

**MALAKOFF POWER BERHAD
PRINCIPAL TERMS AND CONDITIONS
UP TO RM5,400,000,000.00 SUKUK MURABAHAH**

1. BACKGROUND INFORMATION

(a) Issuer

(i) Name : Malakoff Power Berhad (“**MPower**” or “**Issuer**”)

(ii) Address : **Registered Address:**
Ground Floor, Wisma Budiman
Persiaran Raja Chulan
50200 Kuala Lumpur

Business Address:
Level 10, Block 4, Plaza Sentral
Jalan Stesen Sentral 5
50470 Kuala Lumpur

(iii) Business registration number : 909003-H

(iv) Date and place of incorporation : 22 July 2010/ Malaysia

(v) Date of listing, where applicable : 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 : Operations and maintenance of power plants

(viii) Board of directors : The board of directors of the Issuer as at 25 September 2013:

Name	Resident Status	I/C No
Habib bin Husin	Malaysian	600814-01-5949
Lee Khuan Eoi	Malaysian	550925-08-6122
Zainal 'Abidin Abd Jalil	Malaysian	590122-01-5247

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- (ix) **Structure of shareholdings and names of shareholders or, in the case of public company, names of all substantial shareholders** : The shareholders and shareholding structure of the Issuer as at 25 September 2013:

Name	No. of shares held	% of shareholding
Malakoff Corporation Berhad	2	100
Total	2	100

- (x) **Authorised, issued and paid-up capital** : **Authorised capital as at 25 September 2013:**
100,000 ordinary shares of RM1.00 each amounting to RM100,000.00

Issued and Fully Paid-Up Capital as at 25 September 2013:

2 ordinary shares of RM1.00 each amounting to RM2.00

- (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**

The Issuer or its board members have not 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, since the date of incorporation (for the Issuer) or for the past five (5) years prior to the date of application (for the board members of the Issuer).

- **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**

Not applicable as the Issuer is not listed on any stock exchange.

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2. PRINCIPAL TERMS AND CONDITIONS

(a) Names of parties involved in the proposal, where applicable

- (i) **Principal advisers** : CIMB Investment Bank Berhad (“**CIMB**”) and Maybank Investment Bank Berhad (“**Maybank IB**”) (collectively, the “**JPs**”)
- (ii) **Lead arrangers** : CIMB and Maybank IB (collectively, the “**JLAs**”)
- (iii) **Co-arranger** : Not applicable
- (iv) **Solicitor** : Messrs Albar & Partners, acting for the JPs and the JLAs
- (v) **Financial adviser** : Not applicable
- (vi) **Technical adviser** : Not applicable
- (vii) **Sukuk trustee** : AmanahRaya Trustees Berhad (“**Trustee**”)
- (viii) **Shariah adviser** : Maybank Islamic Berhad
- (ix) **Guarantor** : Malakoff Corporation Berhad (“**Guarantor**”)
- (x) **Valuer** : Not applicable
- (xi) **Facility agent** : Maybank IB
- (xii) **Primary subscriber (under a bought-deal arrangement) and amount subscribed** : The primary subscribers (applicable under a bought deal arrangement) will be determined prior to the issuance.
- (xiii) **Underwriter and amount underwritten** : None
- (xiv) **Central depository** : Bank Negara Malaysia (“**BNM**”)
- (xv) **Paying agent** : BNM
- (xvi) **Reporting accountant** : Messrs KPMG
- (xvii) **Calculation agent** : Not applicable
- (xviii) **Others (please specify)**
- (1) **Lead Managers** : CIMB and Maybank IB (collectively, the “**JLMs**”)
- (2) **Security Trustee** : AmanahRaya Trustees Berhad

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- (3) **Commodity Trading Participant (“CTP”)** : Maybank Islamic Berhad or such other CTP as may be designated by the Issuer and acceptable to the JLAs.
- The CTP will act as (i) the buyer of Commodities (as defined in item 2(d) herein) for the Issuer (as Agent (as defined in item 2(a)(xviii)(7) herein)) from the Commodity Seller (as defined in item 2(a)(xviii)(4) herein); and (ii) the seller of Commodities for the Issuer (as itself) to the Ultimate Commodity Buyer (as defined in item 2(a)(xviii)(5) herein).
- Note:*
The CTP will act as MPower’s agent to perform all acts and execute all documents with respect to the relevant trade transactions through purchase and sale agreements, certificates and other instruments.
- (4) **Commodity Seller** : Commodities suppliers via *Bursa Suq Al-Sila’* or such other supplier(s) as may be designated by the Issuer (as Agent) and acceptable to the JLAs and the Shariah Adviser.
- The Commodity Seller will act as the seller of Commodities to the CTP.
- (5) **Ultimate Commodity Buyer** : Bursa Malaysia Islamic Services Sdn Bhd or such other buyer as may be designated by the Issuer and acceptable to the JLAs and the Shariah Adviser.
- The Ultimate Commodity Buyer will act as the buyer of Commodities from the CTP.
- (6) **Commodity Trustee** : The Issuer will act as the commodity trustee for the holders of the Sukuk Murabahah (as defined in item 2(c) herein) (“**Sukukholders**”) in respect of the Commodities.
- (7) **Agent** : The Issuer will act as the agent of the Sukukholders to buy the Commodities from the Commodity Seller.
- (b) **Islamic principles used** : Murabahah (via Tawarruq arrangement), being a Shariah principle approved by the Securities Commission Malaysia (“**SC**”)’s Shariah Advisory Council (“**SAC**”).
- (c) **Facility description** : Issuance of sukuk of up to RM5,400,000,000.00

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in nominal value under the Shariah principle of Murabahah via Tawarruq arrangement ("**Sukuk Murabahah**").

The issuance of the Sukuk Murabahah shall be effected as follows:

1. MPower (as itself) shall issue a purchase order ("**Purchase Order**") to the Agent and in such Purchase Order, MPower will irrevocably undertake to purchase the Commodities from the Sukukholders through the Trustee at the Deferred Sale Price (as defined in item 2(e) herein) payable on a deferred payment basis (in instalments). Upon receiving the Purchase Order from MPower, MPower as Agent shall appoint the CTP to purchase Commodities from the Commodity Seller. The CTP shall purchase the Commodities from the Commodity Seller at the Purchase Price (as defined in item 2(e) herein) on a spot basis.
2. Upon purchasing the Commodities from the Commodity Seller via the CTP, MPower in its capacity as the Issuer shall issue the Sukuk Murabahah to the Sukukholders whereupon the Sukuk Murabahah shall evidence the Sukukholders' ownership of the Commodities and all such rights thereto (including all rights against MPower under the Purchase Order and entitlement to the Deferred Sale Price once the Commodities are sold to MPower) and subsequently, MPower in its capacity as the Agent shall pay the Purchase Price using proceeds received from the Sukukholders. The Commodity Trustee will declare a trust in favour of the Sukukholders over the Commodities (so long as title thereto is vested in the Issuer).
3. Subsequently, the Trustee, on behalf of the Sukukholders shall sell the Commodities to MPower, under the Shariah principle of Murabahah, at the Deferred Sale Price. For the avoidance of doubt, the Deferred Sale Price will be paid by MPower to the Sukukholders on an

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instalment payment basis during the tenure of the Sukuk Murabahah.

4. Thereafter, MPower (as itself) will appoint the CTP to sell the Commodities to the Ultimate Commodity Buyer on a spot basis. The CTP shall sell the Commodities to the Ultimate Commodity Buyer for cash consideration equivalent to the Purchase Price.
5. The Guarantor shall provide an unconditional and irrevocable guarantee under the principle of Kafalah (“**Kafalah Guarantee**”), as a continuing obligation, in favour of the Security Trustee for and on behalf of the Sukukholders under which the Guarantor shall agree to guarantee (i) the payment of the Deferred Sale Price which is due and payable on the relevant maturity date and/or the Periodic Distribution Date (as defined in item 2(j) herein), as the case may be, for the relevant Sukuk Murabahah which are then outstanding; and (ii) the Dissolution Amount (as defined in item 2(y)(6) herein) upon declaration of an Event of Default (as set out in item 2(v) herein), including Ta’widh (as explained in item 2(y)(5) herein) and all other amounts due by the Issuer in relation to the Sukuk Murabahah.

The obligations of the Guarantor under the Kafalah Guarantee shall at all times rank at least pari passu with all other present and future unsecured and unsubordinated obligations of the Guarantor, subject to those preferred by law and the Issue Documents (as defined in item 2(y)(13) herein).

6. During the tenure of the Sukuk Murabahah, the Issuer shall make periodic payments equal to the Periodic Distribution Amount (as defined in item 2(k) herein) on the Periodic Distribution Date and the nominal value of the Sukuk Murabahah on the maturity date of the Sukuk Murabahah pursuant to its obligation to pay the Deferred Sale Price to the Sukukholders.

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Upon declaration of an Event of Default, the Issuer shall pay the Dissolution Amount pursuant to its obligation to pay the Deferred Sale Price for the redemption of the Sukuk Murabahah whereupon the redeemed Sukuk Murabahah shall be cancelled.

Please refer to the **Annexure** for the structure diagram of the Sukuk Murabahah.

- (d) **Identified assets** : Shariah-compliant commodities (excluding ribawi items in the category of medium of exchange such as currency, gold and silver) which will be identified on or prior to the time of issuance of the Sukuk Murabahah ("**Commodities**").
- (e) **Purchase and selling price/ rental (where applicable)** : The "**Purchase Price**" shall be equivalent to the proceeds of the Sukuk Murabahah and comply with the asset pricing requirements stipulated under the SC's Guidelines on Sukuk, as may be amended from time to time.
- The "**Deferred Sale Price**" shall be equivalent to the Purchase Price plus the aggregate Periodic Distribution Amount.
- (f) **Issue/ sukuk programme size** : Up to RM5,400,000,000.00 in nominal value ("**Issuance Limit**") which will be issued one-off in tranches and once issued, the remaining unissued portion of the Issuance Limit shall be cancelled and not be available for any subsequent issuance.
- (g) **Tenure of issue/ sukuk programme** : Each of the Sukuk Murabahah shall have tenure of more than one (1) year and up to eighteen (18) years from the issue date of the Sukuk Murabahah.
- (h) **Availability period of sukuk programme** : Not applicable.
- (i) **Profit/ coupon/ rental rate** : The profit rate per annum ("**Periodic Distribution Rate**") for each tranche of the Sukuk Murabahah will be determined prior to the issuance of the Sukuk Murabahah.
- (j) **Profit/ coupon/ rental payment frequency** : On semi-annual basis or such other period of frequency to be agreed between the Issuer and the JLAs prior to the issuance of the Sukuk Murabahah ("**Periodic Distribution Period**").

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The “**Periodic Distribution Date**” means the last day of a particular Periodic Distribution Period.

- (k) **Profit/ coupon/ rental payment basis** : The Periodic Distribution Amount (as defined herein) will be calculated on actual/ 365 days basis (“**Periodic Distribution Basis**”).

The “**Periodic Distribution Amount**”, payable on any relevant Periodic Distribution Date, is calculated at the Periodic Distribution Rate on the nominal value of the relevant tranche of the Sukuk Murabahah for the relevant Periodic Distribution Period based on the Periodic Distribution Basis.

- (l) **Security/ collateral, where applicable** : The Sukuk Murabahah shall be secured by the following:

- (i) the Kafalah Guarantee;
- (ii) an assignment and charge over the FSRA (as defined in item 2(n)(i) herein) and the Issuer DPA (as defined in item 2(n)(ii) herein); and
- (iii) a third party assignment and charge over the Guarantor DPA (as defined in item 2(n)(iii) herein),

collectively referred to as the “**Securities**”.

- (m) **Details on utilisation of proceeds by Issuer. If proceeds are to be utilised for project or capital expenditure, description of the project or capital expenditure, where applicable** : The proceeds from the issuance of the Sukuk Murabahah shall be utilised for the following Shariah-compliant purposes:

- (i) early redemption of the outstanding Murabahah securities of RM4,900,000,000.00 in nominal value under the Islamic principle of Murabahah issued by the Issuer on 18 January 2013 pursuant to a facility agreement dated 28 December 2012 (“**Existing Sukuk**”) and to defray any costs and expenses incurred in relation to the redemption exercise; and
- (ii) to defray costs and expenses incurred in relation to the issuance of the Sukuk Murabahah and any balance thereof, if any, to be utilised for general working

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capital purposes of the Issuer.

(n) Sinking fund and designated accounts, where applicable

- (i) Finance Service Reserve Account :** The Issuer is required to open and maintain a Shariah-compliant bank account to be designated as the Finance Service Reserve Account (“**FSRA**”) with an Islamic bank acceptable to the JLAs. Prior to the occurrence of an Event of Default, the FSRA shall be operated jointly by the Facility Agent and the Issuer. Upon the occurrence of an Event of Default, the FSRA shall be operated solely by the Facility Agent. If such Event of Default has been remedied or waived, the FSRA shall be operated jointly by the Issuer and the Facility Agent.

The Issuer shall ensure that an amount equivalent to the following percentage of the aggregate nominal value of the outstanding Sukuk Murabahah and/or any Periodic Distribution Amount which will become due and payable on the upcoming maturity date/ Periodic Distribution Date (as the case may be) (“**Minimum Required Balance**”) is deposited into the FSRA no later than the period stipulated as below:

Number of months prior to the maturity date/ Periodic Distribution Date of the relevant Sukuk Murabahah	Percentage (%)
Five (5)	20
Four (4)	40
Three (3)	60
Two (2)	80
One (1)	100

The Issuer may only withdraw sums from the FSRA for the payment of the nominal value, the Periodic Distribution Amount and other outstanding amounts payable under the Sukuk Murabahah.

In the event that the balance held in the FSRA exceeds the Minimum Required Balance, the excess shall be released to the Issuer.

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Pending disbursement from the FSRA, all monies standing to the credit of the FSRA may be utilised to make Permitted Investments (as defined in item 2(y)(13) herein).

- (ii) **Disposal Proceeds Account (Issuer)** : The Issuer is required to open and maintain a Shariah-compliant bank account to be designated as the Disposal Proceeds Account (Issuer) ("**Issuer DPA**") with an Islamic bank acceptable to the JLAs. Prior to the occurrence of an Event of Default, the Issuer DPA shall be operated jointly by the Facility Agent and the Issuer. Upon the occurrence of an Event of Default, the Issuer DPA shall be operated solely by the Facility Agent. If such Event of Default has been remedied or waived, the Issuer DPA shall be operated jointly by the Issuer and the Facility Agent.

The Issuer shall ensure that the Net Proceeds (as defined herein) from the Issuer Disposal (as defined herein) ("**Issuer Disposal Proceeds**") are deposited in the Issuer DPA upon completion of such Issuer Disposal.

"**Net Proceeds**" means all cash proceeds (which shall include any deposit received earlier but net of any outstanding amount of the Relevant Financing (as defined herein) that is payable to the financier(s) of such Relevant Financing upon disposal, any transaction expenses and/or taxes (anticipated or actual) payable and/or any amount contractually obliged to be refunded ("**Withheld Amount**")) received pursuant to the Issuer Disposal or the Guarantor Disposal (as defined herein) (as the case may be). For the avoidance of doubt, if any of the Withheld Amount is not utilised or conclusively determined to be not applicable, such Withheld Amount shall form part of the Net Proceeds.

"**Relevant Financing**" means any financing undertaken to fund (including any refinancing thereof) the project and/or acquisition undertaken by the Issuer and/or the Guarantor and/or any of their subsidiaries and/or associate companies, which is required to be prepaid or repaid as a result of any such Issuer Disposal or Guarantor Disposal, as the case may be.

"**Issuer Disposal**" means disposal by the Issuer

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of any of its shareholding (direct or indirect) ("**Shareholding**") in any of its existing and future subsidiaries and associate companies.

The Issuer is permitted to withdraw monies standing to the credit of the Issuer DPA for purposes below in the following order of priority:

- (i) depositing into the FSRA in order to meet the then prevailing Minimum Required Balance and/or for the payment of the nominal value, the Periodic Distribution Amount and/or other outstanding amounts payable under the Sukuk Murabahah; and
- (ii) provided that no Event of Default has occurred and is continuing (each of the sub-paragraphs (a), (b) and (c) below being treated as at the same level of priority):
 - (a) distribution to the Guarantor ("**Issuer Disposal Distribution Amount**") of an amount not exceeding the Withdrawal Limit (as defined in item 2(y)(13) herein);
 - (b) purchasing the Sukuk Murabahah in the secondary market; and
 - (c) for the making of investments by the Group (as defined in item 2(w) herein) in projects or businesses substantially relating to energy or utilities which will enhance the Group's overall value, PROVIDED THAT such amount withdrawn shall not exceed the Associate Disposal Proceeds (as defined herein) remaining in the Issuer DPA.

"Associate Disposal Proceeds" means the Net Proceeds arising from disposal by the Issuer and/or the Guarantor of its Shareholding in any of its existing and future associate companies (save and except for Kapar Energy Ventures Sdn Bhd (Company No. 518564-T) and Port Dickson Power Bhd (Company No. 263941-V), which companies shall not be taken into account in respect of this definition).

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Pending disbursement from the Issuer DPA, all monies standing to the credit of the Issuer DPA may be utilised to make Permitted Investments.

- (iii) **Disposal Proceeds Account (Guarantor)** : The Guarantor is required to open and maintain a Shariah-compliant bank account to be designated as the Disposal Proceeds Account (Guarantor) (“**Guarantor DPA**”) with an Islamic bank acceptable to the JLAs. Prior to the occurrence of an Event of Default, the Guarantor DPA shall be operated jointly by the Facility Agent and the Guarantor. Upon the occurrence of an Event of Default, the Guarantor DPA shall be operated solely by the Facility Agent. If such Event of Default has been remedied or waived, the Guarantor DPA shall be operated jointly by the Guarantor and the Facility Agent.

The Guarantor shall ensure that the Net Proceeds from the Guarantor Disposal (“**Guarantor Disposal Proceeds**”) are deposited in the Guarantor DPA upon completion of such Guarantor Disposal.

“**Guarantor Disposal**” means disposal by the Guarantor of:

- (i) its Shareholding in any of its existing and future subsidiaries and associate companies;
- (ii) five (5) units of combined office suites on level 12, 13 and 13A of Block 3B and level 8 and 9 of Block 2A, Plaza Sentral; and
- (iii) thirty-seven (37) parcels of land totaling 735.5 hectares which are collectively known as the Windsor Estate, located at Batu Kurau-Kamunting, Taiping, Perak.

The Guarantor is permitted to withdraw monies standing to the credit of the Guarantor DPA for purposes below in the following order of priority:

- (i) depositing into the FSRA in order to meet the then prevailing Minimum Required Balance and/or for the payment of the nominal value, the Periodic Distribution Amount and/or other outstanding amounts payable under the Sukuk Murabahah; and
- (ii) provided that no Event of Default has

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occurred and is continuing (each of the sub-paragraphs (a), (b) and (c) below being treated as at the same level of priority):

- (a) distribution to the Guarantor's shareholder(s) ("**Guarantor Disposal Distribution Amount**") of an amount not exceeding the Withdrawal Limit;
- (b) purchasing the Sukuk Murabahah in the secondary market; and
- (c) for the making of investments by the Group in projects or businesses substantially relating to energy or utilities which will enhance the Group's overall value, PROVIDED THAT such amount withdrawn shall not exceed the Associate Disposal Proceeds remaining in the Guarantor DPA.

Pending disbursement from the Guarantor DPA, all monies standing to the credit of the Guarantor DPA may be utilised for Permitted Investments.

The Guarantor DPA and the Issuer DPA shall be collectively referred to as the "**DPA**".

The FSRA and the DPA shall be collectively referred to as the "**Designated Accounts**".

(o) Rating

- **Credit ratings assigned and whether the rating is final or indicative. In the case of a sukuk programme where the credit rating is not assigned for the full amount, disclosures set out in paragraph 9.04 of the Sukuk Guidelines must be made** : The Sukuk Murabahah has been accorded a preliminary rating of AA-1s.

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- **Name of credit rating agencies** : Malaysian Rating Corporation Berhad (“**MARC**”)

- (p) Mode of issue** : The Sukuk Murabahah will be issued either on a bought deal basis, book-building or direct placement on a best effort basis, as the Issuer may select.

The issuance of Sukuk Murabahah shall be in accordance with the MyClear Rules and Procedures (as defined in item 2(y)(3) herein), subject to such exemptions (if any) granted from time to time.

- (q) Selling restriction, including tradability, i.e. whether tradable or non-tradable** : The Sukuk Murabahah are tradable subject to the following selling restrictions:

At issuance

The Sukuk Murabahah may only be offered, sold, transferred or otherwise disposed of directly or indirectly to a person to whom an offer or invitation to subscribe the Sukuk Murabahah and to whom the Sukuk Murabahah are issued would fall within Schedule 6 or Section 229(1)(b) and Schedule 7 or Section 230(1)(b) of the Capital Markets and Services Act 2007 (“**CMSA**”) to be read together with Schedule 9 or Section 257(3) of the CMSA.

Thereafter

The Sukuk Murabahah may only be offered, sold, transferred or otherwise disposed of directly or indirectly to a person to whom an offer or invitation to purchase the Sukuk Murabahah would fall within Schedule 6 or Section 229(1)(b) of the CMSA to be read together with Schedule 9 or Section 257(3) of the CMSA.

- (r) Listing status and types of listing, where applicable** : The Sukuk Murabahah will not be listed on Bursa Malaysia Securities Berhad or any other stock exchange.

- (s) Other regulatory approvals required in relation to the issue, offer or invitation to subscribe or purchase sukuk, and whether or not obtained** : Not applicable.

- (t) Conditions precedent** : To include but not limited to the following (all

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have to be in form and substance acceptable to the JLAs):

A. Main Documentation

- (i) All relevant Issue Documents have been executed, endorsed as exempted under Stamp Duty Exemption (No 23) Order 2000 and presented for registration where applicable; and
- (ii) all relevant notices and acknowledgements of assignment (where applicable) which are required to be issued/ obtained under the relevant Issue Documents shall have been made or received as the case may be.

B. Issuer and Guarantor

- (i) Certified true copies of the Certificate of Incorporation, and the Memorandum and Articles of Association, of the Issuer and the Guarantor;
- (ii) certified true copies of the latest Forms 24, 44 and 49 of the Issuer and the Guarantor;
- (iii) a certified true copy of board resolutions of the Issuer and the Guarantor (where applicable) authorising, among others, the execution of the Issue Documents to which they are a party;
- (iv) a list of the Issuer's and the Guarantor's authorised signatories and their respective specimen signatures;
- (v) a report of the relevant company search of the Issuer and the Guarantor; and
- (vi) a report of the relevant winding up search of the Issuer and the Guarantor.

C. General

- (i) The approval and authorisation from the SC;
- (ii) the Sukuk Murabahah has been accorded a final rating of AA-1s with stable outlook;

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- (iii) satisfactory evidence that all requisite approvals from the holders of the Existing Sukuk for the early redemption of the Existing Sukuk and issuance of the Sukuk Murabahah have been obtained;
- (iv) evidence of confirmation from the Shariah Adviser that the structure, mechanism and Issue Documents of the Sukuk Murabahah are in compliance with Shariah;
- (v) where required, satisfactory evidence that all requisite consents/ approvals have been obtained from the relevant financiers in respect of the Issuer's, the Guarantor's and/or their subsidiary companies' existing indebtedness (where applicable) for the Issuer and/or the Guarantor to create the Securities and issue the Sukuk Murabahah;
- (vi) receipt of redemption statement from the facility agent of the Existing Sukuk ("**Existing FA**") on the redemption sum due in relation to the outstanding Existing Sukuk ("**Redemption Sum**") together with the details of the account to which the Redemption Sum shall be remitted;
- (vii) satisfactory evidence that all the Designated Accounts have been opened;
- (viii) satisfactory evidence that the TRA (as defined in item 2(y)(13) herein) has been opened in the name of the Trustee, and having a credit balance of Ringgit Malaysia Thirty Thousand (RM30,000.00) or satisfactory evidence that Ringgit Malaysia Thirty Thousand (RM30,000.00) will be deposited into the TRA on the issue date of the Sukuk Murabahah;
- (ix) the JLAs have received from their legal counsel a satisfactory legal opinion addressed to them and the Trustee advising with respect to, among others, the legality, validity and enforceability of the Issue Documents and a confirmation addressed to the JLAs that all the conditions precedent have been fulfilled

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or otherwise waived; and

- (x) such other conditions precedent as advised by the legal counsel of the JLAs and agreed by the Issuer.

(u) Representations and warranties and : By the Issuer and the Guarantor (each a "Relevant Party")

Including but not limited to the following:

- (i) the Relevant Party is a company duly incorporated with limited liability and validly existing under the laws of Malaysia, has full power to carry on its business and to own its property and assets;
- (ii) the memorandum and articles of association of the Relevant Party incorporate provisions which authorise, and all necessary corporate action has been taken to authorise, and all relevant consents and approvals of any governmental or other authority or body in Malaysia have been duly obtained and are in full force and effect which are required to authorise the Relevant Party to own its assets, carry on its business as it is being conducted and which, if not obtained would have a Material Adverse Effect (as defined in item 2(y)(13) herein), and sign and deliver, and exercise its rights and perform the transactions contemplated in the Issue Documents and to perform each of its obligations specified therein and under the Sukuk Murabahah and in accordance with its terms;
- (iii) neither the execution nor delivery of the Issue Documents nor the performance of any of the transactions contemplated in the Issue Documents does or will (a) contravene or constitute a default under any provision contained in any contract, undertaking, agreement, instrument, law, ordinance, decree, judgment, order, rule, regulation, license, permit or consent by which the Relevant Party or any of its assets are bound or which is applicable to the Relevant Party or any of its assets; or (b) cause any limitation on the Relevant

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Party or the powers of its directors, whether imposed by or contained in its memorandum and articles of association or in any other law, ordinance, decree, order, rule, regulation, judgment, agreement, instrument or otherwise, to be exceeded;

- (iv) subject to the lodgement and registration of Forms 34 in relation to the charges created under the relevant Issue Documents and the presentation and registration of the power of attorney clause under the relevant Issue Documents, each of the Issue Documents is or will when executed and/ or issued, as the case may be, be in full force and effect and constitutes, or will when executed or issued, as the case may be, constitute, valid and legally binding obligations on the Relevant Party, enforceable in accordance with its term; and
 - (v) such other representations and warranties as may be advised by the legal counsel of the JLAs and agreed by the Relevant Party.
- (v) **Events of default, dissolution event and enforcement event, where applicable** : The events of default (collectively “**Events of Default**” and each an “**Event of Default**”) include but are not limited to the following:
- (i) the Relevant Party fails to pay:
 - (a) any amount due and payable under the Sukuk Murabahah on the due date (whether formally demanded or not), or on demand, if so payable; and/or
 - (b) any amount due under the Issue Documents (other than such amount due under the Sukuk Murabahah) on the due date (whether formally demanded or not), or on demand, if so payable and such failure to pay is not remedied within seven (7) days from the date such amount is due or demanded;

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- (ii) the Relevant Party fails to observe or perform any of its obligations under the Issue Documents to which it is a party or under any undertaking or arrangement entered into in connection therewith, other than an obligation of the type referred to in paragraph (i) above, and such failure to observe or perform would have a Material Adverse Effect, and in the case of a failure which in the opinion of the Trustee is capable of being remedied, the Relevant Party does not remedy the breach within thirty (30) days after the Relevant Party became aware of the breach or having been notified by the Trustee of the breach;
- (iii) any representation, warranty or statement which is made (or acknowledged to have been made) by the Relevant Party in the Issue Documents to which it is a party or which is contained in any certificate, statement, legal opinion or notice provided under or in connection therewith proves to be incorrect in any material respect on or as of the date made or given or deemed made or given, where such event would have a Material Adverse Effect, and in the case of a misrepresentation which in the opinion of the Trustee is capable of being remedied, the Relevant Party does not remedy the misrepresentation within thirty (30) days after the Relevant Party became aware of the misrepresentation or having been notified by the Trustee of the misrepresentation;
- (iv) any material license, authorisation, approval or consent required by the Relevant Party to carry on its business is revoked or withheld or is otherwise not granted or fails to remain in full force and effect or is modified, and any such event would have a Material Adverse Effect;
- (v) any indebtedness for borrowed monies/ Islamic financings of the Relevant Party exceeding the sum of Ringgit Malaysia Fifty Million (RM50,000,000.00) (a) becomes due or payable or capable of being declared due or payable before its stated maturity; or (b) is not paid/ repaid on its due date; or any guarantee or similar

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obligations of the Relevant Party are not discharged at maturity or when called; or any security for such indebtedness becomes enforceable, where such declaration of indebtedness being due or payable or such call on guarantee or similar obligations or such enforcement of security would in each case have a Material Adverse Effect, and is not discharged or disputed in good faith by the Relevant Party in a court of competent jurisdiction within thirty (30) days from the date of such declaration or call or security becoming enforceable;

(vi) any of the following events occurs:

- (a) an encumbrancer takes possession of, or a trustee or administrative or other receiver or similar officer is appointed in respect of, all or any substantial part of the business or assets of the Relevant Party or other steps are taken for making an administration order against the Relevant Party or distress or any form of execution is levied or enforced upon or sued against any such assets and is not discharged or stayed within thirty (30) days after being levied, enforced or sued out. For the purpose of this item (a), reference to "substantial" shall mean such value which would have a Material Adverse Effect;
- (b) if the Relevant Party is for the purposes of Section 218(2) of the Companies Act, 1965 deemed to be unable to pay its debts (including Islamic financings) or stops payment of all or a material part of its debts (including Islamic financings) and such event, in the opinion of the Trustee has or would have a Material Adverse Effect;
- (c) the Relevant Party convenes a meeting of its creditors or

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proposes or makes any arrangement 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 Relevant Party becomes or is declared to be insolvent);

- (d) the Relevant Party begins negotiations or takes any proceeding or other step with a view to a rescheduling or deferral of all of its indebtedness (or of any part of its indebtedness which it will or might otherwise be unable to pay when due) (including amount arising under Islamic financing) or makes a general assignment or an arrangement or composition (including but not limited to a scheme of arrangement under Section 176 of the Companies Act, 1965) with or for the benefit of its creditors or a moratorium is agreed or declared by a court of competent jurisdiction in respect of or affecting all or any part of its indebtedness (including amount arising under Islamic financing) or for the suspension of payments of its indebtedness (including amount arising under Islamic financing) generally and such event, in the opinion of the Trustee has or would have a Material Adverse Effect;
- (e) any step is taken for the winding up, dissolution or liquidation of the Relevant Party or a resolution is passed for the winding up of the Relevant Party or a petition for winding up is presented against the Relevant Party, and the Relevant Party has not taken any action in good faith to set aside such petition within thirty (30) days from the date

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of service of such winding up petition to the Relevant Party;

- (f) anything analogous to any of the events specified in items (a) to (e) occurs under the law of any applicable jurisdiction; or
- (g) any judgment passed against the Relevant Party by any court of competent jurisdiction which, in the opinion of the Trustee has a Material Adverse Effect and shall remain unsatisfied for more than thirty (30) days unless an appeal has been filed within the requisite time period for filing such appeals;
- (vii) any of the undertakings, assets, rights or revenue of, or shares or other ownership interests in the Relevant Party are seized, nationalised, expropriated or compulsorily acquired by the government or any person acting under the authority of the government which in the opinion of the Trustee would have a Material Adverse Effect;
- (viii) at any time it is illegal or unlawful for the Relevant Party to perform any of its material obligations under the Issue Documents to which it is a party;
- (ix) any event or events has or have occurred or a situation exists which would, give the Trustee reasonable grounds to believe that such event or events would have a Material Adverse Effect on the financial condition of the Relevant Party or materially and adversely affect the Relevant Party's ability to perform any of their material obligations under the Issue Documents to which it is a party; or
- (x) any other Events of Default as may be advised by the legal counsel of the JLAs and agreed by the Relevant Party.

Upon the occurrence of an Event of Default which is continuing, the Trustee may at its discretion or, upon the Sukukholders' instruction, shall declare that an Event of Default has occurred and the

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Trustee is entitled to enforce its rights under the Issue Documents including, but not limited to, accelerating the payment of the Dissolution Amount and enforcing the Kafalah Guarantee.

(w) Covenants : Positive Covenants

By the Relevant Party

Including but not limited to the following:

- (i) the Relevant Party will exercise reasonable diligence in carrying on and operating its business and affairs in a proper and efficient manner and in accordance with the financial and commercial standards and practices;
- (ii) the Relevant Party shall prepare its financial statements on a basis consistently applied in accordance with approved accounting principles in Malaysia and those financial statements shall give a true and fair view of the results of the operations of the Group for the period in question and the state of the Group's affairs for the period to which the financial statements are made up and shall disclose or provide against all material liabilities (actual or contingent) of the Group. "**Group**" is defined as the Guarantor and its subsidiaries whose accounts are consolidated in the Guarantor's audited consolidated financial statements in accordance with approved accounting standards in Malaysia;
- (iii) the Relevant Party will deliver to the Trustee:
 - (a) as soon as they become available (and in any event within one hundred and eighty (180) days after the end of each of its financial year) copies of its consolidated audited financial statements for that period duly audited by a firm of independent certified public accountants;
 - (b) as soon as they become available

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(and in any event within ninety (90) days after the end of each half year) copies of its unaudited half-yearly consolidated financial statements for that period which shall contain the income statements and balance sheets, which are duly certified by any one of its directors and/or chief financial officer;

(c) on or before each anniversary of the date of the trust deed, a certificate confirming that the Relevant Party has complied with all its obligations under the trust deed and the Issue Documents to which it is a party and if applicable, since the date of the last certificate issued, whether any Event of Default has occurred and if any Event of Default has occurred, the certificate should specify the same; and

(d) such additional financial or other information relating to the Relevant Party or relevant to the Sukuk Murabahah as the Trustee may from time to time reasonably request in order to discharge its duties and obligations under the trust deed except to the extent where the disclosure of such information would breach any law, regulation, stock exchange requirement or duty of confidentiality;

(iv) the Relevant Party will obtain and promptly renew from time to time all relevant authorisations, consents, licenses, approval and permits as may be necessary to ensure the validity, enforceability or priority of the liabilities and obligations of the Relevant Party or the rights of the Trustee under the Issue Documents, and will promptly deliver to the Trustee, certified true copies of, any such authorisations, consents, licenses, approvals and permits and the Relevant

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Party shall comply with the terms of such documents;

- (v) the Relevant Party shall notify the Trustee in writing immediately in the event that the Relevant Party becomes aware of the following events:
 - (a) the occurrence of any Event of Default or any event which, upon the giving of notice and/or lapse of time and/or the issue of a certificate and/or the fulfilment of the relevant requirement as contemplated under the relevant Issue Document would constitute an Event of Default (“**Potential Event of Default**”), and shall provide the Trustee with full details of any steps which it is taking, or is considering taking, in order to remedy or mitigate the effect of the Event of Default or the Potential Event of Default or otherwise in connection with it and shall take such reasonable steps as may have been notified by the Trustee following the occurrence of the Event of Default or the Potential Event of Default to remedy or mitigate the effect of any of the Event of Default or the Potential Event of Default or any other steps as the Trustee may reasonably request;
 - (b) the happening of any event that has caused or could cause one or more of the following:
 - (1) any amount secured or payable under the Sukuk Murabahah to become immediately payable;
 - (2) the Sukuk Murabahah to become immediately enforceable; or
 - (3) any other right or remedy under the terms, provisions or covenants of the Sukuk

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Murabahah or the trust deed to become immediately enforceable;

- (c) any circumstance that has occurred that would materially prejudice the Relevant Party or any security created pursuant to the Sukuk Murabahah or the trust deed;
 - (d) any substantial change in the nature of the business of the Relevant Party or change in its board of directors;
 - (e) any change in the name of the Guarantor;
 - (f) any cessation of liability of the Guarantor for the payment of the whole or part of the monies for which it was liable under the Kafalah Guarantee;
 - (g) any change in the withholding tax position or taxing jurisdiction of the Relevant Party;
 - (h) any change in the utilisation of proceeds from the Sukuk Murabahah from that set out in item 2(m) above or in the information memorandum or any agreement entered into in connection with the Sukuk Murabahah which sets out a specific purpose for which proceeds are to be used; and
 - (i) any other matter that may materially prejudice the interests of the Sukukholders;
- (vi) the Relevant Party shall keep proper books and accounts at all times and upon the Trustee having given reasonable notice to it, permit the Trustee and any person appointed by the Trustee (e.g. auditors) to inspect the Relevant Party's books of accounts and other relevant documents in relation to the Issue

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Documents except to the extent where the disclosure of such information would breach any law, regulation, stock exchange requirement or duty of confidentiality; and

- (vii) any other covenants as advised by the legal counsel of the JLAs and agreed by the Relevant Party.

By the Issuer

Including but not limited to the following:

- (i) the Issuer shall maintain a paying agent in Malaysia;
- (ii) the Issuer shall procure the Paying Agent to forthwith notify the Trustee if for any reason whatsoever: (a) the amounts received by the Paying Agent from the Issuer pursuant to the Central Securities Depository and Paying Agency Rules are insufficient; or (b) no monies have been received by the Paying Agent from the Issuer pursuant to the Central Securities Depository and Paying Agency Rules, to satisfy all payments then due in respect of the Sukuk Murabahah;
- (iii) the Issuer shall ensure that the terms in the trust deed do not contain any matter which is inconsistent with the provisions of the information memorandum relating to the Sukuk Murabahah unless it has obtained the approval of the Sukukholders by way of an extraordinary resolution or the written consent of the Trustee (which consent may be given where in its opinion, it is not materially prejudicial to the interest of the Sukukholders to give such approval) for the negative covenants relating to the amendment, supplement and variation to the Memorandum and Articles of Association of the Issuer and the change in the utilisation of proceeds from the Sukuk Murabahah;
- (iv) the Issuer shall ensure that all credit balances in the disposal proceeds account (issuer) of the Existing Sukuk

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("Existing Issuer DPA") (if any) are deposited into the Issuer DPA upon cancellation of the Existing ICP Programme (as defined in item 2(y)(13) herein) and discharge of charge over the Existing Issuer DPA; and

- (v) any other covenants as advised by the legal counsel of the JLAs and agreed by the Issuer.

By the Guarantor

Including but not limited to the following:

- (i) the Guarantor shall ensure that the Issuer will remain as its wholly owned subsidiary;
- (ii) the Guarantor shall ensure that all credit balances in the disposal proceeds account (guarantor) of the Existing Sukuk ("Existing Guarantor DPA") (if any), are deposited into the Guarantor DPA upon cancellation of the Existing ICP Programme and discharge of charge over the Existing Guarantor DPA;
- (iii) the Guarantor shall promptly notify the Trustee in writing of any amendment, supplement and variation to its Memorandum and Articles of Association in a manner which may be materially prejudicial to the interests of the Sukukholders; and
- (iv) any other covenants as advised by the legal counsel of the JLAs and agreed by the Guarantor.

Negative Covenants

By the Relevant Party

Including but not limited to the following:

Unless otherwise consented to in writing by the Trustee:

- (i) save and except in respect of loans and advances (including by way of Islamic financings) to the Issuer and/or the Guarantor and/or its/their subsidiaries

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and/or its/their associate companies (as the case may be) in the ordinary course of business and on ordinary commercial terms, the Relevant Party shall not lend any money (including by way of Islamic financings) to any party other than to its directors, officers or employees as part of their terms of employment and on ordinary commercial terms of employment. For the avoidance of doubt, the restrictions contained herein shall not be applicable in respect of any guarantees issued by any Relevant Party;

- (ii) the Relevant Party shall not create or permit to subsist any encumbrance, mortgage, charge (whether fixed or floating), pledge, lien, right of set off, assignment by way of security or any security interest whatsoever, howsoever created or arising ("**Security Interest**") over all or any part of its business or undertaking or assets save and except for:
 - (a) liens arising by operation of law and/or arising in the ordinary course of its business and/or arising in pursuance of agreements executed in the ordinary course of its business and/or arising under any guarantee issued by the Relevant Party and for any right of set-off arising under any guarantee or set-off agreement issued and/or executed by the Relevant Party;
 - (b) such Security Interest created over equity and/or equity linked and/or debt securities of the relevant subsidiaries and/or associate companies of the Relevant Party (which are undertaking the project and/or acquisition) in favour of any financiers providing the financing for such project and/or acquisition to such relevant subsidiaries and/or associate companies of the Relevant Party;

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- (c) any Security Interest created over its cash deposits of an amount not exceeding RM400 million (in aggregate for the Issuer and the Guarantor), at any time to secure short term bank guarantee facilities and/or credit support facilities for the benefit of the Issuer and/or the Guarantor and/or its/their subsidiaries in the normal course of its operations, as the case may be; and
 - (d) any Security Interest created and disclosed to the JLAs prior to the date of the trust deed for the Sukuk Murabahah;
- (iii) the Relevant Party shall not enter into a transaction, whether directly or indirectly, with the directors, major shareholders and chief executive officer ("**Interested Persons**") of the Relevant Party unless:
 - (a) such transaction shall be on terms that are no less favourable to the Relevant Party than those which could have been obtained in a comparable transaction from persons who are not the Interested Persons; and
 - (b) with respect to transactions involving an aggregate payment or value equal to or greater than such amount representing fifty per centum (50%) of the Guarantor's net tangible asset as reflected in its then current audited consolidated financial statement, the Relevant Party obtains certification from an independent adviser that the transaction is carried out on fair and reasonable terms;

provided that the Relevant Party certifies to the Trustee in writing:

- (1) that the transaction complies with paragraph (a) above;

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- (2) that the Relevant Party has received the certification referred to in paragraph (b) above (where applicable); and
- (3) 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;
- (iv) the Issuer shall not permit any amendment, supplement and variation to its Memorandum and Articles of Association in a manner which may be materially prejudicial to the interests of the Sukukholders; and
- (v) any other covenants as advised by the legal counsel of the JLAs and agreed by the Relevant Party.

By the Issuer

Including but not limited to the following:

Unless otherwise consented to in writing by the Trustee:

- (i) save and except in respect of the settlement of loans/ advances (including by way of Islamic financings) to the Guarantor and the transfer of monies between the Guarantor and the Issuer in the ordinary course of business, the Issuer shall not make any payment/ repayment in respect of the loans/ advances (including by way of Islamic financing) from its related companies if:
 - (a) an Event of Default has occurred and is continuing or will occur as a result of such payment;
 - (b) the Aggregated DE Ratio (as defined herein) or the Group DE Ratio (as defined herein) is breached or will be breached as a result of such payment;
 - (c) the FSCR (as defined in item 2(y)(13)) is below 1.75 times after

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such payment; or

- (d) the requirements with respect to the FSRA have not been met or will not be met after such payment;
- (ii) the Issuer shall not change the utilisation of proceeds from the Sukuk Murabahah for any purposes other than for the purposes set out in item 2(m) above;
- (iii) the Issuer shall not dispose, sell or transfer or permit to dispose, sell or transfer:
 - (a) its Shareholding in any of its existing and future subsidiaries and associate companies from the issue date of the Sukuk Murabahah until 30 April 2014 (“**Locked Period**”);
 - (b) its Shareholding in Tanjung Bin O&M Berhad (“**Tanjung Bin O&M**”) which will result in it holding less than fifty one per centum (51%) Shareholding in Tanjung Bin O&M, post the Locked Period; and
 - (c) any of its operation and maintenance business, so long as the Sukuk Murabahah is outstanding; and
- (iv) any other covenants as advised by the legal counsel of the JLAs and agreed by the Issuer.

By the Guarantor

Including but not limited to the following:

Unless otherwise consented to in writing by the Trustee:

- (i) the Guarantor shall not (1) declare or pay any dividend or bonus issue or make any distribution (be it income or capital in nature) to its shareholders or (2) make payment/ repayment in respect of the

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loans/ advances (including by way of Islamic financings) from its shareholders and/or related companies (as the case may be) if:

- (a) an Event of Default has occurred and is continuing or will occur as a result of such payment or declaration;
- (b) the Aggregated DE Ratio or the Group DE Ratio is breached or will be breached as a result of such payment or declaration;
- (c) the FSCR is below 1.75 times after such payment or declaration; or
- (d) the requirements with respect to the FSRA have not been met or will not be met after such payment or declaration.

In respect of item (1) above, the aforesaid conditions (b), (c) and (d) shall not be applicable if the payment or distribution is made from the Guarantor Disposal Distribution Amount and the Issuer Disposal Distribution Amount (indirectly);

- (ii) the Guarantor shall not dispose, sell or transfer or permit to dispose, sell or transfer:
 - (a) its Shareholding in any of its existing and future subsidiaries and associate companies (save and except for Malakoff Utilities Sdn Bhd (formerly known as Wirazone Sdn Bhd (Company No. 374739-T)) during the Locked Period; and
 - (b) its Shareholding in Segari Energy Ventures Sdn Bhd (Company No. 248091-X), Teknik Janakuasa Sdn Bhd (Company No. 271559-H), GB3 Sdn Bhd (Company No. 523034-M), Prai Power Sdn Bhd (Company No. 506784-H), Tanjung Bin Power Sdn Bhd

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(Company No, 459016-X),
Tanjung Bin Energy Sdn Bhd
(Company No. 481582-X), Natural
Analysis Sdn Bhd (Company No.
307034-D) or Malakoff Wind
Macarthur Pty Ltd (formerly known
as Meridian Wind Macarthur Pty
Ltd (ACN: 124 383 688) which will
result in it holding less than fifty
one per centum (51%)
Shareholding in those companies,
post the Locked Period;

- (iii) the Guarantor shall not pay any distribution to the Junior Sukuk (as defined in item 2(y)(13) herein) if there are any amounts due and payable under the Sukuk Murabahah which remains unpaid;
- (iv) the Guarantor shall not redeem the Junior Sukuk unless such redemption is financed by any securities constituting obligations of equivalent ranking or below thereto, including equity fund raising; and
- (v) any other covenants as advised by the legal counsel of the JLAs and agreed by the Guarantor.

Financial Covenant

The Issuer and the Guarantor shall maintain at all times:

- (i) a debt-to-equity ratio ("**DE Ratio**") of not more than 1:1 at the aggregated company level ("**Aggregated DE Ratio**"); and
- (ii) a DE Ratio of not more than 5.5:1 at the Guarantor's group level ("**Group DE Ratio**").

Aggregated DE Ratio shall be calculated as the ratio of the Debt (as defined herein) to the Aggregated Equity (as defined herein) whereas the Group DE Ratio shall be calculated as the ratio of the Debt to the Group Equity (as defined herein).

"**Debt**" is represented by the aggregate of:

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- (i) the principal amount for the time being owing by the Parties (as defined herein) in respect of any loan, overdraft (or other similar indebtedness), financing raised under Islamic principles, debenture, debenture stock, credit facilities, borrowing, long term debt instruments (including but not limited to the Sukuk Murabahah, promissory notes and loan stocks) or any other instrument creating or evidencing the Parties' borrowing/ financing raised under Islamic principles, as the case may be, but so that in the case of a debenture, debenture stock, bond/sukuk or other instruments created or evidencing collateral security for the Parties' borrowing/ financing raised under Islamic principles, as the case may be, the amount to be taken into account shall be the principal amount thereof or the amount for the time being outstanding of the borrowing/ financing raised under Islamic principles or indebtedness collaterally secured whichever is the lesser;
- (ii) in relation to advances (including by way of Islamic financings) made to the Parties, the amount to be taken into account shall be the principal amount of the advances (including by way of Islamic financings) made to the Parties and not paid/ repaid;
- (iii) amounts raised by the Parties by acceptance under any acceptance credit opened on its/their behalf and the principal amount recoverable from the Parties in respect of bills or receivables discounted;
- (iv) amounts raised by the Parties by factoring its/their hire-purchase receivables with recourse and financial leases;
- (v) in relation to guarantees and indemnities provided by the Parties, the liabilities of the Parties to be taken into account shall be the outstanding principal amount of the indebtedness for which such guarantees and indemnities are issued; and

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- (vi) net exposures determined on a marked to market basis under any derivatives transactions entered by the Parties;

but excludes:

- (i) the double counting of any liability;
- (ii) all loans and/or advances (including by way of Islamic financings) from the Parties' shareholders that remains outstanding and which are subordinated;
- (iii) all loans, advances, guarantees and/or indemnities extended/ granted between the Issuer and the Guarantor; and
- (iv) the Junior Sukuk and other instruments of equivalent ranking or below thereto.

"Aggregated Equity" means the aggregate of:

- (i) the total equity (company level) of the Issuer and the Guarantor save and except for the share capital and share premium of the Issuer;
- (ii) all loans and/or advances (including by way of Islamic financings) from the Guarantor's shareholders that remain outstanding and which are subordinated; and
- (iii) the Junior Sukuk and other instruments of equivalent ranking or below thereto.

"Group Equity" means the aggregate of:

- (i) the total equity (inclusive of non-controlling/ minority interests) of the Group;
- (ii) all loans and/or advances (including by way of Islamic financings) from the Guarantor's shareholders that remain outstanding and which are subordinated; and
- (iii) the Junior Sukuk and other instruments of equivalent ranking or below thereto.

The Aggregated Equity and the Group Equity

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shall take into account the following:

- (a) adjustment as may be appropriate in respect of any variation in the issued and paid-up share capital, the share premium account and any other capital and revenue reserve account of the Parties since the date of the latest audited consolidated financial statements (except for those accounted in (b) below);
- (b) deduction for:
 - (1) an amount equal to any distribution by the Parties out of profits earned prior to the date of its latest audited balance sheet and which have been declared, recommended or made since that date except so far as provided for in such balance sheet; and
 - (2) an appropriate amount for any tax which is payable on the actual realisation of any land or buildings of the Parties at the amounts which they have been realised.

For avoidance of doubt, any double counting shall be disregarded.

The Aggregated DE Ratio and the Group DE Ratio shall be computed based on the then latest annual audited financial statements of the Issuer and the Guarantor, prepared consistently in accordance with approved accounting standards in Malaysia.

For the purpose of this clause, "**Parties**" means (i) for purpose of computing the Aggregated DE Ratio, the Issuer and the Guarantor and (ii) for the purpose of computing the Group DE Ratio, the Group.

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

- (i) **Redemption** : Unless redeemed earlier by the Issuer, the Issuer shall redeem the Sukuk Murabahah at nominal value on its respective maturity dates.

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- (ii) **Purchase and Cancellation** : The Issuer, its subsidiaries or agent acting on behalf of the Issuer may at any time purchase the Sukuk Murabahah in the open market at any price or by private treaty. The Sukuk Murabahah so purchased by the Issuer or by its subsidiaries or by agent of the Issuer who is acting for the purchase will be cancelled and may not be re-sold or re-issued.
- (y) **Other principal terms and conditions for the proposal**
- (1) **Availability period of the issue of the Sukuk Murabahah** : The period commencing from the date of fulfillment of the conditions precedent in accordance with item 2(t) herein and ending on the date falling one (1) year from the date of approval and authorisation by the SC.
- (2) **Issue price (RM)** : The Sukuk Murabahah may be issued at a premium, at par or at a discount.
- The issue price of the Sukuk Murabahah shall be determined prior to the issuance of the Sukuk Murabahah and shall be calculated in accordance with the Operational Procedures for Securities Services issued by Malaysian Electronic Clearing Corporation Sdn Bhd (“**MyClear**”) dated 6 May 2011, as amended or substituted from time to time (“**MyClear Procedures**”).
- (3) **Form and Denomination** : Form
- The Sukuk Murabahah shall be issued in accordance with:
- (a) the Participation and Operation Rules for Payments and Securities Services issued by MyClear dated 6 May 2011, as amended or substituted from time to time (“**MyClear Rules**”); and
- (b) MyClear Procedures;
- or their replacement thereof (collectively the “**MyClear Rules and Procedures**”) applicable from time to time.
- Each tranche of the Sukuk Murabahah shall be represented by a global certificate to be

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deposited with the Central Securities Depository and is exchanged for definitive bearer form only in certain limited circumstances.

Denomination

The denomination of the Sukuk Murabahah shall be Ringgit Malaysia One Million (RM1,000,000.00) or in multiples of Ringgit Malaysia One Million (RM1,000,000.00) at the time of issuance or such other denomination as agreed between the Issuer and the Facility Agent at the time of issuance, subject to the MyClear Rules and Procedures.

- (4) **Minimum Level of Subscription** : The minimum level of subscription for the Sukuk Murabahah shall be one hundred per centum (100%) of the size of issue.
- (5) **Compensation for late payments (Ta'widh)** : In the event of delay in payment of the Deferred Sale Price under the Sukuk Murabahah, the Issuer shall pay to the Sukukholders, compensation (Ta'widh) on such overdue amounts at the rate and in the manner prescribed by the SC's SAC from time to time.
- (6) **Rebate (Ibra')** : The Sukukholders in subscribing or purchasing the Sukuk Murabahah, consent to grant a rebate, if the Sukuk Murabahah is redeemed before the maturity date, upon the declaration of an Event of Default.

The "**Rebate (Ibra')**" shall be the unearned Periodic Distribution Amount to the Sukukholders from the date of redemption of the Sukuk Murabahah upon the declaration of an Event of Default up to the maturity date of the Sukuk Murabahah.

The Issuer shall pay the Dissolution Amount on the date of the declaration of an Event of Default as determined by the Facility Agent pursuant to its obligation to pay the Deferred Sale Price, which shall be calculated in accordance with the formula below.

"**Dissolution Amount**" is the amount equivalent to the Deferred Sale Price determined at the Issue Date less the aggregate of Periodic Distribution Amount and nominal value paid (if any) prior to the declaration of an Event of

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Default less the Rebate (Ibra') (if any).

- (7) **Status** : The Sukuk Murabahah shall constitute direct, unconditional and secured obligations of the Issuer and shall at all times rank pari passu, without discrimination, preference or priority amongst themselves and at least pari passu with all other present and future unsecured and unsubordinated obligations of the Issuer, subject to those preferred by law and the Issue Documents.
- (8) **Taxes** : All payments by the Issuer and/or the Guarantor shall be made without withholding or deductions for or on account of any present or future tax, duty or charge of whatsoever nature imposed or levied by or on behalf of Malaysia or any other applicable jurisdictions, or any authority thereof or therein having power to tax, unless such withholding or deduction is required by law. In the event the withholding or deduction is required, the Issuer and/or the Guarantor shall not be required to make such additional amount in respect of such withholding or deduction.
- (9) **No payment of interest** : For the avoidance of doubt and notwithstanding any other provision to the contrary herein contained, it is agreed and declared that nothing in this principal terms and conditions ("**PTC**") and the Issue Documents shall oblige or entitle any party nor shall any party pay or receive or recover interest on any amount due or payable to another party pursuant to the PTC and/or the Issue Documents and the parties hereby expressly waive and reject any entitlement to recover such interest.
- (10) **Other conditions** : The Sukuk Murabahah shall at all times be governed by the guidelines issued and to be issued from time to time by the SC, BNM and/or MyClear who have jurisdiction over matters pertaining to the Sukuk Murabahah.
- (11) **Interested Person** : The Sukuk Murabahah held by the Issuer or any Interested Person of the Issuer shall not be counted for purposes of voting. For the purpose of this clause, Interested Person will not include the categories of major shareholders as provided under the exceptions in paragraphs 22.04 (a) to (d) of the SC's Trust Deed Guidelines effective 12 August 2011.

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- (12) **Governing laws & jurisdiction** : The laws of Malaysia and the Issuer and/or the Guarantor shall unconditionally and irrevocably submit to the exclusive jurisdictions of the courts of Malaysia.
- (13) **Definitions**
- Issue Documents** : The Sukuk Murabahah shall be governed by documentation standard for a transaction of this nature to be in the form and substance acceptable to the JLAs and the Issuer and shall include, but not limited to the following:
- (i) trust deed;
 - (ii) facility agreement;
 - (iii) Kafalah Guarantee;
 - (iv) security documents;
 - (v) Islamic documents;
 - (vi) securities lodgement form for central securities depository and paying agency services; and
 - (vii) such other documents as advised by the legal counsel to the JLAs, the Shariah Adviser and to be agreed with the Issuer.
- Permitted Investments** : Permitted Investments are collectively referred to as the Shariah-compliant investment products approved by the SC's SAC, BNM's Shariah Council and/or other recognised Shariah authorities and include as follows:
- (a) Mudharabah, Wadiah and other deposits under Shariah principles (which is income bearing) and negotiable certificates of deposits issued by a licensed financial institution pursuant to the Islamic Financial Services Act 2013 (“IFSA”);
 - (b) Islamic bankers acceptances, Islamic bills and other Islamic money market instruments of a licensed financial institution (as defined in the IFSA) with a short term rating of MARC-1 (or its equivalent) and a minimum long term rating of AA- (or its equivalent);

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- (c) Islamic treasury bills, Islamic money market instruments and other Islamic securities or Sukuk issued or guaranteed by BNM or the Government of Malaysia;
- (d) Islamic money market funds which are principal protected and are approved by the SC;
- (e) principal protected structured investments approved by BNM and issued by licensed financial institutions (as defined in the IFSA) with a short term rating of MARC-1 (or its equivalent) and a minimum long term rating of AA- (or its equivalent); or
- (f) Islamic securities issued by corporations, licensed financial institutions or guaranteed by licensed financial institutions (as defined in the IFSA) with a short term rating of MARC-1 (or its equivalent) and a minimum long term rating of AA- (or its equivalent),

provided always that:

- (i) such investments are Shariah-compliant;
- (ii) such Permitted Investments are to be held and not traded and having maturity date that matches the utilisation of the monies to meet any payment obligations of the Issuer when falling due and payable;
- (iii) such funds utilised for the Permitted Investments shall be remitted into the respective Designated Accounts at least one (1) business day prior to the date the funds are required for its intended purposes under the respective Designated Accounts; and
- (iv) such Permitted Investments are denominated in Ringgit Malaysia.

Withdrawal Limit : For each of the Issuer Disposal and/or the Guarantor Disposal (as the case may be), the total allowable withdrawal from each relevant DPA for purposes of distribution to the Guarantor and/or its shareholders (as the case may be)

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shall be the lower of:

- (i) the balance standing to the credit of the Guarantor DPA and/or the Issuer DPA (as the case may be); and
- (ii) the following limit for the Issuer Disposal Proceeds from each Issuer Disposal and/or the Guarantor Disposal Proceeds from each Guarantor Disposal (as the case may be) (“**Proceeds**”):

Date of Issuer Disposal and/or Guarantor Disposal (from issue date of the Sukuk Murabahah)	% limit (as a percentage of the Issuer Disposal Proceeds and the Guarantor Disposal Proceeds, as the case may be)
Up to the 6 th anniversary (inclusive)	10%
From the 6 th anniversary (exclusive) up to the 10 th anniversary (inclusive)	20%
From the 10 th anniversary (exclusive) up to the 15 th anniversary (inclusive)	30%
After the 15 th anniversary (exclusive)	40%

For the avoidance of doubt, the Issuer and/or the Guarantor shall be allowed to make only one-time withdrawal from the Issuer DPA and/or the Guarantor DPA (as the case may be) for each Issuer Disposal and/or each Guarantor Disposal (as the case may be).

Trustee’s Reimbursement Account for : The Issuer shall open and maintain a Shariah-compliant TRA in the name of the Trustee with an

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Sukukholders' ("TRA")	Actions	<p>Islamic bank acceptable to the Trustee with a sum of Ringgit Malaysia Thirty Thousand (RM30,000.00).</p> <p>The TRA shall be operated by the Trustee and the money shall only be used strictly by the Trustee in carrying out its duties in relation to the declaration of an Event of Default in the manner as provided in the trust deed. This sum of money in the TRA shall be maintained at all times throughout the tenure of the Sukuk Murabahah.</p> <p>The monies in the TRA may be invested in Shariah-compliant bank deposit or Shariah-compliant instruments or securities in the manner as provided in the trust deed, with profit from the investment to be accrued to the Issuer. The monies in the TRA shall be returned to the Issuer upon full redemption of the Sukuk Murabahah if no Event of Default or enforcement takes place.</p>
Existing ICP Programme	:	<p>The Islamic commercial papers programme under the Shariah principle of Murabahah of up to RM300,000,000.00 established by the Issuer pursuant to a programme agreement dated 28 December 2012.</p>
Material Adverse Effect	:	<p>An effect which would have a material adverse effect on the business or condition (financial or otherwise) or results of the operations of the Issuer and/or the Guarantor which, in every case, would materially and adversely affect the ability of the Issuer and/or the Guarantor to perform any of its material obligations under any of the Issue Documents to which they are a party.</p>
FSCR	:	<p>The FSCR is the ratio of Available Cash Flow (as defined herein) to the aggregate of:</p> <ul style="list-style-type: none"> (i) all nominal value and all Periodic Distribution Amount payable by the Issuer under the Sukuk Murabahah for the next twelve (12) months; plus (ii) all principal obligations paid by the Issuer and the Guarantor under any other indebtedness for borrowed monies (including Islamic financing) of the Issuer and the Guarantor during the previous twelve (12) months and all interests/ coupons/ profit payments paid under

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such other indebtedness for borrowed monies (including Islamic financing) of the Issuer and the Guarantor during the previous twelve (12) months.

For avoidance of doubt, any unscheduled payment/ repayment under any financings/ borrowings prior to its stated maturity date shall be excluded from the above calculation and any double counting shall be disregarded.

“Available Cash Flow” in relation to any preceding annual period is defined as the sum of:

- (i) all income received by the Issuer and the Guarantor and any other receipts of a capital or revenue nature under any agreement or contract received by the Issuer and the Guarantor during such annual period, save and except for proceeds received and deposited into the DPA;
- (ii) all cash distribution, returns and realised gains received by the Issuer and the Guarantor during such annual period save and except for proceeds received and deposited in the DPA;
- (iii) credit balances of all accounts of the Issuer and the Guarantor (save for the DPA) (including amount utilised towards the Permitted Investments from the relevant accounts (save for the DPA) and returns earned and received from such Permitted Investments) at the beginning of the relevant twelve (12) month period;
- (iv) any liquidated damages/ penalties received by the Issuer and the Guarantor during such annual period;
- (v) all proceeds of Takaful/ insurance claims received by the Issuer and the Guarantor during such annual period; and
- (vi) all other monies received by the Issuer and the Guarantor during such annual period, including the Net Proceeds from Early Repayment/ Redemption (as defined herein), including any other

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proceeds received by the Issuer and the Guarantor from its fund raising exercises (either by way of equity and/or debt), in particular any share acquisition financing for investment purposes;

less:

- (i) the total amount spent by the Issuer and the Guarantor on operating expenses including management, administration, financing (including but not limited to the respective fees of the Trustee, the Facility Agent, the Security Trustee, the rating agency, etc) for that period;
- (ii) any other capital expenditures/ investments incurred and paid by the Issuer and the Guarantor for that period;
- (iii) taxes, duties or such other contributions paid by the Issuer and the Guarantor for that period;
- (iv) inter company advances (including by way of Islamic financings) to the subsidiaries and the associate companies of the Issuer and the Guarantor;
- (v) payment/ repayment by way of cash in respect of the loans/ advances (including by way of Islamic financings) from shareholders of the Guarantor and related companies of the Issuer and the Guarantor; and
- (vi) dividend paid/ payable or any distribution paid/ payable by the Guarantor whether income or capital in nature to its shareholders, save and except for the amount paid from the DPA pursuant to the Issuer Disposal Distribution Amount and the Guarantor Disposal Distribution Amount.

For the avoidance of doubt, the borrowings/ financings referred to herein are those that are being raised externally by the Issuer and/or the Guarantor and any double counting shall be disregarded.

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“Net Proceeds from Early Repayment/ Redemption” is defined as the sum of:

- (i) proceeds raised for early repayment/ redemption of a particular class of instrument (**“Early Repaid/ Redeemed Instrument”**); less
- (ii) the principal amount of the Early Repaid/ Redeemed Instrument; less
- (iii) any penalty, breakage cost or accrued interest/ profit up to the early repayment/ redemption date for the Early Repaid/ Redeemed Instrument (if any); less
- (iv) any associated cost of raising such financing including professional fees, arranger/ upfront fees, etc.

For avoidance of double, any double counting shall be disregarded. The above shall be computed based on the Issuer’s and the Guarantor’s latest audited accounts and confirmed by their external auditors acceptable to the Trustee.

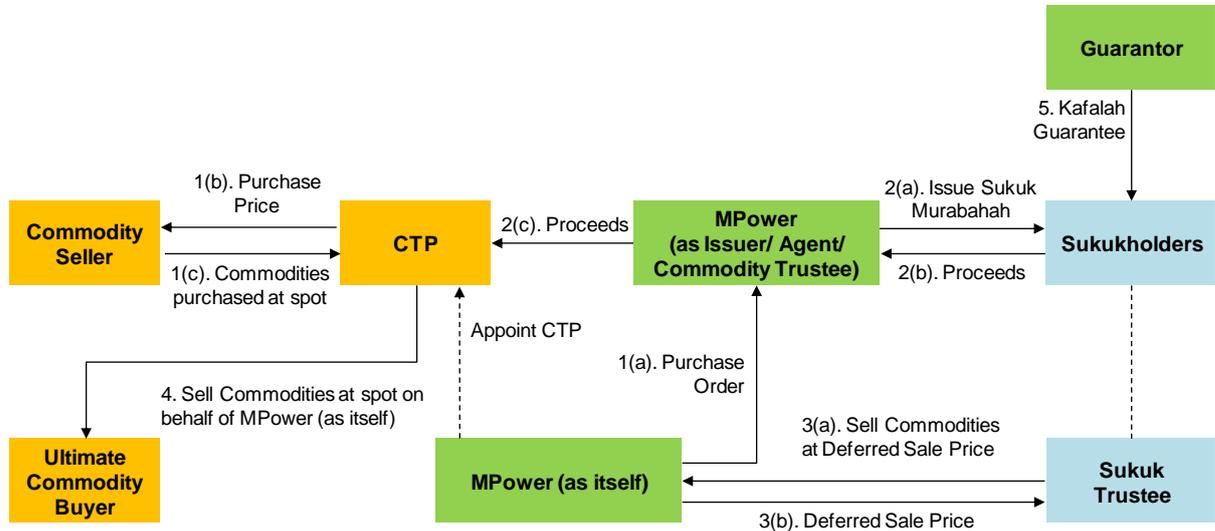
Junior Sukuk : Unrated subordinated Islamic securities of up to RM1,800,000,000.00 in nominal value under the Islamic principle of Musharakah issued by the Guarantor on 3 September 2012 pursuant to a facility agreement dated 17 August 2012 and other replacement instruments of equivalent ranking or below thereto.

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ANNEXURE

**STRUCTURE DIAGRAM OF THE UNDERLYING TRANSACTION FOR THE
SUKUK MURABAHAH**



Step 1 MPower (as itself) shall issue a purchase order (“**Purchase Order**”) to the Agent and in such Purchase Order, MPower will irrevocably undertake to purchase the Commodities from the Sukukholders through the Trustee at the Deferred Sale Price (as defined in item 2(e) of the PTC) payable on a deferred payment basis (in instalments). Upon receiving the Purchase Order from MPower (as itself), MPower as Agent shall appoint the CTP to purchase Commodities from the Commodity Seller. The CTP shall purchase the Commodities from the Commodity Seller at the Purchase Price (as defined in item 2(e) of the PTC) on a spot basis.

Step 2 Upon purchasing the Commodities from the Commodity Seller via the CTP, MPower in its capacity as the Issuer shall issue the Sukuk Murabahah to the Sukukholders whereupon the Sukuk Murabahah shall evidence the Sukukholders’ ownership of the Commodities and all such rights thereto (including all rights against MPower under the Purchase Order and entitlement to the Deferred Sale Price once the Commodities are sold to MPower) and subsequently, MPower in its capacity as the Agent shall pay the Purchase Price using proceeds received from the Sukukholders. The Commodity Trustee will declare a trust in favour of the Sukukholders over the Commodities (so long as title thereto is vested in the Issuer).

Step 3 Subsequently, the Trustee, on behalf of the Sukukholders, shall sell the Commodities to MPower, under the Shariah principle of Murabahah, at the Deferred Sale Price. For the avoidance of doubt, the Deferred Sale Price will be paid by MPower to the Sukukholders on an instalment payment basis during the tenure of the Sukuk Murabahah.

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- Step 4** Thereafter, MPower (as itself) will appoint the CTP to sell the Commodities to the Ultimate Commodity Buyer on a spot basis. The CTP shall sell the Commodities to the Ultimate Commodity Buyer for cash consideration equivalent to the Purchase Price.
- Step 5** The Guarantor shall provide an unconditional and irrevocable guarantee under the principle of Kafalah (“**Kafalah Guarantee**”), as a continuing obligation, in favour of the Security Trustee for and on behalf of the Sukukholders under which the Guarantor shall agree to guarantee (i) the payment of the Deferred Sale Price which is due and payable on the relevant maturity date and/or the Periodic Distribution Date (as defined in item 2(j) of the PTC), as the case may be, for the relevant Sukuk Murabahah which are then outstanding; and (ii) the Dissolution Amount (as defined in item 2(y)(6) of the PTC) upon declaration of an Event of Default, including Ta’widh (as explained in item 2(y)(5) of the PTC) and all other amounts due by the Issuer in relation to the Sukuk Murabahah.