

**SUNWAY TREASURY SUKUK SDN BHD
(FORMERLY KNOWN AS FANTASTIC PROLINK SDN BHD) (“THE ISSUER”)**

PRINCIPAL TERMS AND CONDITIONS OF THE PROPOSED ISSUE

1. BACKGROUND INFORMATION

(a) Issuer

- (i) Name Sunway Treasury Sukuk Sdn Bhd (formerly known as Fantastic Prolink Sdn Bhd) (the “**Issuer**”).
- (ii) Address Level 16, Menara Sunway
Jalan Lagoon Timur, Bandar Sunway
47500 Subang Jaya
Selangor Darul Ehsan.
- (iii) Company number 1088200-V.
- (iv) Date and place of incorporation 8 April 2014/ Malaysia.
- (v) Date of listing Not applicable.
- (vi) Status on residence, i.e. whether it is a resident controlled company or non-resident controlled company Resident-controlled company.
- (vii) Principal activities The Issuer is a special purpose vehicle for the purpose of conducting treasury and financing operations, including but not limited to advancing, depositing or lending money to its related companies.
- (viii) Board of Directors The directors as at 15 July 2014 are listed below:
1. Chong Chang Choong
2. Tan Poh Chan
- (ix) Structure of shareholdings and names of shareholders or, in the case of a public company, names of all substantial shareholders The shareholder and shareholding structure of the Issuer as at 15 July 2014 are listed below:

Name	No. of ordinary shares held	%
Sunway Treasury Sdn Bhd	300,000	100

- (x) Authorized, issued and paid-up capital The authorized, issued and paid-up capital of the Issuer as at 15 July 2014 are listed below:

Authorized

RM400,000.00 divided into 400,000 ordinary shares of RM1.00 each.

Issued and fully paid-up

RM300,000.00 divided into 300,000 ordinary shares of RM1.00 each.

- (xi) Disclosure of the following:

- If the issuer or its board members have been convicted or charged with any offence under the securities laws, corporation laws or other laws involving fraud or dishonesty in a court of law, for the past five years prior to the date of application; and None.
- If the issuer has been subjected to any action by the stock exchange for any breach of the listing requirements or rules issued by the stock exchange, for the past five years prior to the date of application None.

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2. PRINCIPAL TERMS AND CONDITIONS

(a) Name of parties involved in the proposed transaction (where applicable)

(i)	Principal adviser	Kenanga Investment Bank Berhad (Company No.15678-H) (“ KIBB ” or “ PA/LA ”).
(ii)	Lead arranger	KIBB.
(iii)	Co-arranger	Not applicable.
(iv)	Solicitor	Messrs. Lee Hishammuddin Allen & Gledhill (“ Solicitors ”).
(v)	Financial adviser	Not applicable.
(vi)	Technical adviser	Not applicable.
(vii)	Sukuk trustee	Pacific Trustees Berhad (“ Trustee ”).
(viii)	Shariah adviser	Datuk Dr. Mohd Daud Bakar (“ Shariah Adviser ”).
(ix)	Guarantor	Sunway Berhad (“ Sunway ” or “ Guarantor ”).
(x)	Valuer	Not applicable.
(xi)	Facility agent	KIBB (“ Facility Agent ”).
(xii)	Primary subscriber(s) (under a bought-deal arrangement) and amount subscribed	The primary subscribers will be determined prior to each issuance of the Sukuk Mudharabah (as defined in paragraph 2(c) below) in the event of a bought deal issue.
(xiii)	Underwriter and amount underwritten	<u>ICPs (as defined in paragraph 2(c) below)</u> The ICPs will not be underwritten. Notwithstanding this, the Issuer may arrange for the ICPs to be underwritten in part or in full based on underwriting fees and yields to be agreed then with the underwriter(s). <u>IMTNs (as defined in paragraph 2(c) below)</u> The IMTNs will not be underwritten. Notwithstanding this, the Issuer may arrange for the IMTNs to be underwritten in part or in full based on underwriting fees and yields to be agreed then with the

underwriter(s).

(xiv)	Central depository	Bank Negara Malaysia (“ BNM ”).
(xv)	Paying agent	BNM.
(xvi)	Reporting accountant	Not applicable.
(xvii)	Calculation agent	Not applicable.
(xviii)	Others (please specify)	<u>Lead Manager</u> KIBB.

Tender Panel Members (“**TPM**”) (in respect of the ICPs)

To be identified by the PA/LA comprising banks, other financial institutions and other persons falling within Schedule 6 or Section 229(1)(b), and Schedule 7 or Section 230(1)(b), read together with Schedule 9 or Section 257(3) of the Capital Markets and Services Act 2007 as amended from time to time (“**CMSA**”).

(b) Islamic principles used

The issuance of the Sukuk Mudharabah (as defined in paragraph 2(c) below) will be based on the Shariah principle of Mudharabah, which is a Shariah principle and concept approved by the Shariah Advisory Council (“**SAC**”) of the Securities Commission Malaysia (“**SC**”).

(c) Facility description

Issuance of Islamic commercial papers (“**ICPs**”) and/or Islamic medium term notes (“**IMTNs**”) under an Islamic commercial paper/medium term note programme of up to RM2.0 billion in nominal value (“**Sukuk Programme**”).

The ICPs and the IMTNs are collectively referred to as the “**Sukuk Mudharabah**”.

The Sukuk Programme will be issued in one or more series.

Underlying Transaction

Under the Mudharabah transaction, Sunway Treasury Sukuk Sdn Bhd (the “**Issuer**”) (as “**Mudharib**”) shall enter into a Mudharabah contract with the Trustee, acting on behalf of the investors (as “**Rabb al-mal**”).

Pursuant to the Mudharabah contract, the investors (herein referred to as the “**Sukukholders**”) shall from time to time provide capital to the Issuer for the purpose of the Sukukholders’ investment in the Issuer’s Shariah-compliant business which includes the provision of Islamic inter-company advances or investment in the Shariah-compliant business activities and/or general corporate purpose of companies within the Sunway Group (as defined in paragraph 2(y)(L) below) (collectively known as “**Mudharabah Venture**”).

The Sukukholders, as the Rabb al-mal, shall participate in the Mudharabah Venture by subscribing to the Sukuk Mudharabah which will be issued in series, pursuant to the Sukuk Programme. Each series represents a Mudharabah Venture on its own. Proceeds from the Sukuk Mudharabah represent 100% of the Sukukholders’ capital contribution (“**Mudharabah Capital**”) in the said Mudharabah Venture. The Issuer on the other hand, as the Mudharib, shall be granted by the Sukukholders the absolute entrepreneurial authority to manage the Mudharabah Venture and administer the collection of income from the Mudharabah Venture.

The Issuer shall subsequently make a declaration of trust (“**Declaration of Trust**”) over the undivided rights and entitlements of the Sukukholders under the Mudharabah Venture (“**Trust Assets**”) for the benefit of the Sukukholders and itself. The Sukuk Mudharabah represents each of the Sukukholders’ undivided proportionate beneficial interests in the Trust Assets.

Profits generated from the Mudharabah Venture shall be shared between the Rabb al-mal and the Mudharib according to a pre-agreed profit-sharing ratio (“**PSR**”) of 99:1 while losses shall be borne solely by the Rabb al-mal.

In respect of Sukuk Mudharabah with periodic distribution, the payment of profits shall be based on the income generated from the Mudharabah Venture (the

“Periodic Distribution(s)”) which shall be distributed semi-annually or such other period to be agreed (**“Periodic Distribution Date”**) to the Sukukholders.

In respect of Sukuk Mudharabah without Periodic Distribution, the payment of profits shall be based on the income generated from the Mudharabah Venture which shall be distributed to the Sukukholders on a one-off basis (the **“One-off Distribution”**) on the respective maturity dates of such Sukuk Mudharabah.

The Rabb al-mal’s share of profits shall be the return expected (**“Expected Return”**) by the Sukukholders from the Mudharabah Venture which shall be the yield of the Sukuk Mudharabah for the period from the issuance of the Sukuk Mudharabah up to the respective maturity dates or the date of declaration of an event which dissolves the Mudharabah Venture (**“Dissolution Event”**) or the early redemption date of the Sukuk Mudharabah (**“Early Redemption”**) (as stated in paragraph 2(x)), as the case may be.

Under the Mudharabah Venture, the Sukukholders have agreed upfront that they shall receive profits up to the Expected Return. Any amounts in excess of the Expected Return shall be given to the Mudharib as an incentive fee for successfully managing the Mudharabah Venture. A partner may waive his right under the Shariah principle of Tanazul on the profit payments from the Mudharabah Venture, if he desires so.

If, on any Periodic Distribution Date, the income generated from the Mudharabah Venture is insufficient to meet the expected Periodic Distribution, the Issuer shall make advanced profit payments during the tenure of the Sukuk Mudharabah (**“Advance Profit Payments”**) equal to such deficiency. For the avoidance of doubt any Advance Profit Payments made by the Issuer shall be offset against the Exercise Price (as defined in paragraph 2(y)(C) below).

The Issuer shall undertake to purchase the Trust Assets from the Trustee (acting on behalf of the Sukukholders) at the Exercise Price via a Purchase Undertaking (as defined in paragraph 2(y)(C) below) upon the occurrence of the earlier of the respective maturity dates of the Sukuk Mudharabah or declaration of a Dissolution Event or on Early Redemption.

Upon the exercise of the Purchase Undertaking and the payment of the Exercise Price, the Mudharabah Venture and the trust over the Trust Assets shall be dissolved and the Sukuk Mudharabah shall be cancelled.

Sunway shall issue an irrevocable and unconditional Al-Kafalah Guarantee, which shall be applicable in respect of all series of the Sukuk Mudharabah in favour of the Trustee to guarantee all payment obligations of the Issuer under the Purchase Undertaking. Sunway shall enter into a separate Kafalah Agreement with the Issuer to provide the guarantee, which is an independent arrangement from the Mudharabah Agreement.

A diagrammatical illustration of the Sukuk Mudharabah transaction is set out in Annexure 2.

- | | |
|---|--|
| (d) Identified assets | The Trust Assets which are the undivided rights and entitlements of the Sukukholders under the Mudharabah Venture. |
| (e) Purchase and selling price/rental (where applicable) | Not applicable as the Mudharabah transaction does not involve purchase and sale of underlying assets. |
| (f) Issue/sukuk programme size | <p><u>Sukuk Programme</u></p> <p>The total outstanding nominal amount of the Sukuk Mudharabah issued under the Sukuk Programme shall not exceed RM2.0 billion in aggregate at any point in time.</p> <p>However, the Issuer shall have the option to upsize the aforesaid programme limit provided that:</p> |

- (a) the relevant approvals have been obtained from the Sukukholders (prior to each upsizing by the Issuer) where the voting to upsize the Sukuk Programme shall be carried out on a “per series” basis and not collective basis;
- (b) approval has been obtained from the SC; and
- (c) the Issuer must ensure that any exercise to upsize the Sukuk Programme shall not unfairly discriminate against or is otherwise prejudicial to existing Sukukholders of the Sukuk Programme.

Further details in relation to the voting by the Sukukholders under the Sukuk Programme are set out in paragraph 2(y)(K) below.

“per series” shall mean, in relation to any Sukuk Mudharabah, such Sukuk Mudharabah with the same issue date and maturity date.

(g) Tenure of issue/sukuk programme

Sukuk Programme

Up to seven (7) years from the date of first issuance of the Sukuk Mudharabah under the Sukuk Programme.

The first issuance of the Sukuk Mudharabah shall be made within two (2) years from the date of the written authorisation issued by the SC.

ICPs

One (1), two (2), three (3), six (6), nine (9) or twelve (12) months as the Issuer may select.

IMTNs

Above one (1) year and up to seven (7) years as the Issuer may select.

Provided always that the Sukuk Mudharabah shall mature on or prior to the expiry of the Sukuk Programme.

- (h) **Availability period of sukuk programme** The Sukuk Programme is available for utilisation upon completion of documentation and compliance of all conditions precedent to the satisfaction of PA/LA and ending on the date falling seven (7) years from the date of the first issuance of the Sukuk Mudharabah under the Sukuk Programme.
- (i) **Profit/coupon/rental rate** ICPs
The ICPs will be issued at a discount to its nominal value without Periodic Distribution/ profit payment.
- IMTNs
The expected Periodic Distribution/ profit rate will be determined prior to each issuance of the IMTNs.
- (j) **Profit/coupon/rental payment frequency** ICPs
The ICPs shall be issued without Periodic Distribution/ profit payment.
- IMTNs
For IMTNs with Periodic Distribution, the frequency of the Periodic Distribution/ profit payment shall be semi-annually or such other period to be agreed between the Issuer and the Lead Manager prior to the issuance of such Sukuk Mudharabah.
- Not applicable for IMTNs without Periodic Distribution.
- (k) **Profit/coupon/rental payment basis** For Sukuk Mudharabah with Periodic Distribution, the Periodic Distribution/ profit payment of the Sukuk Mudharabah shall be calculated on the basis of the actual number of days in the relevant period divided by 365 (actual/365 days) and in any event, in accordance with the MyClear Rules and Procedures (as defined in paragraph 2(p) below).
- (l) **Security/collateral, where applicable** An irrevocable and unconditional Al-Kafalah Guarantee by Sunway.
- (m) **Details on utilisation of proceeds by issuer/obligor and originator (in the case of ABS). If proceeds are to be utilised for project or** The proceeds from the Sukuk Programme shall be utilised for the following purposes:
- (a) to utilise RM30,000 to fund the Trustees' Reimbursement Account (as

capital expenditure, description of the project or capital expenditure, where applicable	<p>defined in paragraph 2(y)(F)) as required under the SC's Trust Deeds Guidelines;</p> <p>(b) to finance the investment activities, capital expenditure, working capital requirements and/or other general corporate purposes (including but not limited to future operating expenses and financing expenses, i.e. the fees and expenses relating to the Sukuk Programme) of the Issuer and/or Sunway Group; and/or</p> <p>(c) for repayment of future borrowings to be undertaken by the Issuer and/or Sunway Group.</p> <p>In any case, all utilisation of funds from the issuance of the Sukuk Mudharabah shall be for Shariah-compliant purposes only including the manner in which the funds are to be channelled to the companies within the Sunway Group by the Issuer.</p>
(n) Sinking fund and designated accounts, where applicable	Not applicable.
(o) Rating	
<ul style="list-style-type: none"> • Credit rating assigned and whether the rating is final or indicative. 	<p><u>ICPs</u> Preliminary rating of P1(s).</p>
<ul style="list-style-type: none"> • Name of credit rating agency 	<p><u>IMTNs</u> Preliminary rating of A2(s).</p> <p>RAM Ratings Services Berhad ("RAM Ratings").</p>
(p) Mode of issuance	<p><u>ICPs</u> Via competitive tender by the TPM or direct placement on a best effort basis without prospectus at the option of the Issuer under Fully Automated System for Issuing/Tendering ("FAST").</p> <p><u>IMTNs</u> Via book building on best effort basis or bought deal basis, all without prospectus under FAST. The IMTNs could also be issued by way of private placement to selected investors at an agreed yield between the Issuer and investor(s).</p>

Issuance of the Sukuk Mudharabah under the Sukuk Programme shall be in accordance with (i) the Participation and Operation Rules for Payments and Securities Services issued by Malaysian Electronic Clearing Corporation Sdn Bhd (“**MyClear**”) (“**MyClear Rules**”); and (ii) the Operational Procedures for Securities Services issued by MyClear (“**MyClear Procedures**”) or their replacement thereof (collectively referred to as “**MyClear Rules and MyClear Procedures**”) applicable from time to time.

(q) Selling restrictions, including tradability (i.e. tradable or non-tradable)

The Sukuk Mudharabah are tradable but shall not be offered or sold, directly or indirectly, nor may any document or other material information in connection therewith be distributed in Malaysia, other than to persons to whom the offer or invitation to purchase the Sukuk Mudharabah falling within any of the categories of persons or in the circumstances specified below:

At the point of issuance

Schedule 6 or Section 229(1)(b); or Schedule 7 or Section 230(1)(b), read together with Schedule 9 or Section 257(3) of the CMSA and any issue, offer or invitation to subscribe for or purchase the Sukuk Mudharabah does not constitute an offer to the public within the meaning of Section 4(6) of the Companies Act, 1965 (as amended from time to time).

After the issuance

Schedule 6 or Section 229(1)(b) read together with Schedule 9 or Section 257(3) of the CMSA and any issue, offer or invitation to subscribe for or purchase the Sukuk Mudharabah does not constitute an offer to the public within the meaning of Section 4(6) of the Companies Act, 1965 (as amended from time to time).

(r) Listing status and types of listing

The Sukuk Mudharabah will not be listed on the Bursa Malaysia Securities Berhad (“**Bursa Malaysia**”) or on any other stock exchange.

(s) Other regulatory approvals required in relation to the

Not applicable.

**issue, offer or invitation to
subscribe or purchase
sukuk, and whether or not
obtained**

(t) Conditions precedent

Conditions Precedent to first issuance

Conditions precedent to the first issuance of the Sukuk Mudharabah shall include conditions precedent customary for transactions of this nature (in the form and substance acceptable to the PA/LA), including, but not limited to, the following:

- (i) All relevant Transaction Documents (as defined in paragraph 2(y)(E)) shall have been executed and duly endorsed as exempted under the Stamp Duty Exemption (No 23) Order 2000 and where relevant, presented for registration;
- (ii) Certified true copies of the Certificate of Incorporation, and the Memorandum and Articles of Association of the Issuer and Sunway have been obtained;
- (iii) Certified true copies of the latest Forms 24, 44 and 49 of the Issuer and Sunway have been obtained;
- (iv) Certified true copies of the respective board resolutions of the Issuer and Sunway authorising, among others, the execution of the Transaction Documents to which it is a party have been obtained;
- (v) A list of the authorised signatories of the Issuer and Sunway and their respective specimen signatures have been obtained;
- (vi) A report each in respect of the relevant company search of the Issuer and Sunway have been obtained;
- (vii) A report each in respect of the relevant winding up search or the relevant statutory declaration of the Issuer and Sunway have been

obtained;

- (viii) Evidence of authorisation from the SC in relation to the Sukuk Programme has been obtained;
- (ix) Evidence that the Trustees' Reimbursement Account has been opened for the purpose stated in the Transaction Documents;
- (x) Representations and warranties of the Issuer and Sunway remain true and correct in all material respects and no Dissolution Event or potential Dissolution Event has occurred;
- (xi) The PA/LA has received a favourable legal opinion from the Solicitors advising with respect to the legality, validity and enforceability of the Transaction Documents to which the Issuer is a party and that all the conditions precedent have been fulfilled;
- (xii) The ICPs and IMTNs have received their respective requisite ratings as stated in this principal terms and conditions;
- (xiii) Evidence of payment or arrangement for payment of all relevant fees and amounts due by the Issuer in connection with the Sukuk Programme has been obtained;
- (xiv) Confirmation from the Shariah Adviser that the structure of the Sukuk Programme and the Transaction Documents are in compliance with Shariah principles has been obtained;
- (xv) Where consent is required for the Sukuk Programme from the existing noteholders and/or the existing lenders under any existing facilities including under security documents executed by the Issuer, the obtaining of such consent and/or redemption

statement (if applicable); and

- (xvi) Such other conditions precedent as may be advised by the Solicitors and mutually agreed between the Issuer and the PA/LA.

Conditions Precedent to subsequent issuances of the Sukuk Mudharabah

- (i) Confirmation from the Issuer that all relevant representations and warranties of the Issuer and Sunway remain true and correct;
- (ii) No Dissolution Event has occurred or is continuing or will occur as a result of the issuances; and
- (iii) Such other conditions precedent as may be advised by the Solicitors and mutually agreed between the Issuer and the PA/LA.

(u) Representations and warranties

The Sukuk Programme shall be subject to such representations and warranties as may be deemed customary for a facility of this nature or as may be advised by the Solicitors. This shall include but not be limited to:

(A) Issuer (to be documented in the Trust Deed)

- (i) **Status:**
 - a. The Issuer is a corporation duly incorporated and validly existing under the laws of Malaysia,
 - b. The Issuer has the power to own its assets and carry on its business as it is being conducted.
- (ii) **Non-Violation:**

The entry into and performance by the Issuer of, and the transactions contemplated by, the Transaction Documents do not and will not conflict with:

 - a. its constitutional documents;

- b. any law or regulation applicable to it; or
- c. any agreement or instrument binding upon it or any of its assets.

(iii) **Power and Authority:**

The Issuer has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

(iv) **Authorisation:**

All authorisations, consents, approvals, filings or registration required or desirable:

- a. to enable the Issuer to lawfully enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party;
- b. to make the Transaction Documents to which it is a party admissible in evidence in its jurisdiction of incorporation;
- c. for it to carry on its business, and which are material;

have been obtained or affected and are in full force and effect.

(v) **No Proceedings Pending Or Threatened:**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect (as defined in paragraph 2(y)(L)) below) have (to the best of its knowledge and belief after due and careful enquiry) been started or threatened against the Issuer.

(vi) **Appointment of Receiver, Legal Process:**

No steps have been taken by the Issuer nor, to the best of its knowledge after due and careful enquiry, have any legal proceedings been started or threatened for the dissolution liquidation or winding up of the Issuer or for the appointment of a receiver or similar officer in respect of all or any part of the business or assets of the Issuer and no demand under Section 218(2) of the Companies Act 1965 has been received by the Issuer.

(vii) **Binding Obligations:**

The obligations expressed to be assumed by the Issuer in each Transaction Documents are, subject to any general principles of law limiting its obligations legal, valid, binding and enforceable obligations.

(viii) **No default:**

a. No Dissolution Event or potential Dissolution Event is continuing or might reasonably be expected to result from the issuance of the Sukuk Mudharabah.

b. No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on the Issuer or to which the Issuer's assets are subject, which might have a Material Adverse Effect.

(ix) **Accounts:**

The Issuer's financial statements has been prepared on a basis consistently applied in accordance with the generally accepted accounting principles in Malaysia and give a true and fair view of the results of its operations for that year and the state of its financial affairs at that date, and in particular disclose or reserve against such liabilities

(actual or contingent) of the Issuer.

- (x) **No misleading information:**
 - a. Any factual information provided by the Issuer to the Trustee in writing in connection with or as required under the Transaction Documents is true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated and is not misleading in any respect;
 - b. Any financial projections provided by the Issuer to the Trustee have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.

- (xi) **Changes:**

No event or series of events has occurred (including, without limitation, the revocation or non-renewal of any authorisations, consents, approvals, filings or registration) which would have a Material Adverse Effect.

- (xii) Such other representations and warranties which may be advised by the Solicitors.

- (B) **Sunway and its Material Subsidiaries (as defined in paragraph 2(y)(L)) (to be documented in the Al-Kafalah Guarantee)**

- (i) The representations and warranties corresponding to those under paragraphs 2(u)(A)(i) to 2(u)(A)(xii) (both inclusive) in respect of Sunway and its Material Subsidiaries (where applicable).

(v) Dissolution Events

Dissolution Events shall include but not limited to the following:

(A) Events relating to the Issuer (to be documented in the Trust Deed)

(i) Non-Payment:

At any time, the Issuer fails to pay any amount due from it under any Sukuk Mudharabah and/or any other amounts due from it under any of the Transaction Documents on the due date and such default is not remedied by the Issuer within seven (7) business days; or

(ii) Breach of Obligations:

The Issuer does not comply with any provision of the Transaction Documents or under any undertaking or arrangement entered into in connection therewith (other than a payment obligation referred under “Non-Payment” in paragraph 2(v)(A)(i) above and compliance with the Financial Covenant referred to in paragraph 2(w)(1) below) and, in the case of a failure capable of being remedied, is not remedied within thirty (30) days after the earlier of the Issuer becoming aware of or having been notified in writing by the Trustee of the event or situation, or such other longer remedy period as may be agreed between the Trustee and the Issuer; or

(iii) Misrepresentation:

Any representation or statement made or deemed to be made by the Issuer in the Transaction Documents or any other document delivered by or on behalf of the Issuer under or in connection with any Transaction Documents is or proves to have been incorrect or misleading in any material respect when made or deemed to be made; or

(iv) Cross-default:

Any indebtedness of the Issuer becomes due and is not paid (after

the expiry of any originally applicable grace period) or is capable of being declared due prematurely by reason of a default or a Dissolution Event (however described); or

(v) **Appointment of Receiver:**

An encumbrancer takes possession of or a trustee or administrator or a receiver, or liquidator or officer similar to any of the foregoing is appointed in respect of all or any part of the assets of the Issuer or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within sixty (60) days after being levied, enforced or sued out or any security interest which may for the time being affect any of the assets of the Issuer becomes enforceable which in the reasonable opinion of the Trustee would have a Material Adverse Effect; or

(vi) **Winding Up:**

The Issuer convenes a meeting of its creditors or proposes or makes any arrangement (including a scheme of arrangement under Section 176 of the Companies Act, 1965) or composition with, or any assignment for the benefit of, its creditors (other than for the purposes of and followed by a reconstruction previously approved in writing by the Trustee, unless during or following such reconstruction the Issuer becomes or is declared to be insolvent) or a petition is presented or a meeting is convened for the purposes of considering a resolution for the winding-up of the Issuer or a winding-up order is made against the Issuer unless such petition is contested in good faith and set aside within thirty (30) days (or such longer period as may be agreed by the Trustee) from the date of service of such winding-up petition, or if a winding-up order has been made

against it or any event occurs by virtue of which the Issuer may be dissolved pursuant to the documents which establish the constitution of the Issuer or pursuant to which the courts of Malaysia or any other competent court would be entitled to order the dissolution of the Issuer or a moratorium is agreed or declared in respect of or affecting all or a material part of or a particular type of the indebtedness of the Issuer; or

- (vii) **Material Adverse Change:**
Any event or series of event has occurred or which might occur and which, in the opinion of the Trustee will result in the occurrence of a Dissolution Event or would have a Material Adverse Effect; or
- (viii) **Invalidity or Illegality:**
Any provision of the Transaction Documents is or becomes or is alleged by or on behalf of the Issuer to be, for any reason, invalid, unenforceable or unlawful and would have a material adverse effect on the Issuer's ability to perform its obligations under the Transaction Documents, or the Issuer purports to repudiate any provision of the Transaction Documents; or
- (ix) **Legal Proceedings:**
The Issuer fails to satisfy any judgement exceeding RM30 million passed against it by any court of competent jurisdiction within thirty (30) business days and no appeal against such judgement has been made to any appropriate appellate court within the time prescribed by law or such appeal has been dismissed; or
- (x) **License:**
There is a revocation, withholding or modification of a license, authorisation or approval that impairs or prejudices the Issuer's ability to comply with the terms and

conditions of the Transaction Documents or the Sukuk Mudharabah or any other document relating to the issue offer or invitation in respect of the Sukuk Mudharabah; or

- (xi) Such other Dissolution Events as required under the SC's Trust Deeds Guidelines or as may be advised by the Solicitors and mutually agreed between the Issuer and the PA/LA.

(B) Events relating to Sunway and/or its Material Subsidiaries (to be documented in the Trust Deed)

(i) **Non-Payment:**

There is a default by Sunway in payment of any amount due under the Transaction Documents on the due date, or if so payable on demand; or

(ii) **Breach of Obligations:**

Sunway does not comply with any provision of the Transaction Documents to which it is a party (other than the payment obligation referred to in paragraph 2(v)(B)(i) and compliance with the Financial Covenant referred to in paragraph 2(w)(1) below) and, in the case of a failure capable of being remedied, is not remedied within thirty (30) days after the earlier of Sunway becoming aware of or having been notified in writing by the Trustee of the event or situation, or such other longer remedy period as may be agreed between the Trustee and Sunway; or

(iii) **Misrepresentation:**

Any representation or statement made or deemed to be made by Sunway in the Transaction Documents to which it is a party or any other document delivered by or on behalf of Sunway under or in connection with any Transaction Documents to which it is a party is or proves to have been incorrect or

misleading in any material respect when made or deemed to be made; or

- (iv) **Cross-default:**
Any indebtedness of Sunway or any of the Material Subsidiaries becomes due and is not paid (after the expiry of any originally applicable grace period) or is capable of being declared due prematurely by reason of a default or a Dissolution Event; or
- (v) **Appointment of Receiver:**
An encumbrancer takes possession of or a trustee or administrator or a receiver, or liquidator or officer similar to any of the foregoing is appointed in respect of all or any part of the assets of Sunway or any of the Material Subsidiaries or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within sixty (60) days after being levied, enforced or sued out or any security interest which may for the time being affect any of the assets of Sunway or any of the Material Subsidiaries becomes enforceable which in the reasonable opinion of the Trustee would have a Material Adverse Effect; or
- (vi) **Winding Up:**
Sunway or any of the Material Subsidiaries convenes a meeting of its creditors or proposes or makes any arrangement (including a scheme of arrangement under Section 176 of the Companies Act, 1965) or composition with, or any assignment for the benefit of, its creditors (other than for the purposes of and followed by a reconstruction previously approved in writing by the Trustee, unless during or following such reconstruction Sunway or any of the Material Subsidiaries becomes or is declared to be insolvent) or a

petition is presented or a meeting is convened for the purposes of considering a resolution for the winding-up of Sunway and/or the Material Subsidiaries or a winding-up order is made against Sunway and/or the Material Subsidiaries unless such petition is contested in good faith and set aside within thirty (30) days (or such longer period as may be agreed by the Trustee) from the date of service of such winding-up petition, or if a winding-up order has been made against it or any event occurs by virtue of which Sunway and/or the Material Subsidiaries may be dissolved pursuant to the documents which establish the constitution of Sunway and/or the Material Subsidiaries or pursuant to which the courts of Malaysia or any other competent court would be entitled to order the dissolution of Sunway and/or the Material Subsidiaries or a moratorium is agreed or declared in respect of or affecting all or a material part of or a particular type of the indebtedness of Sunway and/or the Material Subsidiaries; or

(vii) **Invalidity or Illegality:**
Any provision of the Transaction Documents to which it is a party is or becomes or is alleged by or on behalf of Sunway to be, for any reason, invalid, unenforceable or unlawful and would have a material adverse effect on the Issuer's ability to perform its obligations under the Transaction Documents to which it is a party, or Sunway purports to repudiate any provision of the Transaction Documents to which it is a party; or

(viii) **Legal Proceedings:**
Sunway or any of the Material Subsidiaries fails to satisfy any judgment exceeding RM30 million passed against it by any court of competent jurisdiction within thirty

(30) business days and no appeal against such judgment has been made to any appropriate appellate court within the time prescribed by law or such appeal has been dismissed; or

- (ix) Such other Dissolution Events as required under the SC's Trust Deeds Guidelines or as may be advised by the Solicitors and mutually agreed between the Issuer and the PA/LA.

Upon the occurrence of any of the Dissolution Events, the Trustee may, or if so directed by a special resolution of all holders of the Sukuk Mudharabah ("**Sukukholders**"), declare that such Dissolution Event has occurred in respect of all the Sukuk Mudharabah, and that notwithstanding the stated maturity of all the Sukuk Mudharabah then outstanding, all Sukuk Mudharabah then outstanding and the profit accruing thereunder up to the date of the said declaration shall become immediately due and payable whereupon the Purchase Undertaking will be invoked, the Exercise Price will be due and payable and the Mudharabah Venture will be dissolved.

The obligations of Sunway under the Al-Kafalah Guarantee will be triggered upon the failure by the Issuer to pay the Exercise Price under the Purchase Undertaking. The Trustee shall be bound to take such proceedings against the Issuer as it may think fit and take such other steps to enforce the repayment of the Sukuk Mudharabah and the provisions of the Transaction Documents and its rights thereunder.

(w) Covenants

1. Financial Covenant

Sunway shall at all times throughout the tenure of the Sukuk Programme maintain a Net Debt to Shareholders' Funds not exceeding 1.5 times, based on the then latest available audited and consolidated financial statements of Sunway at that time.

Note:

“Net Debt” shall mean consolidated debt less cash and cash equivalents of Sunway.

“Shareholders’ Funds” shall mean the aggregate of:

- a. nominal ordinary and preference share capital for the time being issued and paid-up; and*
- b. the amount standing to the credit of capital revenue reserve (share premium accounts, capital redemption reserve fund, profit & loss account).*

The Financial Covenant shall be duly confirmed by the Issuer and Sunway on a semi-annual basis through a compliance certificate setting out the computations to be duly signed by either one (1) director of the Issuer OR one (1) director of Sunway, who are duly authorised to do so.

2. Positive Covenants

(A) Covenants relating to the Issuer (to be documented in the Trust Deed)

- (i) **Redemption in Full:**
The Issuer shall redeem in full all outstanding Sukuk Mudharabah in accordance with the terms and conditions of the Transaction Documents.
- (ii) **Conduct of Business:**
The Issuer shall exercise reasonable diligence in carrying out its business and affairs in a proper and efficient manner and in accordance with sound financial and commercial standards and practices and shall ensure that all necessary approvals and licenses required for it to carry out its business are obtained.
- (iii) **Financial Information:**
The Issuer shall not later than one

hundred and eighty (180) days after the end of its financial year, furnish to the Trustee one (1) copy of its annual audited financial statements, and any other accounts, report, notice, circular, statement or other document issued by the Issuer to its members (in their capacity as such).

(iv)

Other Information:

The Issuer shall promptly provide to the Trustee any information relating to its affairs to the extent permitted by law, as the Trustee may from time to time reasonably require in order to discharge its duties as trustee under the Trust Deed and the other Transaction Documents.

(v)

Compliance Certificate:

The Issuer shall not later than one hundred and eighty (180) days after the end of its financial year provide to the Trustee a certificate signed by an authorised signatory of the Issuer relating to the financial year prior to the relevant date, in which the certificate shall state the following matters:-

- a. whether or not the Issuer has observed and performed all its obligations, covenants, terms and conditions and all other provisions under or pursuant to the Sukuk Mudharabah or the Trust Deed or the other Transaction Documents;
- b. (in reasonable detail) computations as to compliance by Sunway with the Financial Covenant referred to in paragraph 2(w)(1) as at the date as at which those financial statements were drawn up;
- c. whether or not any Dissolution Event has happened, existed

or exists, from the date the Sukuk Mudharabah were first issued and if in the affirmative to specify the details of such Dissolution Event.

- (vi) **Preparation of Accounts:**
The Issuer shall keep proper books and accounts at all times on a basis consistently applied in accordance with the laws of Malaysia and generally accepted accounting principles and standards in Malaysia, and will provide the Trustee and any person appointed by it (e.g. auditors), to the extent permitted by law to which the Issuer is subject to, access to such book and accounts subject to prior written notice and during normal business hours.
- (vii) **Paying Agent:**
The Issuer shall at all times maintain a Paying Agent with a specified office in Malaysia.
- (viii) **Compliance with Transaction Documents:**
The Issuer shall promptly comply with the terms and perform and carry out all its obligations under the Sukuk Mudharabah, the Trust Deed and the other Transaction Documents to which it is a party (including but not limited to redeeming the Sukuk Mudharabah on the relevant maturity dates or any other date on which the Sukuk Mudharabah are due and payable) and ensure that it shall immediately notify the Trustee in the event the Issuer is unable to fulfill or comply with any of the provisions of the Transaction Documents.
- (ix) **Immediate Notification:**
The Issuer shall upon becoming aware, immediately notify the Trustee of the following:-

- a. any circumstance that has occurred that would materially prejudice the Issuer, Sunway or any security included in or created by the Sukuk Mudharabah;
- b. any change in the utilisation of proceeds from the Sukuk Mudharabah from that set out in the information memorandum or the Transaction Documents;
- c. any substantial change in the nature of business of the Issuer or Sunway;
- d. any change in the name of Sunway;
- e. any cessation of liability of guarantors for the payment of the whole or part of the moneys for which they are liable under the guarantee;
- f. any change in its withholding tax position or taxing jurisdiction; and
- g. any other matter that may materially prejudice the interests of the Sukukholders;

(x) **Notification by Paying Agent:**
 The Issuer shall procure that the Paying Agent notifies the Trustee in the event that the Paying Agent does not receive, in the manner provided by the Transaction Documents, the monies payable on the due date for payment in respect of the Sukuk Mudharabah or any of them.

(xi) **Dissolution Events:**
 The Issuer shall promptly give notice to the Trustee of the occurrence of any Dissolution Event or of such other right or remedy under the terms, provisions

and covenants of the Sukuk Mudharabah, the Trust Deed and the other Transaction Documents which shall have become enforceable or of any potential Dissolution Event forthwith upon becoming aware thereof, and it shall take all reasonable steps and/or such other steps as may be reasonably requested by the Trustee to remedy and/or mitigate the effect(s) of the Dissolution Event or the potential Dissolution Event .

(xii)

Authorisations:

The Issuer shall promptly:

- a. obtain, comply with and do all that is necessary to maintain in full force and effect; and
- b. supply certified copies to the Trustee of, any authorisations, consents, approvals, filings or registrations required to enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation.

(xiii)

Compliance with laws:

The Issuer shall comply in all respects with all laws to which it may be subject to, if failure so to comply would materially impair its ability to perform its obligations under the Transaction Documents.

(xiv)

Legal Existence:

The Issuer shall do all things necessary to preserve, renew and keep in full force and effect its legal existence and the authorisations, consents and licences which are material to the conduct of its business.

(xv)

Insurance:

The Issuer shall maintain and/or

cause to be maintained such insurances in respect of its assets and businesses against such risks (including but not limited to third party risks and workmen's compensation) which a prudent company carrying on a business similar to that of the Issuer would normally insure.

- (xvi) **Change of Business:**
The Issuer shall ensure and shall procure that no substantial change is made to the general nature of the business of the Issuer from that carried on at the date of the Trust Deed.
- (xvii) **Auditors:**
The Issuer shall appoint from time to time such auditor or firm of auditors acceptable to the Trustee and authorise such auditor or firm of auditors to supply the Trustee with a certified copy of any communication sent by such auditor to the Issuer and further to communicate directly with the Trustee at any time in respect of any matter connected with the accounts and operations of the Issuer.
- (xviii) **CMSA and SC:**
In addition to and without prejudice to the other provisions of the Trust Deed, limited so far as required by the CMSA, any other relevant legislation and/or so far as directed by the SC of any other relevant authority, the Issuer shall comply with all applicable laws including the provisions of the CMSA and/or the directive, written notices, circulars or guidelines issued by the SC from time to time affecting the Sukuk Mudharabah (including but not limited to the SC's Trust Deeds Guidelines and practice notes issued pursuant to Section 377(1) of the CMSA).

(B) Covenants relating to Sunway and/or its Material Subsidiaries (to be documented in the Al-Kalafah Guarantee)

- (i) **Conduct of Business:**
Sunway shall and shall ensure that each of the Material Subsidiaries exercise reasonable diligence in carrying out its business and affairs in a proper and efficient manner and in accordance with sound financial and commercial standards and practices and will ensure that all necessary approvals and licenses required for it and each of the Material Subsidiaries to carry out its business are obtained.
- (ii) **Financial Information:**
Sunway shall not later than one hundred and eighty (180) days after the end of its financial year, furnish to the Trustee one (1) copy of its annual audited financial statements (including consolidated balance sheet and profit and loss account), and any other accounts, report, notice, circular, statement or other document issued by the Issuer to its members (in their capacity as such).
- (iii) **Other Information:**
Sunway shall promptly provide to the Trustee any information relating to its affairs to the extent permitted by law, as the Trustee may from time to time reasonably require in order to discharge its duties as trustee under the Trust Deed and the other Transaction Documents.
- (iv) **Compliance Certificate:**
Sunway shall not later than one hundred and eighty (180) days after the end of its financial year provide to the Trustee a certificate signed by an authorised signatory of Sunway relating to the financial year prior to the relevant date, which certificate shall state the

following matters:-

- a. whether or not Sunway has observed and performed all its obligations, covenants, terms and conditions and all other provisions under or pursuant to the Sukuk Mudharabah or the Trust Deed or the other Transaction Documents;
- b. (in reasonable detail) computations as to compliance by Sunway with the Financial Covenant referred to in paragraph 2(w)(1) as at the date as at which those financial statements were drawn up;
- c. whether or not any Dissolution Event has happened, existed or exists, from the date the Sukuk Mudharabah were first issued and if in the affirmative to specify the details of such Dissolution Event.

(v)

Preparation of Accounts:

Sunway shall and shall ensure that each of the Material Subsidiaries keep proper books and accounts at all times on a basis consistently applied in accordance with the laws of Malaysia and generally accepted accounting principles and standards in Malaysia, and will provide the Trustee and any person appointed by it (e.g. auditors), to the extent permitted by law to which Sunway and each of the Material Subsidiaries is subject to, access to such book and accounts subject to prior written notice and during normal business hours.

- (vi) **Dissolution Events:**
Sunway shall promptly give notice to the Trustee of the occurrence of any Dissolution Event or of such other right or remedy under the terms, provisions and covenants of the Sukuk Mudharabah, the Trust Deed and the other Transaction Documents which shall have become enforceable or of any potential Dissolution Event forthwith upon becoming aware thereof, and it shall take all reasonable steps and/or such other steps as may be reasonably requested by the Trustee to remedy and/or mitigate the effect(s) of the Dissolution Event or the potential Dissolution Event .
- (vii) **Authorisations:**
Sunway shall promptly:
- a. obtain, comply with and do all that is necessary to maintain in full force and effect; and
 - b. supply certified copies to the Trustee of, any authorisations, consents, approvals, filings or registrations required to enable it to perform its obligations under the Transaction Documents to which it is a party and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation.
- (viii) **Compliance with laws:**
Sunway shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Transaction Documents to which it is a party.
- (ix) **Legal Existence:**
Sunway shall and shall ensure its Material Subsidiaries .do all things

necessary to preserve, renew and keep in full force and effect its and that of its Material Subsidiaries' legal existence and the authorisations, consents and licences which are material to the conduct of its business.

(x) **Compliance with Transaction Documents:**

Sunway shall promptly comply and take all necessary steps to cause the Issuer to comply with the terms and perform and carry out all obligations under the Sukuk Mudharabah and the Transaction Documents to which they are a party and ensure that it shall immediately notify the Trustee in the event the Issuer is unable to fulfill or comply with any of the provisions of the Transaction Documents to which it is a party.

(xi) **Insurance:**

Sunway shall and shall ensure that the Material Subsidiaries maintain and/or cause to be maintained such insurances in respect of its assets and businesses against such risks (including but not limited to third party risks and workmen's compensation) which a prudent company carrying on a business similar to that of the Issuer and the Material Subsidiaries would normally insure.

(xii) **Change of Business:**

Sunway shall ensure and shall procure that no substantial change is made to the general nature of the business of Sunway or the Material Subsidiaries from that carried on at the date of the Trust Deed.

(xiii) **CMSA and SC:**

Sunway shall and take all necessary steps to cause the Issuer to comply with all applicable laws including the provisions of the

CMSA and/or the directive, written notices, circulars or guidelines issued by the SC from time to time affecting the Sukuk Mudharabah(including but not limited to the SC's Trust Deeds Guidelines and practice notes issued pursuant to Section 377(1) of the CMSA) as may be applicable to Sunway and the Issuer in relation to the Sukuk Programme in their respective capacity as the Issuer and the Guarantor.

3. Negative Covenants

(A) Covenants relating to the Issuer (to be documented in the Trust Deed and/or Programme Agreement)

(i) **Related Party Transaction:**
Except otherwise contemplated in or permitted under the Transaction Documents, the Issuer shall not enter into any transaction, whether directly or indirectly with interested persons (includes directors, major shareholder or chief executive) unless:-

- a. such transaction shall be on terms that it is no less favourable to the Issuer than those which could have been obtained in a comparable transaction from persons who are not interested persons; and
- b. with respect to transactions involving a value equal to or greater than RM10 million, the Issuer obtains certification from an independent adviser that the transaction is carried out on fair and reasonable terms.

PROVIDED THAT the Issuer certifies to the Trustee that the transaction complies with paragraph

(a) above, that the Issuer has received the certification referred to in paragraph (b) above (where applicable) and that the transaction has been approved by the majority of the board of directors or shareholders in a general meeting as the case may require.

(ii) **Constitutional Documents:**
The Issuer shall not change its memorandum and articles of association in a manner which would be inconsistent with the provisions of the Transaction Documents or in a manner which would materially and adversely affect the ability of the Issuer to perform its obligations under the Transaction Documents.

(iii) **Merger:**
The Issuer shall not consolidate or amalgamate with, or merge with or into or transfer all or substantially all its assets to another entity, unless the successor entity expressly assumes the Issuer's obligations under the Transaction Documents and after giving effect to the transaction, no Dissolution Event has occurred and is continuing.

(iv) **Invest Acquire Shares or Debentures:**
The Issuer shall not invest, acquire shares or debentures in or with any company or person (including the creation of any subsidiary) nor acquire or purchase assets if:

- a. a declaration of a Dissolution Event has been made under the Trust Deed and is continuing; and
- b. following such investment or acquisition, a Dissolution Event would occur.

(v) **Alteration of Paid Up:**
The Issuer shall not decrease or in any way whatsoever alter (other than

by way of increase) the authorised or issued capital of the Issuer whether by varying the amount, structure or value thereof or the rights attached to thereto or convert any of its share capital into stock or by consolidation dividing or sub-dividing all or any of its shares.

- (vi) **Negative Pledge:**
Save and except for the Permitted Security (as defined in paragraph 2(y)(L) below), the Issuer shall not create or permit to create or to subsist any security interest over all or any part of the assets (be it present or future) belonging to itself unless the creation of such security interest shall also secure the payment and repayment of the secured amounts in respect of the Sukuk Mudharabah on a pari passu basis.
- (vii) **Restriction on Transactions:**
The Issuer shall not enter into any transaction with a person, firm or company or establish any exclusive purchasing or sales agency, or enter into any transaction whereby the Issuer might pay more than the ordinary commercial price for any purchase or might receive less than the full commercial price (subject to normal trade discounts) for its products.
- (viii) **Surrender rights:**
The Issuer shall not surrender, transfer, assign, relinquish or otherwise dispose of any of its rights and interest under the Transaction Documents or any of them.
- (ix) **Utilisation of Proceeds:**
The Issuer shall not use the proceeds of the Sukuk Mudharabah for any purpose other than for the purpose set out in the information memorandum or the Transaction Documents.

(x) **Incur Liability:**
The Issuer shall not incur additional indebtedness without the Trustee's prior written consent (which consent shall not be unreasonably withheld) save and except for any indebtedness incurred or to be incurred by the Issuer for so long as the Financial Covenant referred to in paragraph 2(w)(1) are complied with and no Dissolution Event has occurred and is subsisting.

(xi) **Subordination:**
The Issuer shall not incur or permit to exist any indebtedness to any member of the Sunway Group, unless such indebtedness are subordinated to the Sukuk Mudharabah.

(xii) **Inter-company Transactions:**
Except otherwise contemplated in or permitted under the Transaction Documents, the Issuer shall not enter into any agreement with any member of the Sunway Group save for such agreement that is entered into:

(a) in the ordinary course of its business;

(b) on an arms-length basis; and

(c) the performance of which will not have a Material Adverse Effect on the Issuer.

(B) Covenants relating to Sunway and/or its Material Subsidiaries

(i) **Constitutional Documents:**
Sunway shall not change its memorandum and articles of association in a manner which would be inconsistent with the provisions of the Transaction Documents to which it is a party or in a manner which would materially and adversely affect the ability of Sunway to perform its obligations under the Transaction

Documents to which it is a party.

- (ii) **Merger:**
Sunway shall not consolidate or amalgamate with, or merge with or transfer all or substantially all its assets to another entity unless the successor entity expressly assumes Sunway's obligations under the Transaction Documents to which it is a party and after giving effect to the transaction, no Dissolution Event has occurred and is continuing.

- (iii) **Invest Acquire Shares or Debentures:**
Sunway shall not and shall ensure that no other member of the Sunway Group invest, acquire shares or debentures in or with any company or person (including the creation of any subsidiary) or acquire or purchase assets if:
 - a. a declaration of a Dissolution Event has been made under the Trust Deed and is continuing; and/or
 - b. following such investment or acquisition, a Dissolution Event would occur.

- (iv) **Alteration of Paid Up:**
Sunway shall not decrease or in any way whatsoever alter (other than by way of increase) the authorised or issued capital of the Issuer whether by varying the amount, structure or value thereof or the rights attached to thereto or convert any of its share capital into stock or by consolidation dividing or sub-dividing all or any of its shares save and except for any decrease in its issued capital resulting from the purchase of its own shares pursuant to section 67A of the Companies Act, 1965.

- (v) **Negative Pledge:**
Save and except for the Permitted Security (as defined in paragraph

2(y)(L) below), Sunway shall not create or permit to create or to subsist any security interest over all or any part of the assets (be it present or future) belonging to itself unless the creation of such security interest shall also secure the payment and repayment of the secured amounts in respect of the Sukuk Mudharabah on a pari passu basis.

- (vi) **Restriction on Transactions:**
Sunway shall not and shall ensure that its Material Subsidiaries will not enter into any transaction with person, firm or company or establish any exclusive purchasing or sales agency, or enter into any transaction whereby Sunway or its subsidiaries might pay more than the ordinary commercial price for any purchase or might receive less than the full commercial price (subject to normal trade discounts) for its products.
- (vii) **Dividends:**
Sunway shall not declare or pay any dividend or make any other distributions in respect of its share capital in so long as a Dissolution Event has occurred and is subsisting or if following the declaration and payment of dividend, a Dissolution Event will occur.
- (viii) **Surrender rights:**
Sunway shall not surrender, transfer, assign, relinquish or otherwise dispose of any of its rights and interest under the Transaction Documents to which it is a party or any of them.
- (ix) **Incur Liability:**
Sunway and the Material Subsidiaries are not allowed to incur additional indebtedness without the Trustee's prior written consent (which consent shall not be unreasonably withheld) save and

except for any indebtedness incurred or to be incurred by Sunway and the Material Subsidiaries for so long as the Financial Covenant referred to in paragraph 2(w)(1) are complied with and no Dissolution Event has occurred and is subsisting.

(x) **Provision on buy-back and early redemption of sukuk**

Buy-back

The Issuer or any of its subsidiaries or agents or any interested person of the Issuer, which includes the directors, major shareholders and chief executive officer may, at any time, purchase any outstanding Sukuk Mudharabah at any price in the open market by way of private treaty. Any Sukuk Mudharabah so purchased by the Issuer or any of its subsidiaries or agents acting for the redemption or purchase are to be surrendered for cancellation and shall not be reissued or resold.

Any Sukuk Mudharabah held by any interested person of the Issuer (who shall include directors, major shareholders and chief executive officer) shall not entitle such interested person to vote at any of the meetings of the Sukukholders and will not be deemed to be outstanding for the purpose of determining the total votes exercisable by the Sukukholders whenever such determination is required under the Transaction Documents.

Early Redemption

The Issuer may at its option redeem all the Sukuk Mudharabah in a specific series (in whole and not in part) before their respective maturity subject to the Issuer providing a notice to the Trustee and the Facility Agent not less than twenty-one (21) days and not more than sixty (60) days before the date of redemption ("**Early Redemption Date**") notifying the Trustee and the Facility Agent the Early Redemption Date and the series the Issuer wishes to redeem, which shall be at the option of the Issuer.

For avoidance of doubt, a series of Sukuk Mudharabah shall mean Sukuk Mudharabah with the same issue date and

maturity date.

Early redemption of the Sukuk Mudharabah shall be at such price based on the formula set out in Annexure 1.

(y) Other principal terms and conditions for the proposal

- A. Kafalah Agreement
- Sunway shall issue an irrevocable and unconditional Al-Kafalah Guarantee, which shall be applicable in respect of all series of the Sukuk Mudharabah in favour of the Trustee to guarantee all payment obligations of the Issuer under the Purchase Undertaking.
- Sunway shall enter into a separate Kafalah Agreement with the Issuer to provide the guarantee, which is an independent arrangement from the Mudharabah Agreement.
- B. Compensation for late and/ or Default Payment (s) (Ta'widh)
- In the event of any delay in payments of any amounts due under the Purchase Undertaking, the Issuer shall pay to the Trustee for the benefit of the Sukukholders compensation on such overdue amounts at an amount and manner prescribed by the SC's SAC from time to time in accordance with the Shariah principles.
- C. Purchase Undertaking and Exercise Price
- Separate from the Mudharabah transaction, in respect of each series of the Sukuk Mudharabah, the Issuer shall grant an undertaking to the Trustee (acting on behalf of the Sukukholders) pursuant to which the Issuer shall purchase the Trust Assets from the Trustee at the Exercise Price ("**Purchase Undertaking**") only upon the occurrence of the earliest of any of the following events:
- (i) the maturity dates of such series of the Sukuk Mudharabah; or
 - (ii) the declaration of a Dissolution Event of such series of the Sukuk Mudharabah; or
 - (iii) the respective early redemption

dates of the Sukuk Mudharabah.

The Exercise Price shall be determined based on the following formula:

Sukuk Mudharabah with Periodic Distribution

- 1) On the maturity dates of such series of the Sukuk Mudharabah: -

The Exercise Price shall be the purchase of the Trust Assets which is at an amount equal to the Mudharabah Capital plus Expected Return less total Periodic Distributions paid.

- 2) On declaration of a Dissolution Event of such series of the Sukuk Mudharabah:-

The Exercise Price shall be the purchase price of the Trust Assets which is at an amount equal to the Mudharabah Capital plus Expected Return less aggregate of Periodic Distribution(s) made and received and to be adjusted to be equivalent to the accreted value plus accrued but unpaid Periodic Distribution(s) (if any) up to the date of declaration of a Dissolution Event and shall be in accordance with the MyClear Procedures.

- 3) On the early redemption dates of such series of the Sukuk Mudharabah:-

The Exercise Price shall be at such price based on the formula set out in Annexure 1.

Sukuk Mudharabah without Periodic Distribution

In respect of Sukuk Mudharabah without Periodic Distribution, the Exercise Price shall be determined based on the following formula:

1) On the maturity dates: -

The Exercise Price shall be the purchase of the Trust Assets which is at an amount equal to the Mudharabah Capital plus Expected Return less One-off Distribution paid.

2) On Dissolution Event:-

The Exercise Price shall be the Mudharabah Capital plus Expected Return less One-off Distribution made and received and to be adjusted to be equivalent to the accreted value up to the date of declaration of a Dissolution Event and shall be in accordance with the MyClear Procedures.

3) On Early Redemption:-

The Exercise Price shall be the purchase of the Trust Assets which shall be at such price based on the formula set out in Annexure 1.

- D. Status of Sukuk Mudharabah
- The Sukuk Mudharabah to be issued under the Sukuk Programme shall constitute direct, unsubordinated, unsecured, unconditional obligations of the Issuer ranking pari passu in all respects without preference or priority among themselves.
- E. Transaction Documents
- The Sukuk Mudharabah shall be evidenced and secured, by the following documents:-
1. Programme Agreement;
 2. Securities Lodgement Form;
 3. Trust Deed;
 4. Tender Panel Agreement;
 5. Al-Kafalah Guarantee
 6. Legal Documents in respect of a Mudharabah structure including Mudharabah Agreement, Mudharabah Declaration of Trust, Purchase Undertaking.
 7. Any other legal documentation as advised by the Solicitors.

- F. Trustees' Reimbursement Account
- The Issuer shall open and maintain an account designated as "Trustees' Reimbursement Account" (as required under the SC's Trust Deeds Guidelines revised on 12 July 2011 and effective on 12 August 2011 ("**Trust Deeds Guidelines**")), in which a sum of RM30,000.00 from the monies received by the Issuer when the Sukuk Mudharabah are issued are to be deposited ("**Trustees' Reimbursement Account**").
- The Trustees' Reimbursement Account shall be solely operated by the Trustee and the monies shall only be used strictly by the Trustee in carrying its duties in relation to the occurrence of Dissolution Events or enforcement events which are provided in the Trust Deed. The sum of RM30,000.00 in the Trustees' Reimbursement Account shall be maintained for so long as any Sukuk Mudharabah remains outstanding.
- G. Redemption
- Unless previously redeemed or purchased and cancelled, the Sukuk Mudharabah will be redeemed by the Issuer at 100% of its nominal value together with profit accrued (if any) to the date of redemption on their respective maturity dates.
- H. Taxation
- All payments shall be made free and clear of all present and future taxes, duties, withholdings or other deductions whatsoever imposed by the government of Malaysia or any political sub-division or tax authority thereof. In the event that any such taxes are in future imposed or if such withholding or deduction is required by law, the Issuer must make such additional payments as are necessary to cause the Sukukholders to receive the net amount that they would otherwise have received.
- I. Other Conditions
- The Sukuk Programme shall be at all times subject to such rules and directives (whether or not having the force of law) required of or imposed on the participating financial institution(s) by the SC, BNM and/or MyClear.
- J. Governing Laws and Jurisdiction
- These terms and conditions and the Transaction Documents for the Sukuk

Programme shall be governed by the laws of Malaysia. The Issuer shall unconditionally and irrevocably submit to the exclusive jurisdiction of the courts of Malaysia.

K. Voting by Sukukholders

The voting of the Sukukholders under the Sukuk Programme shall be carried out as follows:-

Prior to approval for upsizing of the Sukuk Programme:

All matters/resolutions (save for resolutions for the purposes of the upsizing of the Sukuk Programme) which require the Sukukholders' consent under the Sukuk Programme shall be carried out on a collective basis;

Approval for upsizing of the Sukuk Programme:

Resolutions to be passed for the purposes of upsizing of the Sukuk Programme shall be voted by the Sukukholders on a "per series" basis; and

Post upsizing of the Sukuk Programme:

All matters/resolutions which require the Sukukholders' consent under the Sukuk Programmes shall be carried out on a "per series" basis.

L. Definitions

"Material Adverse Effect"

A material adverse effect on (a) the business, operations, property, condition (financial or otherwise) or prospects of the Sunway Group taken as a whole; (b) the ability of the Issuer or Sunway to perform its obligations under the Transaction Documents to which it is a party; or (c) the validity or enforceability of the Transaction Documents or the rights or remedies of the Trustee or the Sukukholders under the Transaction Documents.

"Material Subsidiaries"

At any time, any subsidiary, both present and future, of Sunway which contributes at least fifteen per cent (15%) to the Sunway's consolidated group pre-tax profit based on the then latest available audited and

consolidated financial statements of Sunway at that time.

**“Permitted
Indebtedness”**

Any indebtedness incurred or to be incurred by the Sunway Group for so long as the Financial Covenant referred to in paragraph 2(w)(1) are complied with and no Dissolution Event has occurred and is subsisting.

“Permitted Security”

- (i) Any liens arising by operation of law or created in the ordinary course of business;
- (ii) Pledges created in relation to documentary credits opened in the ordinary course of trading;
- (iii) Hire purchase transactions;
- (iv) Any security interest created or to be created to secure the Permitted Indebtedness; and
- (v) Any other security interest previously disclosed to the Trustee prior to the date of the Trust Deed.

“Sunway Group”

Sunway and its direct and indirect subsidiaries and including jointly controlled entities and associate companies of Sunway.

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Annexure 1

Price payable by the Issuer in the event of early redemption.

For ICPs

Price payable = Nominal value of the ICPs

For IMTNs

Price payable = the higher of NV or the ERS.

Each series of the Sukuk Mudharabah shall be redeemed (in whole but not in part). For avoidance of doubt, a series of Sukuk Mudharabah is defined as the Sukuk Mudharabah with the same issue date and maturity date.

Where:

Early Redemption Date : Date for the early redemption.

NV : Aggregate nominal value of the Sukuk Mudharabah to be redeemed, expressed in RM.

ERS : Early Redemption Sum, shall be calculated by the Facility Agent based on the following formula and the calculation of the Facility Agent shall be final and binding:

$$\text{ERS} = \frac{(\text{NV} \times \text{ERP})}{100}$$

Profit : Original Profit Rate for each series of the Sukuk Mudharabah expressed as a percentage per annum.

YTM_R : Reference MGS plus Spread.

Reference MGS : Reference MGS shall be the MGS rates for the tenure which is equal to the remaining tenure of the series and shall be determined prior to the redemption of the IMTNs from:

- (a) the latest consolidated Government Securities Rates (Conventional) published by BNM daily, two (2) business days prior to the early redemption notice; or
- (b) if (a) above is not available, the arithmetic average of the mid-rates quoted by any five (5) principal dealers, two (2) business days prior to early redemption notice date or in the case where the rate for a particular tenure is not available directly, then such a rate shall be extrapolated on a linear

basis using the available arithmetic average mid-rates;

PROVIDED THAT if the remaining tenure of the series is not an integer, the Reference MGS shall be the arithmetic mean of the rates of the two nearest tenures derived from (a) or (b) above.

Spread : Spread expressed as basis point (bps) shall be determined prior to the issuance of the Sukuk Mudharabah as follows:

Remaining years to maturity	Spread (bps)			
	Rating AA3	Rating A1	Rating A2	Rating A3
1.0	55	95	140	190
2.0	60	105	160	210
3.0	65	115	180	230
4.0	70	125	190	250
5.0	70	135	200	270
6.0	70	140	210	280
7.0	70	145	220	300

ERP : Early redemption price per RM100.00 (2 decimal places) subject to a minimum of RM100.00, calculated as follows:

(i) For IMTNs with Periodic Distribution:

$$ERP = \left(\frac{100}{[1 + YTM_R / 2]^{(N-1) + (S/T)}} \right) + \left(\sum_{k=1}^N \frac{[100 \times (profit/2)]}{[1 + YTM_R / 2]^{(k-1) + (S/T)}} \right) - \left(\frac{U}{T} \times \frac{100 \times profit}{2} \right)$$

N : Number of Periodic Distribution Date(s) between maturity date and Early Redemption Date, inclusive of both the maturity date and Early Redemption Date.

S : Number of days from the Early Redemption Date to the immediate next Periodic Distribution Date.

T : Number of days between the immediate preceding Periodic Distribution Date (from the Early Redemption Date) to the immediate next Periodic Distribution Date (following the Early Redemption Date).

U : Number of days from the immediate preceding Periodic Distribution Date (from the Early Redemption Date) to the Early Redemption Date.

(ii) For IMTNs without Periodic Distribution:

$$ERP = \frac{100}{[1 + YTM_R / 2]^{(M-1) + (V/W)}}$$

M : Number of Subsequent Dates between the Early Redemption Date and the maturity date, inclusive of both the Early Redemption Date and the maturity date.

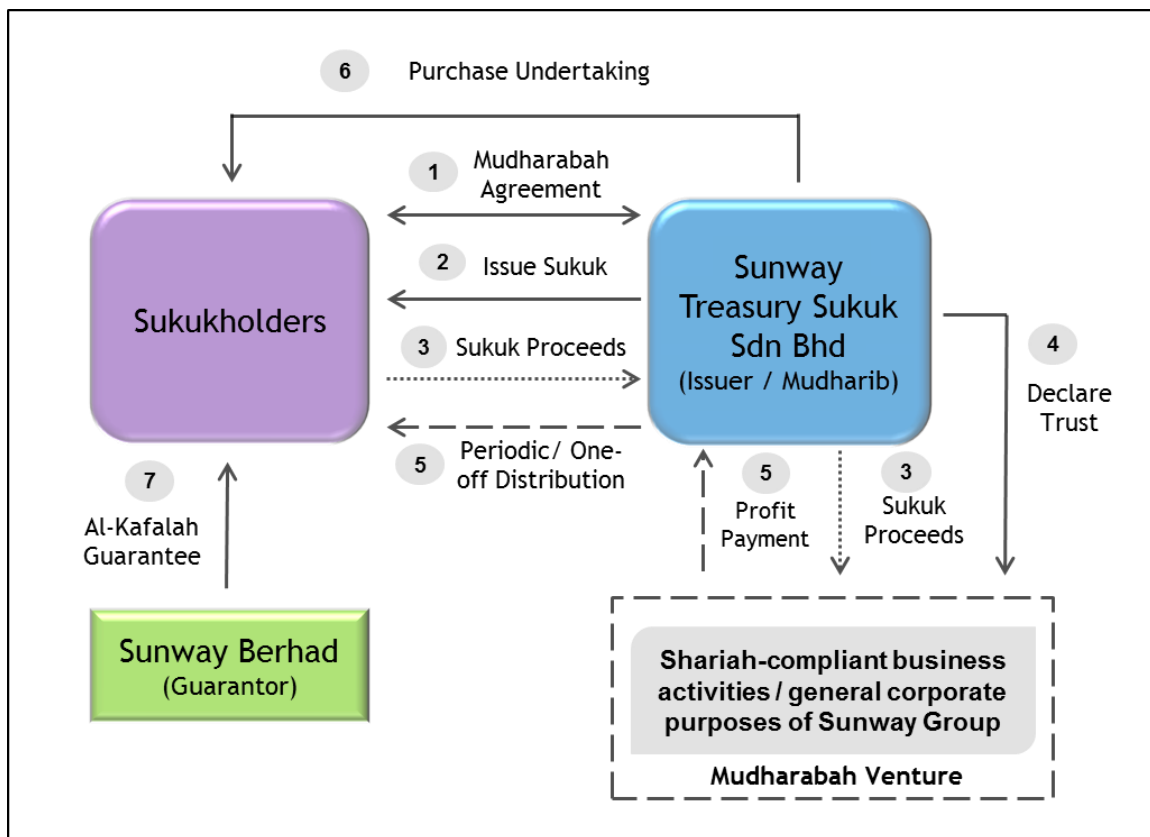
“Subsequent Date(s)” means the date(s) which shall fall on the last day of the successive six (6) month periods (**“Subsequent Period”**), the first period of which shall commence on the issue date.

V : Number of days from the Early Redemption Date to the immediate next Subsequent Date.

W : Number of days in the Subsequent Period within which the Early Redemption Date falls.

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Annexure 2



STEP:

- 1) The Issuer (as "**Mudharib**") shall enter into a Mudharabah contract with the Trustee acting on behalf of the investors (as "**Rabb al-mal**"). Pursuant to the Mudharabah contract, the investors ("**Sukukholders**") shall from time to time provide capital to the Issuer for the purpose of the Sukukholders' investment in Sunway Treasury Sukuk Sdn Bhd's ("**Issuer**") Shariah-compliant business which includes the provision of Islamic inter-company advances or investment into the Shariah-compliant business activities or general corporate purpose of companies within the Sunway Group ("**Mudharabah Venture**").
- 2) The Issuer shall issue the Sukuk Mudharabah to investors ("**Sukukholders**").
- 3) Proceeds from the Sukuk Mudharabah represent 100% of the Sukukholders' capital contribution in the said Mudharabah Venture.
- 4) The Issuer shall subsequently make a declaration of trust ("**Declaration of Trust**") over the undivided rights and entitlements of the Sukukholders under the Mudharabah Venture ("**Trust Assets**") for the benefit of the Sukukholders. The Sukuk Mudharabah hence represents each of the

Sukukholders' undivided proportionate beneficial interests in the Mudharabah Venture.

- 5) Profits generated from the Mudharabah Venture will be shared and distributed between the Rabb al-mal and the Mudharib according to a pre-agreed profit sharing ratio ("**PSR**") of 99:1, while losses will be borne solely by the Rabb al-mal. In respect of Sukuk Mudharabah with periodic distributions, the payment of profits shall be distributed semi-annually or such other period to be agreed ("**Periodic Distribution(s)**") to the Sukukholders. In respect of Sukuk Mudharabah without Periodic Distribution(s), the payment of profits shall be distributed to the Sukukholders on a one-off basis (the "**One-off Distribution**") on the respective maturity dates of such Sukuk Mudharabah.
- 6) The Issuer shall undertake to purchase the Trust Assets from the Trustee (acting on behalf of the Sukukholders) via a Purchase Undertaking upon occurrence of the earlier of the respective maturity dates of the Sukuk Mudharabah or declaration of a Dissolution Event or on Early Redemption.
- 7) Sunway Berhad (as "**Guarantor**") shall guarantee the obligations of the Issuer under the Purchase Undertaking. The Guarantor shall enter into a separate Kafalah Agreement with the Issuer to provide the guarantee, which is an independent arrangement from the Mudharabah Agreement.

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