

14.3 Failure to Insure If the Contractor fails to effect or keep in force any of the insurances referred to in the previous Sub-Clauses, or fails to provide satisfactory evidence, policies or receipts, the Employer may, without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other monies due to the Contractor.

15 RESOLUTION OF DISPUTES

15.1 Arbitration Any dispute, controversy or claim arising out of relating to this Agreement, or the breach, termination or invalidity thereof, shall be decided by arbitration in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration.

The appointing authority shall be the Kuala Lumpur Regional Centre for Arbitration.

The number of arbitrators shall be one.

The place of arbitration shall be Malaysia.

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

16 CONFIDENTIALITY

Save in respect of purposes expressly sanctioned by this Agreement, no information or documentation given or prepared for or in connection with this Agreement shall be disclosed or divulged by the Contractor without the prior written approval of the Employer to any third party or used by the Contractor otherwise than for the purposes of this Agreement. This restriction shall continue to apply, without limitation in point of time, unless and until such information or documentation comes properly into the public domain through no fault of the Contractor. This restriction shall continue to apply, notwithstanding the completion of the Works or earlier termination of this Agreement for any reason whatsoever.

The Contractor shall not, without the prior written knowledge of the Employer take or knowingly permit to be taken any photographs of the Site or of the Works done for use in any publicity or advertising or publish, whether alone or in conjunction with any other person, any articles, photographs or other illustrations relating to the whole or any part of the Site nor shall it impart to any publication, journal or newspaper or any radio or television programme any information regarding the Site or the Works done on the Site.

17 INDEMNITY

The Contractor shall indemnify and save harmless the Employer, its employees, representative, agents or sub-contractors against and from all costs, claims, damages, losses, expenses, demands, causes of action and proceedings of whatsoever nature arising from or contributed by:-

- (i) any negligent act, omission, default or breach by the Contractor, its servants, agents or sub-contractors which results in any liability to the Employer, its employees, representative, agents or sub-contractors under applicable laws, enactment, orders, regulations and other similar instruments (including but not limited to all applicable health and safety legislation) from time to time in force or to any third party; and

- (ii) any negligence or breach of statutory duty on the part of the Contractor, its servants, agents or sub-consultants. Provided that the obligation of the Contractor to indemnify the Employer against any such cost, claims, damages, losses, expenses, demands, causes of action and proceedings, shall be reduced to the extent that the same shall be caused or contributed to by any act, omission, default, or breach of the Employer, its servants or agents.

18 NOTICES Any notice or other communication whether required or permitted to be given by one party hereto the other shall be deemed to have been duly given if signed by or on behalf of a duly authorised representative of the party giving the notice and:-

- (i) if delivered, at the time of delivery to the addressee or its duly authorised representative;
- (ii) if sent by prepaid post, four days after posting if addressed to the party to whom such notice is to be given at the address set forth for such party in the Agreement (or other such address as is from time to time notified to the other party hereto);
- (iii) if transmitted by facsimile, on receipt of an error free transmission report to such facsimile number or numbers from time to time notified to the other party.

All notices to the Employer under the Agreement shall be sent to :

NUR Generation Sdn. Bhd.

Central Control Building

Lot 30, 12 & 361-365

Jalan Hi-Tech 4

Kulim Hi-Tech Park

09000 Kulim

Kedah Darul Aman

19 WAIVER The waiver by either party of a breach or default of any of the provisions of the Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

No examination or lack of examination by the Employer of any documents or matters referred to the Employer by the Contractor shall in any respect modify, limit or extinguish any obligation or liability of the Contractor under the Agreement.

It is agreed and declared that provisions or requirements in this Agreement, that matters or works be done to the satisfaction of or be accepted or confirmed by the Employer or

with the consent or approval of the Employer are inserted as protection to the Employer additional to any other rights whatsoever which the Employer may have for breach of any obligation under this Agreement. No payment by the Employer nor any expression or implication of satisfaction or acceptance nor any confirmation, consent, approval or notice by the Employer shall restrict, debar, exclude or waive any claims or actions whatsoever by the Employer for any breach of its obligations by the Contractor.

20 GOVERNING LAW The Agreement shall be governed by and interpreted according to the laws for the time being in force in Malaysia.