

STRICTLY PRIVATE AND  
CONFIDENTIAL

**Tanjung Bin Energy Issuer Berhad**  
(Company No. 969142-W)  
(formerly known as Powerfield Sdn. Bhd.)

**INFORMATION MEMORANDUM**

Proposed Issuance of Islamic Medium Term Notes (“**Sukuk Murabahah**”) of up to RM4,500,000,000.00 in nominal value under the Islamic principle of Tawarruq (Commodities Murabahah) (“**Proposal**”)

**Joint Principal Advisers/Joint Lead Arrangers/Joint Lead Managers**



**HSBC AMANAH MALAYSIA BERHAD**  
(Company No. 807705-X)



**MAYBANK INVESTMENT BANK BERHAD**  
(Company No. 15938-H)

**Joint Lead Managers**



**AFFIN INVESTMENT BANK BERHAD**  
(Company No. 9999-V)



**BANK MUAMALAT MALAYSIA BERHAD**  
(Company No. 6175-W)



**CIMB INVESTMENT BANK BERHAD**  
(Company No. 18417-M)



**OCBC BANK (MALAYSIA) BERHAD**  
(Company No. 295400-W)



**RHB INVESTMENT BANK BERHAD**  
(Company No. 19663-P)

Dated 7 March 2012

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## Important Notice

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This Information Memorandum is in relation to the proposed issuance of, offer for subscription or purchase of, or invitation to subscribe for or purchase of up to RM4,500,000,000.00 in nominal value Islamic medium term notes ("**Sukuk Murabahah**") based on the Shariah principle of Tawarruq (Commodities Murabahah) ("**Proposal**") by Tanjung Bin Energy Issuer Berhad ("**Issuer**" or "**TBI**").

None of the information or data contained in this Information Memorandum has been independently verified by Maybank Investment Bank Berhad ("**Maybank IB**") or HSBC Amanah Malaysia Berhad ("**HSBC Amanah**") (collectively, "**Joint Lead Arrangers/Joint Lead Managers**"). Accordingly, no representation, warranty or undertaking, express or implied, is given or assumed by the Joint Lead Arrangers/Joint Lead Managers as to the authenticity, origin, validity, accuracy or completeness of such information and data or that the information or data remains unchanged in any respect after the dates stated herein or if no dates have been specifically stated, after the date of this Information Memorandum. The Joint Lead Arrangers/Joint Lead Managers have not accepted and will not accept any responsibility for the information and data contained in this Information Memorandum or otherwise in relation to the aforesaid proposed issuance of the Sukuk Murabahah and shall not be liable for any consequences of reliance on any of the information or data in this Information Memorandum, except as provided by Malaysian laws.

The information in this Information Memorandum supersedes all other information and material previously supplied (if any) to the recipients. By taking possession of this Information Memorandum, the recipients are acknowledging and agreeing and are deemed to have acknowledged and agreed that they will not rely on any previous information supplied. No person is authorised to give any information or data or to make any representation or warranty other than as contained in this Information Memorandum and, if given or made, any such information, data, representation or warranty must not be relied upon as having been authorised by the Issuer, the Joint Lead Arrangers/Joint Lead Managers or any other person.

This Information Memorandum is not and is not intended to be a prospectus. Unless otherwise specified in this Information Memorandum, the information contained in this Information Memorandum is current as at the date hereof.

This Information Memorandum has not been and will not be made to comply with the laws of any other jurisdiction ("**Foreign Jurisdiction**") other than Malaysia, and has not been and will not be lodged, registered or approved pursuant to or under any legislation of (or with or by any regulatory authorities or other relevant bodies of) any Foreign Jurisdiction and it does not constitute an issue, offer or sale of, or an invitation to subscribe or purchase the Sukuk Murabahah or any other securities of any kind by any party in any Foreign Jurisdiction.

The distribution or possession of this Information Memorandum in or from certain jurisdictions may be restricted or prohibited by law. Each recipient is required to seek appropriate professional advice regarding, and to observe, any such restriction or prohibition. Neither the Issuer, the Project Company (as hereinafter defined), the Sponsor (as hereinafter defined) nor the Joint Lead Arrangers/Joint Lead Managers accept any responsibility or liability to any person in relation to the distribution or possession of this Information Memorandum in or from any Foreign Jurisdiction.

By accepting delivery of this Information Memorandum, each recipient agrees to the terms upon which this Information Memorandum is provided to such recipient as set out in this Information Memorandum, and further agrees and confirms that:-

- (i) it will keep confidential all of such information and data;
  - (ii) it is lawful for the recipient to subscribe for or purchase the Sukuk Murabahah under all jurisdictions to which the recipient is subject;
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- (iii) it has complied with all applicable laws in connection with such subscription or purchase of the Sukuk Murabahah;
  - (iv) the Issuer, the Project Company, the Sponsor, the Joint Lead Arrangers/Joint Lead Managers and their respective directors, officers, employees and professional advisers are not and will not be in breach of the laws of any jurisdiction to which the recipient is subject as a result of such subscription or purchase of the Sukuk Murabahah, and they shall not have any responsibility or liability in the event that such subscription or purchase of the Sukuk Murabahah is or shall become unlawful, unenforceable, voidable or void;
  - (v) it is aware that the Sukuk Murabahah can only be offered, sold, transferred or otherwise disposed of directly or indirectly in accordance with the relevant selling restrictions and all applicable laws;
  - (vi) it has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of subscribing or purchasing the Sukuk Murabahah, and is able and is prepared to bear the economic and financial risks of investing in or holding the Sukuk Murabahah;
  - (vii) it is subscribing or accepting the Sukuk Murabahah for its own account;
  - (viii) if it is subscribing to the Sukuk Murabahah at the issuance of the Sukuk Murabahah, it is 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) or Schedule 7 or Section 230(1)(b) and Schedule 9 or Section 257(3) of the Capital Markets and Services Act 2007 as amended from time to time (“**CMSA**”); and
  - (ix) if it is purchasing or acquiring the Sukuk Murabahah after the said Sukuk Murabahah has been issued, that it is a person to whom an offer or invitation to purchase the Sukuk Murabahah would fall within Schedule 6 or Section 229(1)(b) and Schedule 9 or Section 257(3) of the CMSA.

Each recipient is solely responsible for seeking all appropriate expert advice as to the laws of all jurisdictions to which it is subject. For the avoidance of doubt, this Information Memorandum shall not constitute an offer or invitation to subscribe or purchase the Sukuk Murabahah in relation to any recipient who does not fall within the categories of persons specified in item (viii) or item (ix) above, as may be applicable.

This Information Memorandum or any document delivered under or in relation to the issue, offer and sale of the Sukuk Murabahah is not intended to provide the basis of any credit or other evaluation, and should not be construed as, a recommendation by the Issuer, the Project Company, and/or the Joint Lead Arrangers/Joint Lead Managers that any recipient of this Information Memorandum should subscribe or purchase the Sukuk Murabahah. This Information Memorandum is not a substitute for, and should not be regarded as, an independent evaluation and analysis and does not purport to be all-inclusive. Each recipient should perform and is deemed to have made its own independent investigation and analysis of the financial condition, status and affairs, and its own appraisal of the credit worthiness and nature, of the Issuer, the Project Company, the Sponsor, the terms of the Sukuk Murabahah and all other relevant matters including merits and risks involved, and each recipient should consult its own professional advisers. All information and statements herein are subject to the detailed provisions of the respective agreements referred to herein and are qualified in their entirety by reference to such documents.

Neither the delivery of this Information Memorandum nor the offering, sale or delivery of any Sukuk Murabahah shall in any circumstance imply that the information contained herein concerning the Issuer or any other person is correct at any time subsequent to the date stated herein or if no dates have been specifically stated, subsequent to the date of this Information Memorandum or that any other information supplied in connection with the Sukuk Murabahah is correct as at any time subsequent to the date indicated in the document containing the same. Neither the Joint Lead

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Arrangers/Joint Lead Managers nor any other advisers undertake to review the financial condition or affairs of the Issuer, the Project Company or the Sponsor of the Project during the life of the Sukuk Murabahah or to advise any investor in the Sukuk Murabahah of any information coming to their attention. The recipient of this Information Memorandum or the potential investors should review, inter alia, the most recently published documents incorporated by reference into this Information Memorandum when deciding whether or not to purchase any Sukuk Murabahah.

This Information Memorandum includes forward-looking statements and reflects projections of future events which may or may not prove to be correct. All of these statements are based on estimates and assumptions made by the Issuer and although believed to be reasonable, are subject to risks and uncertainties that may cause actual events or future results to be materially different than expected or indicated by such statements and estimates, and no assurance can be given that any such statements or estimates will be realised. In light of these and other uncertainties, the inclusion of forward-looking statements in this Information Memorandum should not be regarded as a representation or warranty by the Issuer, its advisers or any other persons that the future events as anticipated by the Issuer will occur. Any such statements are not guarantees of performance and involve risks and uncertainties, many of which are beyond the control of the Issuer.

This Information Memorandum includes certain historical information, estimates, or reports thereon derived from sources mentioned in this Information Memorandum and other parties with respect to the Malaysian economy, the material businesses which the Issuer operates and certain other matters. Such information, estimates, or reports have been included solely for illustrative purposes. No representation or warranty is made as to the accuracy or completeness of any information, estimates and/or reports thereon derived from such sources or from other third party sources.

This Information Memorandum may not be reproduced in whole or in part, or used for any other purpose, or shown, given, copied to or filed, in whole or in part, with any other person including, without limitation, any government or regulatory authority except with the prior written consent of the Issuer or as required under Malaysian laws, regulations or guidelines. Should this Information Memorandum, at the request of the recipient, be sent to the recipient or is received or viewed by the recipient in an electronic format, the recipient is reminded that documents transmitted via this mode of transmission may be altered or changed during the process of electronic transmission and consequently the Issuer, the Project Company, the Sponsor, the Joint Lead Arrangers/Joint Lead Managers and their respective directors, officers, employees and their agents or affiliates do not accept any liability or responsibility whatsoever in respect of the difference between the Information Memorandum distributed to such recipient or viewed by such recipient in the electronic format and the hard copy version available to the recipient.

The transaction structure relating to the Sukuk Murabahah has been approved by Maybank Islamic Berhad and HSBC Amanah Malaysia Berhad. Prospective holders of the Sukuk Murabahah should not rely on the approval referred to above in deciding whether to make an investment in the Sukuk Murabahah, nor as the basis for deciding whether each of the structure, the issue and the trading of the Sukuk Murabahah is in compliance with Shariah principles. In particular, any reference in this Information Memorandum to secondary trading of the Sukuk Murabahah is not to be taken as advice or confirmation that such trading is Shariah compliant. Prospective holders of the Sukuk Murabahah should obtain their own independent Shariah advice as to compliance with Shariah principles. No representation, warranty or undertaking, express or implied, is given by the Issuer as to the status of the Sukuk Murabahah's compliance with Shariah principles and the Issuer shall not be liable for any consequences of such reliance and/or assumption of any such compliance.

## **RESPONSIBILITY STATEMENT**

This Information Memorandum has been approved by the directors of the Issuer and the management of the Project Company and they collectively and individually accept full responsibility for the accuracy of the information given and confirm that, after having made all reasonable enquiries, and to the best of their knowledge, information and belief, there are no false or misleading statements or other material facts the omission of which would in the context of the Proposal make any statement in this Information Memorandum false or misleading and that there are no material omissions in this

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Information Memorandum.

#### **STATEMENTS OF DISCLAIMER – SECURITIES COMMISSION**

In accordance with the CMSA, a copy of this Information Memorandum will be deposited with the Securities Commission, who takes no responsibility for its contents.

The issue, offer or invitation in relation to the Sukuk Murabahah in this Information Memorandum is subject to the fulfilment of various conditions precedent including without limitation the approval from the Securities Commission. The Securities Commission has given its approval under Section 212(5) of the CMSA vide its letter dated 28 February 2012 and each recipient of this Information Memorandum acknowledges and agrees that the approval of the Securities Commission shall not be taken to indicate that the Securities Commission recommends the subscription for or purchase of the Sukuk Murabahah.

The Securities Commission shall not be liable for any non-disclosure on the part of the Issuer and assumes no responsibility for the correctness of any statements made or opinions or reports expressed in this Information Memorandum.

**THE ISSUANCE OF SUKUK MURABAHAH UNDER THE PROPOSAL WILL CARRY DIFFERENT RISKS AND ALL INVESTORS SHOULD EVALUATE THE ISSUANCE OF SUKUK MURABAHAH ON ITS OWN MERITS. INVESTORS SHOULD RELY ON THEIR OWN EVALUATION TO ASSESS THE MERITS AND RISKS OF THE INVESTMENT.**

**IT IS RECOMMENDED THAT PROSPECTIVE INVESTORS CONSULT THEIR FINANCIAL, LEGAL AND OTHER ADVISERS BEFORE SUBSCRIBING OR ACQUIRING OR PURCHASING THE SUKUK MURABAHAH.**

#### **STATEMENTS OF DISCLAIMER – JOINT SHARIAH ADVISERS**

The transaction structure relating to the Sukuk Murabahah has been approved by the Joint Shariah Advisers. Prospective holders of the Sukuk Murabahah should not rely on the approval referred to above in deciding whether to make an investment in the Sukuk Murabahah and should consult their own Shariah advisers as to whether the proposed transaction described in the approval referred to above is in compliance with Shariah principles.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

All supplements or amendments to this Information Memorandum circulated by the Issuer, if any, published or issued from time to time after the date hereof shall be deemed to be incorporated in, and to form part of, this Information Memorandum, save that any statement contained herein or in a document which is deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purpose of this Information Memorandum to the extent that a statement contained in any such subsequent document which is deemed to be incorporated by reference herein modifies or supersedes such earlier statement (whether expressly, by implication or otherwise). Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Information Memorandum.

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## Confidentiality

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This Information Memorandum and its contents are strictly confidential and the information herein contained is given to the recipient strictly on the basis that the recipient shall ensure the same remains confidential. Accordingly, this Information Memorandum and its contents, or any information which is made available to the recipient in connection with any further enquiries, must be held in complete confidence.

This Information Memorandum is submitted to selected persons falling within Schedule 6 or Section 229(1)(b) or Schedule 7 or Section 230(1)(b) and Schedule 9 or Section 257(3) of the CMSA.

In the event that there is any contravention of this confidentiality undertaking or there is reasonable likelihood that this confidentiality undertaking may be contravened, the Issuer may, at its discretion, apply for any remedy available to the Issuer whether at law or equity, including without limitation, an injunction. The Issuer is entitled to fully recover from the contravening party all costs, expenses and losses incurred and/or suffered by the Issuer, in this regard. For the avoidance of doubt, it is hereby deemed that this confidentiality undertaking shall be imposed upon the recipient, the recipient's professional advisors, directors, employees and any other persons concerned with the Proposal.

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## Glossary of Definitions & Abbreviations

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Except where the context otherwise requires, the following abbreviations apply throughout this Information Memorandum:

Account Bank	: HSBC Amanah
ACP	: available capacity payment
Applicable Coal Price	: the price of coal set by TNB in consultation with the nominated fuel supplier in accordance with Appendix J of the PPA
Base Case FSCR	: a projected base case minimum FSCR of at least 1.25 times
CDA or Company's Disbursement Account	: the Shariah compliant account to be opened and maintained by the Issuer with the Account Bank
Cash Deficiency Support Agreement	: the agreement dated 1 March 2012, executed between the Issuer, the Sponsor and the Junior Term Loan Facility Agent in relation to the Cash Deficiency Support, which expression shall where the context so admits, include any amendment(s) or variation(s) thereof and addition(s) thereto and any other instrument(s) executed supplemental thereto or in substitution thereof
CFAFS or Cash Flow Available for Finance Service	: in relation to any relevant period, the sum of: <ul style="list-style-type: none"><li>(a) all income received or projected to be received (as the case may be) by the Project Company under the PPA or any other agreements;</li><li>(b) interest earned or projected to be earned (as the case may be) on all cash accounts (including any PFSRA, PMRA and other reserve accounts (if any));</li><li>(c) any loss of revenue Takaful/insurance proceeds received or projected to be received (as the case may be), to the extent that such proceeds received are in excess of any amounts utilised, or to be utilised, for any costs of reinstatement or repairing the damaged property in question; and</li><li>(d) all delay liquidated damages received or projected to be received (as the case may be) by the Issuer or the Project Company under the Project Documents, to the extent that such amounts compensate for loss of income of the Issuer or the Project Company, as the case may be;</li></ul> And deducting: <ul style="list-style-type: none"><li>(a) the total amount paid by the Issuer or the Project Company in relation to Takaful/insurance, operations (except the Subordinated O&amp;M Margin), maintenance, administration, management and overheads and fees;</li><li>(b) taxation, duties and working capital requirements of the</li></ul>

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	Issuer and/or the Project Company; and
	(c) capital expenditure incurred by the Issuer and the Project Company (unless funded by the Shareholders' Equity Contribution or proceeds from the Senior Facilities)
CJFRA or Company Junior Facility Repayment Account	: the designated account to be opened and maintained by the Project Issuer to deposit, remit or procure, the deposit or remittance of the following: <ul style="list-style-type: none"><li>(a) amounts transferred from the CDA, up to the COD, for the payment of scheduled interest and fees under the Junior Term Loan Facility when due;</li><li>(b) amounts transferred from the revenue account, from the COD, for the payment of scheduled interest and fees under the Junior Term Loan Facility when due;</li><li>(c) amounts transferred from the PJFA, for the payment of any amounts due under the Junior Term Loan Facility whether arising upon maturity of the Junior Term Loan Facility, an EOD under the Junior Term Loan Facility or at any other time and (in the event of payment of the Junior Term Loan Facility upon an event of default) associated hedging termination costs;</li><li>(d) all receipts from the Junior Hedging Banks under the Junior Hedging Policy</li></ul>
CMSA	: the Capital Markets and Services Act, 2007 (Act 671) as amended from time to time
CO <sub>2</sub>	: carbon dioxide
Coal Quality Rejection Limits	: the rejection limits applicable to the coal as set under Appendix II of the CSTA
Commencement Date	: the date notified by the Project Company to TNB on which construction work at the Site has started, signified by the pouring of concrete for the foundations on which the Power Facility is to be based under the PPA
Companies Act 1965	: the Companies Act 1965 (Act 125) as amended from time to time
COD or Commercial Operation Date	: with respect to the Power Facility, the date on which all the conditions precedent as set forth in clause 3.3 of the PPA shall have been satisfied or waived in writing
Contractual Available Capacity	: the availability in MW of the Power Facility declared by the Project Company on or before the COD which shall be the lower of (a) the Normal Capacity, and (b) the availability of the Power Facility determined and established prior to COD
CRF	: capacity rate financial for the billing period under the PPA
CSTA	: Coal Supply and Transportation Agreement dated 2 December 2011 entered into between the Project Company and TFS
CTA	: Common Terms Agreement dated 29 February 2012, entered between the Issuer, the Project Company, the Trustee, the Sukuk Joint Lead Managers, the USD Term Loan Arrangers, the RM Term Loan Arrangers, the Sukuk Facility Agent, the USD Term Loan

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	Facility Agent, the RM Term Loan Facility Agent, the USD Term Loan Lenders, the RM Term Loan Lenders, the Security Agent, the Senior Hedging Banks, the Senior Intercreditor Agent and the relevant parties, which expression shall, where the context so admits, include any amendment(s) or variation(s) and addition(s) thereto and any other instrument(s) executed supplemental thereto or in substitution thereof
Declared Daily Available Capacity	: on any given day of a contract year, the availability of the Power Facility in MW as may be declared from time to time by the Project Company for such day in accordance with the PPA
Designated Accounts	: (a) the Issuer shall establish with the Account Bank and maintain in accordance with the requirements of the Financing Documents, the following bank accounts: (i) the Escrow Account; (ii) the Issuer's Disbursement Account - RM; (iii) the Issuer's Disbursement Account - USD; (iv) the Issuer's Disbursement Account - EUR; (v) the Issuer's Operating Account - RM; (vi) the Issuer's Operating Account - USD; (vii) the Issuer's Senior Facilities Repayment Account - RM; (viii) the Issuer's Senior Facilities Repayment Account - USD; (ix) the Issuer's Junior Facility Repayment Account; and (x) the Issuer's Insurance Proceeds Account; and  (b) the Project Company shall establish with the Account Bank and maintain in accordance with the requirements of the Financing Documents, the following bank accounts: (i) the Project Company's Disbursement Account - RM; (ii) the Project Company's Disbursement Account - USD; (iii) the Project Company's Disbursement Account - EUR; (iv) the Revenue Account; (v) the Project Company's Operating Account - RM; (vi) the Project Company's Operating Account - USD; (vii) the Project Company's O&M Costs Account; (viii) the Project Company's Maintenance Reserve Account; (ix) the Project Company's Finance Service Account - RM; (x) the Project Company's Finance Service Reserve Account - RM; (xi) the Project Company's Junior Facility Account; and (xii) the Project Company Insurance Proceeds Account
Despatch Instruction	: an oral or written instruction or electronic signal (operation on automatic generation control under the direct control of the Grid System Operator or the control centre) communicated to the Project Company by the Grid System Operator or the control centre directing the Power Facility to commence, increase, decrease, maintain or cease the generation and delivery of electrical energy into the Grid System, in accordance with the PPA
DOE	: Department of Environment Malaysia
DWT	: deadweight tonnage
Effective Date	: the date on which all conditions precedent to the effectiveness of the PPA have been satisfied or waived
EIA Approval	: the environmental impact assessment approval dated 14 October 2011 issued by the DOE in respect of the Project
Emergency Condition	: a condition or situation that is (i) described or regarded as such in the Malaysian Grid Code or (ii) in the judgment of the Grid System

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	<p>Operator, based on Prudent Utility Practices, either (a) presents an imminent physical threat of danger to life or property, or (b) threatens the safety, integrity, stability or security of the Grid System, or (c) could reasonably be expected to cause a significant disruption on the Grid System, or (d) could reasonably be expected to adversely affect the provision of safe, adequate and reliable electricity supply to end users, including other utilities with which the Grid System is interconnected</p>
Energy Commission	: Energy Commission of Malaysia, a statutory body established in 2001 under the Energy Commission Act 2001
EOD	: event of default
EPC Consortium	: collectively, Alstom Power Systems SA (a company incorporated in France) ("Alstom Power"), Alstom Services Sdn Bhd (Company No. 104081-A) ("Alstom Services"), Shin Eversendai Engineering (M) Sdn Bhd (Company No. 274156-X) and Mudajaya Corporation Berhad (Company No. 6307K) and individually, the "EPC Contractor"
EPC Contract	: the agreement dated 23 February 2012 entered into between the Issuer and the EPC Consortium in respect of the design, engineering, procurement, construction, installation, testing, commissioning and completion of the Power Facility, the Interconnection Facilities and the Metering Equipment
EPC Contract Price	: the fixed lump sum price payable to the EPC Consortium in accordance with the EPC Contract for the design and execution of the EPC Works (as defined under the EPC Contract)
Equity Call Option Agreement	: the agreement dated 1 March 2012, executed between (i) the Sponsor; (ii) the Company; (iii) the Issuer; (iv) the Senior Intercreditor Agent; (v) the Security Agent and the parties who join the agreement by accession after the date of the agreement as additional sponsor, which expression shall where the context so admits, include any amendment(s) or variation(s) thereof and addition(s) thereto and any other instrument(s) enacted supplemental thereto or in substitution thereof
EUR	: Euro, the official currency of the European Union
Facility Put Option	: the rights (but not the obligation) of the Junior Term Loan Lenders to sell and the obligation of the Sponsor to purchase the rights of the Junior Term Loan Lenders to receive the outstanding principal and other amounts (including interest) due to the Junior Term Loan Lenders under the Junior Term Loan Facility pursuant to the Junior Term Loan Financing Documents
Financial Close	: the date on which the CTA has been executed
Financing Documents	: collectively, the USD Term Loan Financing Agreements, the RM Term Loan Financing Documents, the Sukuk Issue Documents, the Intercreditor Deed, the Subordination Deed (Senior-Junior), the Equity Call Option Agreement, the Senior Security Documents, the Junior Term Loan Financing Documents and such other documents in relation to the Senior Facilities and the Junior Term Loan Facility which are agreed by the Issuer and the Senior Intercreditor Agent to be designated as a Financing Document

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Financing Facilities	: collectively, the Senior Facilities, the Junior Term Loan Facility together with the senior hedging facilities and the junior hedging facilities
Financing Parties	: such parties granting the Financing Facilities to the Issuer and/or the Project Company and includes an agent or trustee under the Financing Facilities and the word Financing Party may refer to any one of them
Financing Parties Technical Advisor	: Mott MacDonald Singapore Pte Ltd (Company No. 1243967)
Financing Parties Insurance Advisor	: A.oN Singapore Pte Ltd (Company No. 198301764G)
FSCR or Finance Service Cover Ratio	: the ratio of Cash Flow Available for Finance Service to the Senior Finance Service in respect of any Calculation Period
PFSRA	: Project Company's Finance Service Reserve Account
Fuel	: coal and any combustion support or other fuels used by the Power Facility for start-up and the generation of electrical energy
Fuel Facilities	: all of the facilities, as described in Appendix F of the PPA that are necessary (in accordance with Prudent Utility Practices) to enable the Power Facility to receive and utilise Fuel supplied under the Fuel Supply Contracts in quantities sufficient to permit the Power Facility to operate continuously at full load despatch
Fuel Supply Contracts	: all contracts entered into by the Project Company for the supply of Fuel to the Power Facility during the term of the PPA including the CSTA
GDP	: gross domestic product
Generation Licence	: licence for generation and supply of electricity dated 27 January 2012 issued pursuant to Section 9 of the Electricity Supply Act 1990 to the Project Company
GJ	: Gigajoule
GNI	: Gross National Income
Grid Code	: the Malaysian Grid Code, as amended from time to time in accordance with applicable Law
Grid System or National Grid	: the bulk power network controlled or used by the Grid System Operator for the purpose of transmitting and distributing electricity to end users, the Works (as defined in the PPA) and that portion of the Interconnection Facilities to be transferred to TNB under the PPA
Grid System Operator or GSO	: has the meaning given to it in the Grid Code
GW	: Gigawatt
H <sub>2</sub>	: hydrogen
HHV	: higher heating value

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HSBC	HSBC Bank Malaysia Berhad (Company No. 127776-V)
HSBC Amanah	: HSBC Amanah Malaysia Berhad (Company No. 807705-X)
Initial Financial Model	: the Financial Model as at the date of the letter of award dated 9 June 2011 issued by the Energy Commission or the relevant government entity responsible for the award of the Project to the Project Company a copy of which is set out in Attachment A of Appendix M of the PPA and as replaced by the Project Company and TNB in a letter to be executed after Financial Close and such letter forming part of the PPA
Input Data	: information which includes details, on an open book basis, of (i) costings for the construction of the Project and all related fees and costs, (ii) the cost of funds, including all commitment fees hedging and brokerage fees, and similar payments, (iii) construction insurance policies, (iv) tax incentives, benefits or allowances, and (v) other information reasonably requested by TNB and the Energy Commission, as more specifically specified in Appendix M of the PPA
IOD	: initial operation date
Interconnection Facilities	: all of the facilities as further described in Appendix E of the PPA to enable TNB to receive electrical energy from the Power Facility and to maintain the stability of the Grid System
Interconnection Point	the demarcation line for ownership and maintenance which shall be : the Interconnection Facilities' perimeter fencing (as shown under Appendix E of the PPA)
Intercreditor Deed	: the intercreditor deed dated 1 March 2012 entered between the Issuer, the Trustee, the USD Term Loan Lenders, the RM Term Loan Lenders, the Security Agent, the USD Term Loan Facility Agent, the Sukuk Facility Agent, the Senior Intercreditor Agent and other relevant parties joining the intercreditor deed by accession
IPPs	: independent power producers
Issuer or TBI	: Tanjung Bin Energy Issuer Berhad (formerly known as Powerfield Sdn Bhd) (Company No. 969142-W)
Issuer's Project Documents	: collectively, (i) the Turnkey Contract; (ii) the EPC Contract; (iii) the Project Management Agreement and references to "the Issuer's Project Document" include references to any one of them
Junior Facilities	: comprising, a RM-denominated subordinated equity bridge loan facility ("Junior RM Loan") and the junior hedging facilities
Junior Facility Outstanding Amounts	: on any date, all outstanding principal and other amounts (other than interest and default interest) due to the Junior Term Loan Lenders from the Issuer under the Junior Term Loan Facility pursuant to the Junior Term Loan Financing Documents as of that date
Junior Facility Put Exercise Price	: an amount equivalent to the sum of: (a) the Junior Facility Outstanding Amounts; and (b) interest which would have accrued on the Junior Facility

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	<p>Outstanding Amount from the date on which the Facility Put Option is exercised to the date falling three (3) Business Days after the date of such exercise had such amount constituted a loan under the Junior Term Loan Facility Agreement for an interest period of three (3) months,</p> <p>as consideration to purchase the Junior Facility Put Securities</p>
Junior Facility Put Securities	: the rights of the Junior Term Loan Lenders to receive the Junior Facility Outstanding Amounts under the Junior Term Loan Facility
Junior Hedging Agreements	: all hedging agreements from time to time entered into by the Issuer in accordance with the Junior Hedging Policy
Junior Hedging Banks	: such banks or financial institution licensed under the Banking and Financial Institutions Act, 1989 or Islamic Banking Act 1983 and/or as agreed between the Junior Term Loan Facility Agent and the Issuer which will enter into the Junior Term Loan Facility Agreement by way of accession
Junior Hedge Outstanding Amounts	: on any date, all outstanding amounts due to the Junior Hedging Banks under the Junior Hedging Agreements as of that date (including any termination sums, costs of termination and corresponding breakage costs payable under the Junior Hedging Agreements)
Junior Hedging Policy	: comprising, <ul style="list-style-type: none"><li>(i) the Issuer to hedge not less than 75% of its interest rate exposure under the Junior Term Loan Facility;</li><li>(ii) the Project Company to hedge against the coal price exposure in relation to managing coal supply costs under the PPA;</li><li>(iii) the Issuer to hedge against not more than 100% of its foreign currency exposure in relation to payments under the EPC Contract;</li><li>(iv) the Issuer shall not be required to terminate any existing hedging transactions or enter into new hedging transactions under the Junior Hedging Agreements at any time prior to COD, notwithstanding the aggregate notional amounts under such existing hedging arrangements being greater than or less than 100% of the principal amount of the Junior Term Loans outstanding from time to time; and</li><li>(v) the Issuer shall, at all times on and after COD, ensure that the aggregate notional amounts under the hedging arrangements set out in the Junior Hedging Agreements do not exceed 100% of the principal amount of the Junior Term Loans outstanding from time to time</li></ul>
Junior Hedge Put Exercise Price	: an amount equivalent to the Junior Hedge Outstanding Amounts to be paid by the Sponsor as consideration to purchase the Junior Hedging Put Securities
Junior Hedging Put Securities	: the rights of the Junior Hedging Banks to receive the Junior Hedging Outstanding Amounts under the Junior Hedging Policy
Joint Lead Arrangers/ Joint Lead Managers	: collectively, HSBC Amanah and Maybank IB
Junior Lenders or Junior Term	: collectively, RHB Bank Berhad (Company No. 6171-M), Malayan

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Loan Lenders	Banking Berhad (Company No. 3813-K), CIMB Bank Berhad (Company No. 13491-P) and Affin Bank Berhad (Company No. 25046-T)
Junior Term Loan Arrangers	: collectively, RHB Investment Bank Berhad (Company No. 19663-P), Maybank IB, CIMB Investment Bank Berhad (Company No. 18417-M) and Affin Investment Bank Berhad (Company No. 9999-V)
Junior Security Agent	: Maybank IB
Junior Term Loan Facility	: the term loan facility of up to the maximum aggregate amount of RM1,290,139,450.00 made or to be made available by the Junior Term Loan Lenders to the Issuer upon terms and subject to the conditions contained in the Junior Term Loan Facility Agreement
Junior Term Loan Facility Agent	: Maybank IB
Junior Term Loan Facility Agreement	: the agreement dated 29 February 2012, executed between, (i) the Issuer; (ii) the Project Company; (iii) the Junior Security Agent; (iv) the Junior Term Loan Arrangers; (v) the Junior Term Loan Facility Agent; (vi) the Junior Hedging Banks; and (iv) the Junior Term Loan Lenders
kJ	: kilojoules
KLIBOR	: Kuala Lumpur Interbank Offer Rate
kV	: kilovolt
kW	: kilowatt
kWh	: kilowatt hour
Lease Agreements	: comprising, the (i) tripartite lease agreement entered into between the Project Company, Seaport and the Security Agent; the (ii) tripartite lease agreement entered into between the Project Company, SWW and the Security Agent; (iii) upon the expiry of the tripartite lease agreement, the new lease agreement to be entered into between the Project Company and Seaport; and (iv) upon the expiry of the tripartite lease agreement, the new lease agreement to be entered into between the Project Company and SWW
Lease Land A	: all that piece of land held under the new issue document of title issued pursuant to the subdivision of H.S.(D) 10923, Lot No. PTD 1770, Mukim Serkat, District of Pontian, Johor which the Power Facility and the coal yard are situated
Lease Land B	: all that piece of land held under the new issue document of title issued pursuant to the subdivision of H.S.(D) 11153, Lot No. PTD 1851, Mukim Serkat, District of Pontian, Johor which the Interconnection Facilities is situated
LNG	: liquefied natural gas
m <sup>3</sup>	: cubic meter
Maybank IB	: Maybank Investment Bank Berhad (Company No. 15938-H)

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MCB or Sponsor	Malakoff Corporation Berhad (Company No. 731568-V)
MDA	: Master Definition Agreement dated 29 February 2012, entered between the Issuer, the Project Company, the Sponsor, the Senior Intercreditor Agent, the Security Agent, the USD Term Loan Facility Agent, the RM Term Loan Facility Agent, the Sukuk Facility Agent, the USD Term Loan Arrangers, the RM Term Loan Arrangers, the Sukuk Joint Lead Arrangers, the Sukuk Joint Lead Managers, the USD Term Loan Lenders, the RM Term Loan Lenders, the Trustee, the Account Bank, the Junior Security Agent, the Junior Term Loan Facility Agent, the Junior Term Loan Arrangers, the Junior Term Loan Lenders and all the relevant parties who joined the MDA by accession after the date of the MDA
Metering Equipment	: the main and check metering equipment and devices (including telemetering equipment and software) as further described in Appendix D of the PPA to be owned by TNB for the measurement of Net Electrical Output and electrical energy delivered from the Grid System at the applicable Interconnection Point to the Power Facility
MMBTU	: one million British Thermal Units
MMC	: MMC Corporation Berhad (Company No. 30245-H)
Modifications	: means an addition or modification to, or change in, or replacement or renewal of plant, equipment, machinery or facilities used by the Project Company for purposes of, or incidental to, the generation and delivery of electrical energy to the Grid System (other than in the ordinary course of operation of any thereof) and which is in accordance with Prudent Utility Practices
Monitoring Test	: the test conducted by the Grid System Operator upon issuance of a notice by TNB to the Project Company to determine the capability of the Power Facility to meet the specified MW level up to the Declared Daily Available Capacity within the time specified in the notice (including but not limited to the capability of the Power Facility to meet the level of generation not exceeding the Declared Daily Available Capacity within a specific time frame), which test procedures are provided under the PPA
MRA	: Maintenance Reserve Account
MVA	: Megavolt-ampere
MW	: Megawatt
Net Electrical Output	: for any period, the electrical energy generated and delivered to the Grid System at the applicable Interconnection Point from the Power Facility by the Project Company as measured in kWh by the TNB Metering Equipment or as otherwise determined in accordance with the PPA during such period
Nm <sup>3</sup>	: normal cubic meter
Nominal Capacity	: means 1,000 MW net
OECD	: Organization of Economic Cooperation and Development
OMA	: Operation and Maintenance Agreement dated 27 February 2012

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	and entered into between the Project Company and the Operator
Operator	: Teknik Janakuasa Sdn Bhd (Company No. 271559-H) or its successor or permitted assign from time to time who assumes the rights and obligations of the Operator in the OMA
PCG	: parent company guarantee
PJFA or Project Company's Junior Facility Account	: the designated account to be opened and maintained by the Project Company to deposit, remit or procure, the deposit or remittance of all the Project Company equity proceeds and subordinated shareholders' loans received from the shareholders of the Project Company for the purpose of repaying amounts outstanding under the Junior Term Loan Facility (for the avoidance of doubt, excluding any other Project Company equity injected for the purposes of funding Project Costs)
PMRA	: Project Company's Maintenance Reserve Account
Power Facility	: the electricity generating facility located at the Site comprising a coal fired boiler and a steam turbine generator with a net capacity of 1,000 MW and ancillary equipment and facilities thereon as more specifically described in Appendix A of the PPA and includes any Modifications thereto
PPA	: the power purchase agreement dated 2 December 2011 entered into between the Project Company and TNB
Project	: the financing, design, engineering, procurement, construction, installation, testing, commissioning, ownership, operation and maintenance of the Power Facility, the Fuel Facilities, the Site, the Interconnection Facilities and associated facilities at Tanjung Bin, Johor, Malaysia, as more specifically described in Appendix A of the PPA and any Modifications thereto
Project Company or TBE	: Tanjung Bin Energy Sdn. Bhd. (formerly known as Transpool Sdn Bhd) (Company No. 481582-X)
Project Company's Project Documents	: collectively, (i) the PPA; (ii) the CSTA; (iii) the SFA; (iv) the OMA; (v) the Lease Agreements; (vi) the Sub-Lease Agreement; (vii) the Turnkey Contract; and (viii) the Generation Licence and references to "Project Company's Project Document" include references to any one of them
Project Costs	: the total cost and expenses relating to the Project incurred by the Project Company and the Issuer prior to the completion of the Project including to: <ul style="list-style-type: none"><li>(a) finance all costs associated with the Site, development, design, engineering, procurement, construction, installation, testing, commissioning, ownership, operation and maintenance in respect of the Project;</li><li>(b) pay all financing costs in relation to the Project;</li><li>(c) finance any other Project related costs, including consultancy fees, Takaful contributions and contingencies; and</li><li>(d) meet the working capital requirements of the Project</li></ul>

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Company in relation to the Project

Project Documents	: collectively, the Issuer's Project Documents and the Project Company's Project Documents and references to "Project Document" include references to any one of them
Project Management Agreement	: the project management agreement dated 27 February 2012, entered into between the Issuer and Malakoff Engineering Sdn Bhd
Proposal	: the proposed issuance of Sukuk Murabahah of up to RM4,500,000,000.00 in aggregate nominal value based on the Shariah principle of Tawarruq (Commodities Murabahah)
Provisional Acceptance Certificate	: means the certificate issued by the Issuer under the EPC Contract stating the date on which substantial completion of the Power Facility, Interconnection Facilities and Metering Equipment (as applicable) occurred
Prudent Utility Practices	: the practices, methods and standards generally followed by the electricity supply industry in Malaysia, during the applicable period, with respect to the design, construction, testing, operation and maintenance of electricity generating and transmission equipment of the type used by the Power Facility and the Interconnection Facilities, which practices, methods and standards generally conform to applicable laws, the operation and maintenance standards recommended by the Power Facility's equipment suppliers and manufacturers, the operation and maintenance standards recommended by the Interconnection Facilities' equipment and suppliers and manufacturers, the International Electrotechnical Commission standards and the Grid Code
Rating Agency	: RAM Rating Services Berhad (Company No. 763588-T) or its successor in such capacity or any other rating agency as may be appointed in respect of the Proposal
Review Documents	: all the documents, data, records and materials required to support and verify the Input Data or the actual costs incurred by the Project Company in relation to the Project pursuant to the PPA
RM or Ringgit Malaysia	: the lawful currency of Malaysia
RM Hedging Agreements	: all hedging agreements from time to time entered into by the Issuer in accordance with the senior hedging policy with respect to the RM Term Loan Facility
RM Term Loan Arrangers	: collectively, Malayan Banking Berhad (Company No. 3813-K) and RHB Bank Berhad (Company No. 6171-M)
RM Term Loan Facility Agent	: HSBC
RM Term Loan Financing Documents	: collectively, the MDA, the CTA, the RM Term Loan Facility Agreement, the RM Hedging Agreements and any other documents designated as such by the RM Term Loan Facility Agent and the Issuer
RM Term Loan Lenders	: collectively, Malayan Banking Berhad (Company No. 3813-K) and RHB Bank Berhad (Company No. 6171-M)
SCOD or scheduled COD	: the scheduled commercial operation date, being 1 March 2016 or in

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	each case (if applicable) such other date determined in accordance with the PPA
Seaport	: Seaport Terminal (Johore) Sdn Bhd (Company No. 221307-M)
Security Agent	: HSBC
Senior DE Ratio	: on a given date, the ratio of the consolidated Senior Indebtedness of the Issuer and the Project Company to the consolidated Shareholders' Equity Contribution of the Issuer and the Project Company
Senior Facilities	: collectively, the Sukuk Murabahah and the Senior Loan Facilities
Senior Finance Service	: at any time, in relation to any relevant period, the aggregate of:- <ul style="list-style-type: none"><li>(a) all payments made under the Sukuk Murabahah;</li><li>(b) all principal repayments under the Senior Loan Facilities;</li><li>(c) all profits and interest payments paid under the Senior Facilities;</li><li>(d) net hedging settlements paid to the Senior Hedging Banks;</li><li>(e) Senior Facilities Maintenance Costs,</li></ul> at that time, excluding the final repayment amounts under each of the Senior Facilities.  For the avoidance of doubt and for purposes of this definition, interest means the interest obligations of the Issuer as hedged pursuant to the Senior Hedging Policy (if applicable) and principal repayments means the principal repayment obligations of the Issuer as hedged against foreign currency risk pursuant to the Senior Hedging Policy (if applicable)
Senior Hedging Banks	: a group of financial institutions to be determined by the Senior MLAs and approved by the Issuer
Senior Indebtedness	: on a given date:- <ul style="list-style-type: none"><li>(a) the outstanding principal obligations in relation to the Senior Facilities;</li><li>(b) the outstanding principal obligations for all other indebtedness of the Issuer and the Project Company (whether Islamic or conventional) for borrowed monies (be it actual or contingent), hire purchase obligations, finance lease obligations, and obligations/contingent liabilities under guarantees/ call or put options of the Issuer and the Project Company;</li></ul> but excludes:- <ul style="list-style-type: none"><li>(i) any intercompany advances between the Issuer and the Project Company;</li><li>(ii) the Junior Term Loan Facility drawdown and outstanding;</li></ul>

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- (iii) the hedging transactions under the Senior Hedging Policy and the Junior Hedging Policy;
- (iv) Permitted Indebtedness under paragraph (a) of the definition thereof provided that such Permitted Indebtedness is issued on an unsecured and subordinated basis; and
- (v) the Working Capital Facility provided to the Issuer on an unsecured and subordinated basis.

For the avoidance of doubt:-

- (a) any double counting shall be disregarded;
- (b) outstanding principal obligations under the Sukuk Murabahah shall be deemed equivalent to the aggregate amounts disbursed from the Escrow Account into the CDA as at such date

Senior Intercreditor Agent	: HSBC
Senior Lenders	: collectively, the RM Term Loan Lenders and the USD Term Loan Lenders
Senior Loan Facilities	: collectively, the RM Term Loan Facility and the USD Term Loan Facility
Senior RM Loan or RM Term Loan Facility	: the term loan facility of up to the maximum aggregate amount of RM700,000,000.00 made or to be made available by the RM Term Loan Lenders to the Issuer upon terms and subject to the conditions contained in the RM Term Loan Facility Agreement
Senior USD Loan or USD Term Loan Facility	: the term loan facility of up to the maximum aggregate amount of USD400,000,000.00 made or to be made available by the USD Term Loan Lenders to the Issuer upon terms and subject to the conditions contained in the USD Term Loan Facility Agreement
Shareholders' Equity Contribution	: the Shareholders' Equity Contribution shall comprise of: <ul style="list-style-type: none"><li>(a) ordinary paid-up shares in the Project Company issued to its shareholder(s) in an amount no less than RM5,000,000.00, issued at Financial Close;</li><li>(b) ordinary paid-up shares in the Issuer issued to the Project Company of no less than RM100,000.00;</li><li>(c) subordinated shareholders' advances/ loans in an amount no less than 2.4% of Project Costs ("Subordinated Shareholders Loans"); and</li><li>(d) contributions/drawings under the Junior Term Loan Facility,</li></ul> subject to the satisfaction of the Senior DE Ratio.

All forms of Shareholders' Equity Contribution shall be contributed by:

- (a) the shareholders to the Project Company; and

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	(b) the Project Company to the Issuer
Shared Facilities Agreement or SFA	: the shared facilities agreement dated 27 February 2012, entered into between TBP and the Project Company
Site	: the parcel of land upon which the Project is to be constructed and located, on lands held under H.S.(D) 10923, Lot PTD 1770 and H.S.(D) 11153, Lot PTD 1851 and H.S.(D) 11438 Lot PTD 1859, Tanjung Bin, Mukim Serkat, Daerah Pontian, Johor
SPV	: single purpose vehicle
Subordination Deed	: Subordination Deed (Senior-Junior) dated 1 March 2012, made between, amongst others, the Issuer, the Senior Finance Parties and the Junior Finance Parties
Subordinated O&M Margin	: the incentive fee payable to the Operator
Sub-Lease Agreement	: the sub-lease agreement to be entered between TBP and the Project Company in respect of the sub-lease of part of the land measuring approximately 6.956 hectares in area held under H.S.(D) 11438, bearing the address No. Lot PTD 1859, Mukim Serkat, District Pontian, Johor
Sukukholders	: the holders from time to time of the Sukuk Murabahah which are then outstanding
Sukuk Facility Agent	: HSBC
Sukuk Murabahah	: the Islamic medium term notes issued pursuant to the Proposal
SWW	: Seaport Worldwide Sdn Bhd (Company No. 0449357-T))
TBP	: Tanjung Bin Power Sdn Bhd (Company No. 459016-X)
TFS	: TNB Fuel Services Sdn Bhd (Company No. 460430-K)
TNB	: Tenaga Nasional Berhad (Company No. 200866-W)
Trustee	: HSBC (Malaysia) Trustee Berhad
Trust Deed	: the trust deed dated 29 February 2012,executed between the Issuer, the Project Company and the Trustee in respect of the Sukuk Murabahah
Turnkey Contract	: the turnkey contract to be entered into between the Issuer and the Project Company whereby the Issuer shall develop, administer and manage the construction of the Power Facility, the Interconnection Facilities and the Metering Equipment
USD	: the lawful currency of the United States of America
USD Hedging Agreements	: all hedging agreements from time to time entered into by the Issuer in accordance with the senior hedging policy with respect to the USD Term Loan Facility
USD Term Loan Arrangers	: collectively, Sumitomo Mitsui Banking Corporation, Oversea-Chinese Banking Corporation Limited, Labuan Branch, Mizuho Corporate Bank, Ltd., The Hongkong and Shanghai Banking

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Corporation Limited, Offshore Banking Unit Labuan and The Bank of Tokyo-Mitsubishi UFJ, Ltd., Labuan Branch, Licensed Labuan Bank (960051C)

USD Term Loan Facility Agent : HSBC

USD Term Loan Facility Agreement : the agreement dated as of 29 February 2012 made between the Issuer as borrower, the USD Term Loan Arrangers, the USD Term Loan Facility Agent and the USD Term Loan Lenders

USD Term Loan Financing Agreements : collectively, the MDA, the CTA, the USD Term Loan Facility Agreement, the USD Hedging Agreements and any other documents designated as such by the USD Term Loan Facility Agent and the Company

USD Term Loan Lenders : collectively, Sumitomo Mitsui Banking Corporation, Oversea-Chinese Banking Corporation Limited, Labuan, Mizuho Corporate Bank, Ltd., Labuan Branch, The Hongkong and Shanghai Banking Corporation Limited, Offshore Banking Unit Labuan and The Bank of Tokyo-Mitsubishi UFJ, Ltd., Labuan Branch, Licensed Labuan Bank (960051C)

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# Section 1

## Executive Summary

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### 1.1 Introduction

The Issuer has mandated Maybank IB and HSBC Amanah as the Joint Lead Arrangers/Joint Lead Managers to arrange and manage the issuance of Islamic medium term notes of up to RM4,500,000,000.00 in nominal value pursuant to the Proposal.

### 1.2 Issuer

The Issuer is a limited liability company incorporated under the Companies Act 1965. The principal activities of the Issuer are to develop, administer and manage the construction of an electricity generating capacity in Malaysia or elsewhere and all related works thereto and to enter into any contracts, agreements, concessions, arrangements or other transactions in relation thereto. The Issuer is a wholly-owned subsidiary of the Project Company and has entered into (i) the Turnkey Contract with the Project Company for the Turnkey Works and the Turnkey Services, which includes the development, management and procurement of, inter alia, the construction and installation of the Power Facility, the Interconnection Facilities and the Metering Equipment; (ii) the EPC Contract with the EPC Consortium for the design, engineering, procurement, construction, installation, testing and commissioning of the Power Facility, the Interconnection Facilities and the Metering Equipment and (iii) the Project Management Agreement with Malakoff Engineering Sdn Bhd for project management services during construction of the Project. The Issuer will raise the non-equity portion of the financing for the Project from third party financing institutions and/or from the sukuk market.

The corporate information of the Issuer is more particularly set out in Section 2 below.

### 1.3 Project Company

The Project Company is a limited liability company incorporated under the Companies Act 1965 for the purpose of (i) design, engineering, procurement, installation and commissioning, testing, operations and maintenance of 1,000 megawatts coal fired electricity generating facilities; and (ii) sale of electrical energy and generating capacity of the Power Facility. Prior to the issuance of the Sukuk Murabahah, the Project Company has not commenced business. The Project Company has entered into the PPA with TNB, whereby sustainability of the Project Company comes from payments received from the sale of energy to TNB pursuant to the PPA. In addition to the Turnkey Contract entered into with the Issuer, the Project Company has also entered into (i) the CSTA with TFS, the nominated fuel supplier pursuant to the PPA; (ii) the OMA with the Operator to operate and maintain the Power Facility; and (iii) the SFA for the shared use of facilities with TBP.

### 1.4 Project Overview

On 13 June 2011, the Project Company accepted a conditional offer made by the Energy Commission to undertake the Project. The offer was made following a competitive bid process whereby the Sponsor was required to prepare and submit a comprehensive proposal to undertake the Project, including an acceptable level of tariff.

The Project will be implemented via a dual-SPV contractual structure designed to mirror common project finance contractual arrangements and risk allocation.

The Power Facility will be located in the south-western region of the state of Johor, Malaysia and is adjacent to the existing power plant owned by TBP, a 90% owned subsidiary of the Sponsor. The Power Facility will share certain common infrastructure with the existing TBP plant.

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The construction will be undertaken by the EPC Consortium pursuant to a fixed-price, date-certain, turnkey EPC Contract and will take place over a period of four (4) years. Operation and maintenance will be provided by the Operator, a wholly-owned subsidiary of the Sponsor, under the OMA.

The offtaker for the Project will be TNB, the national electricity utility in Malaysia which acts as the sole offtaker for IPP projects in Peninsular Malaysia. The Project Company has entered into an availability-based 25-year PPA with TNB. The coal supply will be provided by TFS, a wholly-owned subsidiary of TNB, which provides Fuel to all TNB generation plants and acts as a nominated fuel supplier for IPPs with long-term PPAs with TNB in Peninsular Malaysia. Pursuant to the CSTA, coal price invoiced by TFS will pass-through to TNB under the tariff mechanism.

Total estimated cost of the Project is up to RM6,800,000,000.00, and will be financed using a mixture of equity and non-equity finance utilising a project financing structure, with a maximum Senior DE Ratio of up to eighty per cent (80%). The financing structure will be as follows:

- The Sponsor's equity in the form of ordinary share capital and shareholder loans equivalent to at least two point five per cent (2.5%) of the Project Costs injected during the construction period;
- the Junior Loan Term Loan Facility allowing the Sponsor to defer the remaining portion of its equity contribution until one (1) year after the COD;
- the Sukuk Murabahah with a serial maturity profile of five (5) to twenty (20) years. The final series has a nominal value of RM650,000,000.00;
- the Senior USD Loan with a serial amortising profile, a balloon repayment of no more than twenty per cent (20%) of the total committed amount and a door-to-door tenor of fifteen (15) years; and
- the Senior RM Loan with a serial amortising profile, a balloon repayment of no more than twenty per cent (20%) of the total committed amount and a door-to-door tenor of twelve (12) years.

In addition to the above, the Issuer shall:-

- hedge no less than 100% of the foreign currency and no less than 100% of the interest rate exposure in relation to the Senior USD Loan;
- hedge no less than 75% of the interest rate exposure in relation to the Senior RM Loan; and
- hedge no less than 75% of the interest rate exposure in relation to the Junior Term Loan Facility.

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## 1.5 Description of the Structure of the Sukuk Murabahah

Please refer to the Principal Terms and Conditions of the Sukuk Murabahah in section 5.2 below.

### 1.5.1 Rating

The Rating Agency has, vide its letter dated 3 February 2012, assigned an indicative rating of AA3 to the Proposal.

### 1.5.2 Issue Amount

The Securities Commission has given its approval under Section 212(5) of the CMSA in its letter dated 28 February 2012 to the Issuer for the proposed issue of up to RM4,500,000,000.00 in nominal value of the Sukuk Murabahah. However, the Issuer is only issuing RM3,290,000,000.00 of the Sukuk Murabahah (the “**Issued Sukuk Murabahah**”) and any unutilised portion of the Sukuk Murabahah will be automatically cancelled on the issuance date after the issue of the Issued Sukuk Murabahah.

The breakdown of the issuance of RM3,290,000,000.00 is as follows:

<b>Series</b>	<b>Nominal Value (RM million)</b>	<b>Tenor (Years from First Issuance)</b>
Series 1	45	5.0
Series 2	40	5.5
Series 3	30	6.0
Series 4	30	6.5
Series 5	30	7.0
Series 6	35	7.5
Series 7	40	8.0
Series 8	35	8.5
Series 9	35	9.0
Series 10	35	9.5
Series 11	20	10.0
Series 12	25	10.5
Series 13	30	11.0
Series 14	35	11.5
Series 15	60	12.0
Series 16	65	12.5
Series 17	65	13.0
Series 18	70	13.5
Series 19	75	14.0
Series 20	75	14.5
Series 21	155	15.0
Series 22	165	15.5
Series 23	165	16.0
Series 24	180	16.5
Series 25	185	17.0
Series 26	165	17.5
Series 27	165	18.0

Series 28	185	18.5
Series 29	190	19.0
Series 30	210	19.5
Series 31	650	20.0

### 1.5.3 Selling Restriction

#### At issuance,

The Sukuk Murabahah may only be offered, sold, transferred or otherwise disposed off 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) or Schedule 7 or Section 230 (1)(b) and Schedule 9 or Section 257(3) of the CMSA.

#### Thereafter,

The Sukuk Murabahah may only be offered, sold, transferred or otherwise disposed off 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) and Schedule 9 or Section 257(3) of the CMSA.

### 1.6 Key Financing Ratio

Under the terms of the Sukuk Murabahah, the Issuer shall maintain the following financial covenants:

- (a) its Senior DE Ratio shall not at any time exceed 80:20;
- (b) its FSCR shall not be at any time less than 1.05 times (excluding cash balances).

### 1.7 Project Documents

The summary of the Project Documents are as follows:

Project Documents	Contracting Counterparties	Date of Agreement	Status
PPA	TBE and TNB	2 December 2011	Signed
CSTA	TBE and TFS	2 December 2011	Signed
OMA	TBE and the Operator	27 February 2012	Signed
Tripartite Lease Agreement	Seaport, TBE and the Security Agent	7 March 2012	Signed
Tripartite Lease Agreement	SWW, TBE and the Security Agent	7 March 2012	Signed
Sub-Lease Agreement	TBP and TBE	29 February 2012	Signed
Shared Facilities Agreement	TBP and TBE	27 February 2012	Signed
Turnkey Contract	TBE and TBI	23 February 2012	Signed

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EPC Contract	TBI and EPC Consortium	23 February 2012	Signed
Project Management Agreement	TBI and Malakoff Engineering Sdn Bhd	27 February 2012	Signed
Generation Licence	Granted by the Energy Commission	Issued on 27 January 2012	Licence issued

For more details on the terms of the Project Documents, please refer to section 4.4.3.

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# Section 2

## Information on the Issuer

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### 2.1 Incorporation

The Issuer was incorporated on 22 November 2011 with the name of Powerfield Sdn. Bhd. under the Companies Act 1965. On 9 December 2011, the Issuer changed its name to Tanjung Bin Energy Issuer Sdn. Bhd. Subsequently, the Issuer converted its status from a private limited company to a public limited company on 14 December 2011 and assumed its present name which is Tanjung Bin Energy Issuer Berhad.

The registered office of the Issuer is at Level 8, Kompleks Antarabangsa, Jalan Sultan Ismail, 50250 Kuala Lumpur.

The Issuer is a wholly-owned subsidiary of the Project Company which in turn is wholly-owned by MCB.

### 2.2 Principal Activity

The principal activities of the Issuer are to develop, administer and manage the construction of an electricity generating capacity in Malaysia or elsewhere and all related works thereto and to enter into any contracts, agreements, concessions, arrangements or other transactions in relation thereto.

### 2.3 Share Capital

The authorised, issued and paid-up capital of the Issuer as at 2 March 2012 is as follows:-

	Number of Shares	Par Value (RM)	Total (RM)
Authorised share capital	100,000	1.00	100,000.00
Issued and paid-up capital	100,000	1.00	100,000.00

Note:

The Issuer is a newly incorporated company and hence there is no audited financial statement for the preceding year.

### 2.4 Profiles of Directors

As at 2 March 2012, the Board of Directors of the Issuer and their respective profiles are as follows:-

#### 2.4.1 Zainal 'Abidin bin Abdul Jalil

Encik Zainal 'Abidin bin Abdul Jalil, aged 53, was appointed as Deputy Chief Executive Officer on 1 March 2011 and subsequently assumed the position of Chief Executive Officer on 1 June 2011. Having spent over 28 years with ExxonMobil, in significant leadership positions across North America, West Africa and the Asia Pacific region, he brings with him international experience and expertise in strategic planning, new business development, operations, capital project engineering and talent management.

His leadership experience in the high-technology capital-intensive industry will support MCB's aspiration to become a leading power industry player in the region. The appointment marks a return to Malaysia for him, who was based in Houston, Texas, United States of America as the Global Lead for the deployment of joint venture best practices for the international

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petroleum company's global operations. Prior to this functional assignment in ExxonMobil's headquarters, he was the Vice-President, Esso Exploration Angola and the General Manager of Operations for ExxonMobil Malaysia.

He is keen to bring global best practices in execution excellence and operating discipline to capture sustainable value from the power projects, both new and existing assets. His focus will be on profitable growth with a strong global presence. An engineer by training, He holds a Bachelor of Engineering in Civil Engineering from the University of Queensland, Australia.

#### **2.4.2 Habib bin Husin**

Encik Habib bin Husin, aged 52, obtained his Bachelor in Engineering (Electrical & Electronics) from University of Wales, United Kingdom. He started his career in 1983 as an Assistant Instrument Maintenance Engineer in Port Dickson Power Station for Lembaga Letrik Negara (now TNB). In 1985, he was transferred to Kapar Power Station (Phase I and II) and was later promoted to Instrument Maintenance Engineer in 1987. He then joined Sarawak Shell Berhad as Instrument Engineer in 1990 before moving to ICI Paints (Mal) Sdn Bhd as Works Engineer in 1992. He is responsible for all Engineering and Maintenance Aspect of ICI (Paints)'s plant located in Petaling Jaya and Nilai.

He joined MCB as Senior Manager of Technical Audit Department in July 1998. His role is to provide consultancy service on all engineering and management matters pertaining to the operations of the Lumut Combined Cycle Power Plant and to conduct technical and safety due diligence from time to time for new projects and proposed acquisitions. He has been redesignated and promoted to Assistant General Manager, Business Organisation & Technical Services on 1 January 2000.

His scope of work, in addition to the previous role, is to oversee the business reorganisation and strengthening the technical services within the group in order to drive Malakoff to be an international power player. In September 2001, he was promoted and transferred to General Manager-Projects in Segari Energy Ventures Sdn Bhd ("**SEV**"). In July 2004, he was promoted to Chief Operating Officer in SEV. He was re-designated to Senior Vice President of Business Operations Division in April 2006. In 2007, he was again re-designated as Senior Vice President of Asset Management Division, until his promotion to become the Chief Operating Officer of Malakoff in October, 2010.

#### **2.5 Shareholder**

The Project Company holds 100% equity stake in the Issuer. Please refer to Section 3 for the information on the Project Company.

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# Section 3

## Information on the Project Company

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### 3.1 Incorporation

The Project Company was incorporated on 21 April 1999 under the Companies Act 1965 under the name of Transpool Sdn. Bhd. The Project Company changed its name to Tanjung Bin Energy Sdn. Bhd. on 29 November 2011.

The registered office of the Project Company is at Level 8, Kompleks Antarabangsa, Jalan Sultan Ismail, 50250 Kuala Lumpur.

The Project Company is a wholly-owned subsidiary of the MCB.

### 3.2 Principal Activity

Prior to the issuance of the Sukuk Murabahah, the Project Company had no operating history. The Project Company being a SPV company will not engage in any business activity other than for the design, engineering, procurement, installation and commissioning, testing, operations and maintenance of 1,000 megawatts coal fired electricity generating facilities; and the sale of electrical energy and generating capacity of the Power Facility.

### 3.3 Share Capital

The authorised, issued and paid-up share capital of the Project Company as at 2 March 2012 is as follows:-

	Number of Shares	Par Value (RM)	Total (RM)
Authorised share capital	5,000,000	1.00	5,000,000.00
Issued and paid-up capital	5,000,000	1.00	5,000,000.00

### 3.4 Profiles of Directors

As at 2 March 2012, the Board of Directors of the Project Company and their respective profiles are as follows:-

#### 3.4.1 Zainal 'Abidin bin Abdul Jalil

Please refer to section 2.4.1 above.

#### 3.4.2 Habib bin Husin

Please refer to section 2.4.2 above.

#### 3.4.3 Datuk Hj. Hasni bin Harun

Datuk Hj Hasni Harun, aged 54, was appointed to the Board on 25 November 2011. He is currently the Group Managing Director of MMC. He held several senior positions in the Accountant General's Office from 1980 to 1994 and was the Senior General Manager of the investment department at the Employees Provident Fund from 1994 to 2001, and the Managing Director of RHB Asset Management Sdn Bhd from 2001 until 2006. He then joined

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DRB-HICOM Berhad as Group Chief Financial Officer until 2006 and joined MMC as the Group Chief Operating Officer in January 2007 until February 2008. He was appointed as the Chief Executive Officer Malaysia in March 2008 prior to his appointment as the Group Managing Director in May 2010.

He is a member of the Malaysian Institute of Accountants. He holds a Masters degree in Business Administration from United States International University, San Diego, California and a Bachelor of Accounting (Honours) degree from University of Malaya.

He also sits on the boards of IJM Corporation Berhad, Zelan Berhad, Aliran Ihsan Resources Berhad, MCB, Johor Port Berhad, MMC Engineering Group Berhad and several private limited companies.

**3.4.4 Dr. Mabel Lee Khuan Eoi**  
*(alternate director to Datuk Hj. Hasni bin Harun)*

Dr. Mabel Lee, aged 56, was appointed to the Board on 25 November 2011. She is currently the Director of Corporate Strategy at MMC. Prior to joining MMC, she had worked with JP Morgan Chase's Kuala Lumpur office as Vice President of its Investment Banking Division.

Dr. Mabel Lee is a Chartered Financial Analyst charterholder and holds a Bachelor of Accounting (First Class Honours) degree from University of Malaya, MBA (with Distinction) from University of Hull, United Kingdom and Doctor of Business Administration degree from University of Newcastle, Australia.

She is a member of the Malaysian Institute of Accountants, an Associate Member with Institut Bank-Bank Malaysia and is a Certified Business Coach.

**3.5 Shareholder**

MCB holds 100% equity stake in the Project Company.

MCB is a public limited liability company incorporated in Malaysia under the Companies Act 1965 and will be providing equity funding to the Project. MCB is a subsidiary of MMC which has 51% equity stake in MCB. The remaining 49% equity stake in MCB is held by Anglo-Oriental Annuities Sdn Bhd, the Employees Provident Fund Board, Kumpulan Wang Persaraan (Diperbadankan), Seasaf Power Sdn Bhd and Standard Chartered IL & FS Asia Infrastructure Growth Fund Company Pte Limited.

The registered office of MCB is at Level 8, Kompleks Antarabangsa, Jalan Sultan Ismail, 50250 Kuala Lumpur and the principal place of business of MCB is at Level 12, Block 3B, Plaza Sentral, Jalan Stesen Sentral 5, 50470 Kuala Lumpur.

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# Section 4

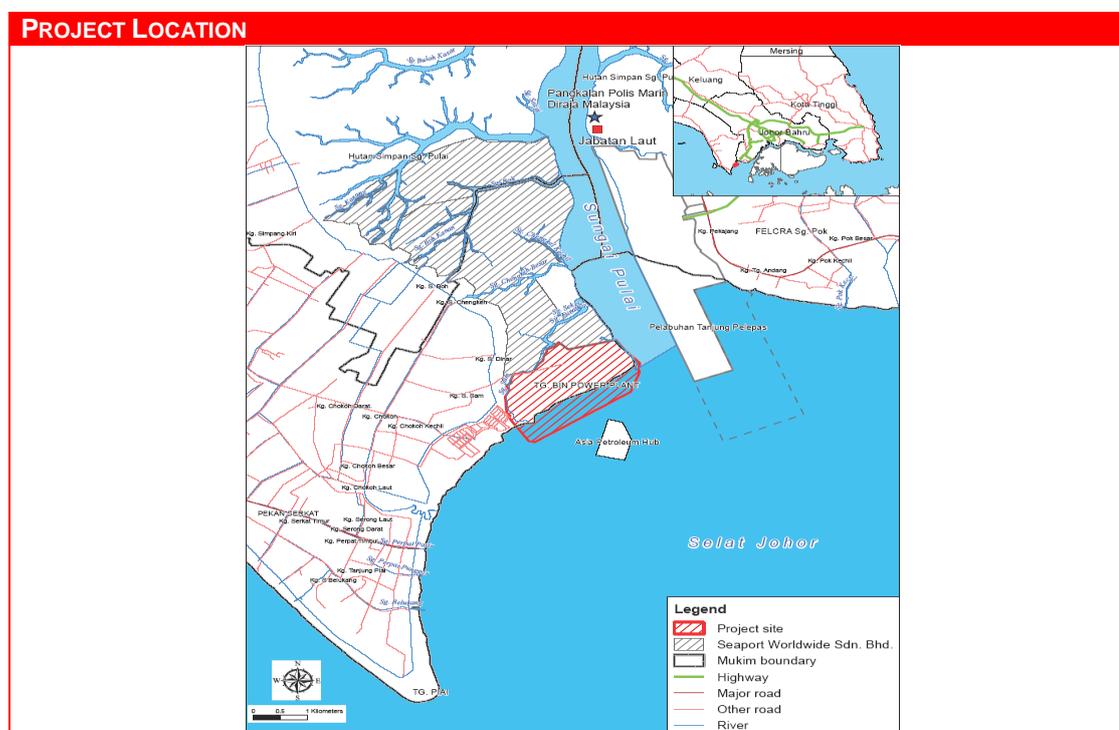
## Information on the Project

### 4.1 Description of Power Plant

#### 4.1.1 Layout

The Power Facility will be located at Mukim Serkat, Daerah Pontian, Johor Darul Takzim, in the south-western region of the state of Johor, Malaysia and is adjacent to the existing power plant owned by TBP, a subsidiary of MCB. The Site is located on the west bank of the mouth of the Pulai River at the Straits of Johor, opposite the Port of Tanjung Pelepas, a container terminal and a major trans-shipment hub in South East Asia. The Power Facility will share certain common infrastructure facilities with the existing TBP plant. The Site comprises of approximately 65.45 hectares of land which have been allocated for the Power Facility.

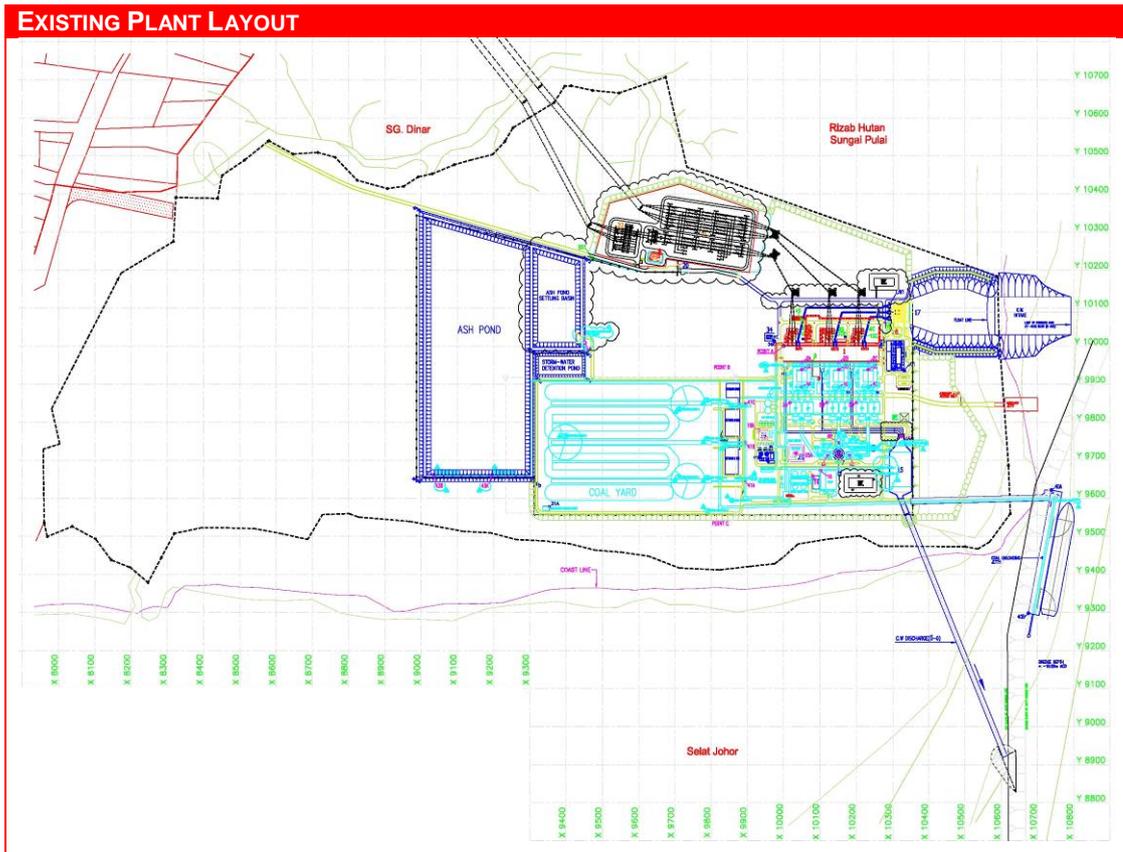
The Site location map is shown below:



Source: MCB

The Site forms part of the Iskandar Malaysia Western Gate Development area which has been earmarked for development as an industrial centre, comprising port and marine services, warehousing, logistics, engineering, hi-tech manufacturing, food production, petrochemical industry and entrepot trade facilities. The proximity of the Site to major shipping lanes through the Straits of Johor ensures the Site is well-positioned for acceptance of coal supplies by sea. The Site also enjoys good access to road infrastructure, cooling water and easy connection to the National Grid. The Project Company intends to lease from Seaport a part of the land for the construction, operation and maintenance of the Power Facility and the coal yard and another part of the land required for the Interconnection Facilities with SWW, a wholly-owned subsidiary of Johor Port Berhad, which in turn is a wholly-owned subsidiary of MMC.

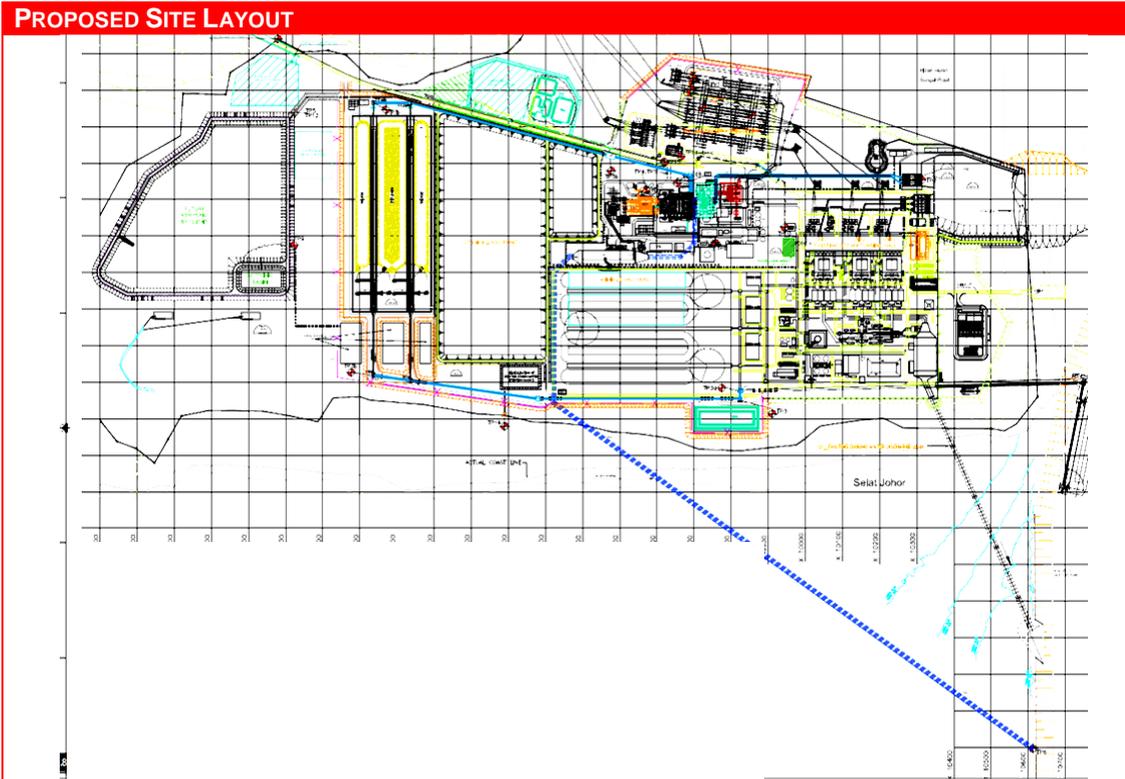
In addition, the Project Company will also enter into a sub-lease with TBP for a part of the land to be utilised by the Power Facility.



Source: MCB

The Power Facility (with the exception of a portion of the substation extension which will be located adjacently) will be located within the land holding of the existing TBP plant and will benefit from shared infrastructure facilities, including cooling water intake, coal unloading jetty and belt conveyors, ash pond, gatehouse, workshop area, chemical laboratory, sewage treatment facility, auxiliary jetty and the telecom line main distribution facility. The proposed Site layout is shown below.

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Source: MCB

#### 4.1.2 Plant Process and Technology

The Power Facility will have a net capacity of 1,000 MW, consisting of one super-critical conventional coal-fired thermal power generating unit. The key performance data are as follows:

- Net capacity: 1,000 MW; and
- Weighted Average Net Heat Rate: 9,429 kJ/ kWh (HHV).

##### (a) Steam Generator

The proposed steam generator is of supercritical once-through type design, single reheat type and consisting of a water-cooled furnace, superheaters, reheaters and economisers. The main and reheat steam pressure and temperature are 278/59 bar and 600/605°C respectively. The steam generator will be capable of variable pressure operation. The combustion system will be capable of firing 100% of the coal total heat input at boiler maximum continuous rating utilising coal within the specified range and 30% of the total heat input with light fuel oil (“LFO”) for start-up and during low load operation. In order to achieve efficient combustion of fuel with minimal release of nitrogen oxide (“NOx”) and losses from unburned carbon in bottom and fly ash, an advanced low-NOx firing system has been chosen. The design of the coal milling plant incorporates medium speed bowl mills, coal bunkers assigned to one coal mill and coal feeders for coal supplying to the mills. The firing system will be equipped with advanced low NOx jet type coal burners with oil guns on the centreline of the burners. Staged combustion with over-fire air supply will be implemented for further NOx reduction and best burn-out of coal particles.

##### (b) Steam Turbine

The proposed steam turbine is of supercritical design at 270/57.6 bar and 595/603.5 °C. The tandem-compound reheat turbine consists of a single flow high pressure cylinder, a double-flow intermediate pressure cylinder, and two double-flow low pressure (“LP”) cylinders. The steam turbine will be supplied with auxiliaries including a lubricating oil system, gland steam sealing system, turbine protection and trip system, turbine bypass system, turbine drain system, LP exhaust spray cooling system, seal oil system, generator cooling system and gas control and distribution (H<sub>2</sub> and CO<sub>2</sub>).

##### (c) Combustion Air, Flue Gas and Fabric Filter Plant Systems

The combustion air system consists of Forced Draft Fans (“FDF”), Primary Air Fans (“PAF”), Regenerative Air Preheaters (“RAPH”), Induced Draft Fans (“IDF”) and all ancillary ductwork, silencers and other supporting equipment. The PAFs will be used to dry the coal in the mills and transport the pulverised coal to the burners. The FDFs will provide combustion air in the form of secondary and tertiary (over-fire) air. The IDFs will abstract the ensuing flue gas from the boiler via the RAPHs and the flue gas cleaning systems prior to transporting the flue gas to the chimney. Flue gas leaving the regenerative air heaters (boilers) will pass through the fabric filter plant system with dust removal efficiency designed to reduce particulate emission to 50 mg/Nm<sup>3</sup> or lower. Fly ash collected will be transported to fly ash storage silos to await disposal or collection by a DOE licensed recoverer.

##### (d) Flue Gas Desulphurisation (“FGD”) System

The FGD plant will receive the flue gases downstream of the fabric filter plant system. The FGD system will be equipped with a bypass. Through seawater for the absorber will be supplied from the turbine cooling seawater discharge and the flue gases will flow through a bed of seawater wetted packing, which will provide a large contact area and promote efficient absorption of sulphur dioxide (“SO<sub>2</sub>”) (85-95%). Acidic seawater containing the absorbed SO<sub>2</sub> will flow to the seawater treatment plant before discharge back into the sea.

**(e) Coal and Light Fuel Oil Handling Systems**

Coal will be the primary fuel used in the operation of the Power Facility with LFO utilised for start-up, shut down, mill changeover and support firing. Coal will be supplied by ships generally of Panamax class up to Cape Size and unloaded at the existing coal unloading jetty located to the east of the Site. The jetty is capable of berthing coal vessels from barges (8,000 DWT) up to Cape Size (150,000 DWT). The unloaded coal will be transported from the jetty to the coal storage yard of the Power Facility via covered conveyors. The coal storage yard is strategically located with minimum and maximum storage capacity sufficient for approximately 30 and 45 days of Power Facility operations respectively. The LFO handling system is designed to receive LFO from road tankers, to provide bulk storage and to feed the boiler and the emergency diesel generator with LFO at the necessary temperature and pressure. One LFO storage tank of 3,000m<sup>3</sup> capacity is provided for start-up of the Power Facility, with a bund wall provided around the tank with capacity to hold 110% of the volume of the storage tank to contain spillage.

**(f) Ash Handling System**

The ash handling system consisting of a scraper conveyor will be used to remove bottom ash while pneumatic transportation equipment will be used to dispose fly ash. Bottom ash will be transported to the ash pond by a slurry ash handling system. Fly ash will be collected from the economiser hoppers, gas-air heaters and fabric filter plant hoppers for transportation by the fly ash system. Ash from the economiser and gas air heaters is sent to the bottom ash bin while ash from the precipitators is sent to the fly ash silo. The fly ash silo can discharge ash to fly ash trucks or to the fly ash export on the fly ash jetty, alternatively the ash can be discharged to the ash pond.

**(g) Electrical System**

The electrical generator will be mechanically driven by its associated steam turbine, electrically excited by the static-excitation system, and internally cooled by gaseous hydrogen. The power output by the generator will be fed mainly through the generator transformer to the 500kV substation and from there via 500kV Transmission Lines to the National Grid. In addition, part of the output will be fed as an auxiliary power to the internal plant through the unit transformers. The generator will be completely enclosed and will utilise hydrogen as the cooling medium. The ventilation system will be self-contained and completely enclosed to prevent ingress of dirt and moisture. The generator is designed for continuous operation and will be constructed to withstand sudden changes in load.

**(h) Interconnection Facilities and Metering Equipment**

The Power Facility will be connected to an extension of an existing substation at the Site to enable power supply to the National Grid. The existing substation shall be expanded by two additional 500 kV diameters including the Metering Equipment to the northern section and an additional support system will be provided to cater for the increased power supply. The Tanjung Bin 500/275kV substation is a conventional 500kV and 275kV outdoor type with a one and half breaker scheme for the 500kV and single breaker scheme for the 275kV. The substation is owned, operated and maintained by TNB. Pursuant to the PPA, the Project Company has the obligation to design, construct, install, test, energise and commission the Interconnection Facilities and the Metering Equipment and transfer the property and title to the Interconnection Facilities and the Metering Equipment to TNB upon completion.

The Net Electrical Output (kWh) delivered to TNB shall be measured by the Metering Equipment, which will be located within the Interconnection Facilities. A telephone line (PSTN) will be connected to the existing private automatic branch exchange (PABX) of Tanjung Bin station. The metering room at the Project Company's substation on the Site shall operate on a "2-key System" whereby TNB and the Project Company will each keep a set of key(s) to the metering room.

For each Interconnection Point, three-phase, four-wire metering devices shall be used. The Metering Equipment shall consist of one main and one check system, which shall have the same configuration. The main and check Metering Equipment comprising the Metering Equipment shall each have separate sets of current transformer and voltage transformer.

**(i) Interbus Transformer and Transmission Line**

To facilitate commencement of on-line testing and commissioning of the Power Facility, a 1 x 500/275kV, 750 MVA, 3-single phase auto transformers at Tanjung Bin substation and the termination and associated works for the transformers at Tanjung Bin 275kV and 500kV bays (“**Interbus Transformer**”) will be constructed by TNB. In addition, a new 500kV circuit (quad curlew) from Tanjung Bin to Bukit Batu of approximately 63 kilometres in length and associated works at Tanjung Bin and Bukit Batu 500kV substations (“**Transmission Line**”) will be constructed by TNB to facilitate full power evacuation from the Power Facility. The Transmission Line will utilise the same alignment as the existing transmission line in use for the TBP plant. The Interbus Transformer is sufficient to commence testing and commissioning of the Power Facility and utilisation of the Transmission Line for power evacuation will commence shortly after it is completed by TNB.

**4.2 Project Construction Schedule**

The Power Facility, the Interconnection Facilities and the Metering Equipment will be constructed pursuant to a fixed-price, date-certain, lump sum turnkey EPC Contract. The scope of the EPC Contract will include the design, engineering, procurement, fabrication, construction, installation, commissioning, start-up, testing and related services for the Project. Each of the members of the EPC Consortium will be jointly and severally liable for the performance of the obligations under the EPC Contract. PCGs will be in place to guarantee the obligations of each of the EPC Consortium members. Under the PPA, the Project Company has the obligation to deliver the Interconnection Facilities required for generation of power up to the Interconnection Point. The Interconnection Point is where TNB’s Metering Equipment will be provided and installed by the Project Company for the purposes of determining Net Electrical Output. TNB has an obligation to provide the Interbus Transformer no later than 23 April 2015, seven (7) days prior to the IOD, to enable power evacuation from the Interconnection Point to the National Grid and hence on-line testing and commissioning of the Power Facility to commence. The Interbus Transformer is a temporary measure to connect the Power Facility to the National Grid and TNB has an obligation to complete the Transmission Line no later than 1 October 2015, five (5) months prior to COD of the Power Facility. Construction will take place over a period of forty eight (48) months. The ash pond for the Power Facility will be constructed by TBP and will be shared with the Project Company pursuant to the terms of the SFA entered or to be entered into between the Project Company and TBP. Project management services for the construction of the Project will be provided by MCB’s wholly-owned subsidiary, Malakoff Engineering Sdn Bhd, with Fichtner GmbH & Co KG retained as to provide specialist technical expertise.

**4.3 Base Case Financial Projections**

**4.3.1 Key Assumption**

The key assumptions of the Base Case Financial Projections are set out in Appendix II.

**4.3.2 Base Case Financials**

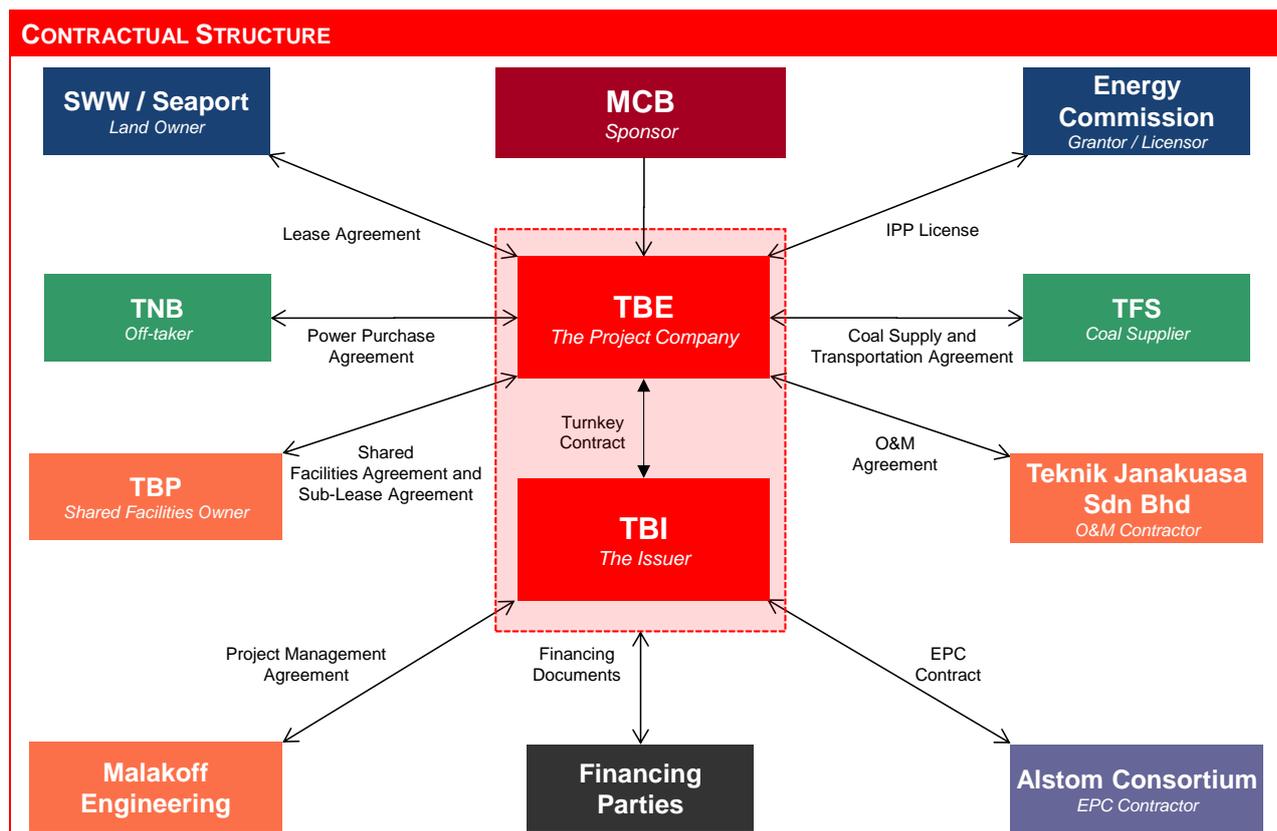
The sources and uses of funds, Base Case Financial Projections and Financing Facilities repayment profile are set out in Appendix I.

#### 4.4 Summary of Project Documents and Project Parties

##### 4.4.1 Contractual Structure

The Project will be implemented utilising a dual-SPV contractual structure (“**Turnkey Structure**”) designed to mirror common project finance contractual arrangements and risk allocation.

The proposed structure of the key contractual relationships between the parties involved in the Project is shown below:



Source: Project Documents and Financing Documents

The Project Company is a SPV formed for the purpose of implementing the Project. Pursuant to Section 9 of the Electricity Supply Act 1990, the Project Company is required to obtain the Generation Licence from the Energy Commission for, inter alia, the operation and maintenance of the Power Facility and for the delivery and sale of electrical energy and generating capacity to TNB. The Generation Licence has a term of 25 years from the completion of the generating unit of the Power Facility.

The Project Company has entered into the following Project Documents:

- PPA with TNB, for a term of 25 years from the date on which all conditions precedent under the PPA have been satisfied or waived;
- CSTA with TFS, the nominated fuel supplier which will be coterminous with the PPA;
- OMA with the Operator, for a term of 25 years and takes effect on the date of the OMA;

- Tripartite Lease Agreement with Seaport and the Security Agent, in respect of the lease of all that piece of land which is to be subdivided from the land identified as H.S.(D) 10923, Lot No. PTD 1770 which the Power Facility and the coal yard are situated;
- Tripartite Lease Agreement with SWW and the Security Agent, in respect of the lease of all that piece of land which is to be subdivided from the land identified as H.S.(D) 11153, Lot No. PTD 1851 which the Interconnection Facilities is situated;
- Sub-Lease Agreement with TBP, in respect of the lease for part of the Site of the Power Facility, identified as H.S.(D) 11438, Lot No. PTD 1859 for a term at least equal to the term of the PPA;
- Shared Facilities Agreement with TBP, governing the shared facilities, for a term of 25-years from the date of the SFA; and
- Turnkey Contract with the Issuer.

Pursuant to the Tripartite Lease Agreements, the following lease agreements will be entered into by the Project Company upon the registration of the charge on the leased lands in favour of the Financing Parties, as replacement to the Tripartite Lease Agreements upon their expiration:

- Lease Agreement with Seaport, in respect of the lease of Lease Land A, for a term at least equal to the term of the PPA; and
- Lease Agreement with SWW, in respect of the lease of Lease Land B, for a term at least equal to the term of the PPA.

The Issuer is a SPV, formed for the purpose of carrying out the development, construction and financing of the Project and is a wholly-owned subsidiary of the Project Company. The Issuer will not be involved in the operation and/or maintenance of the Power Facility.

The Issuer has entered into the following project documents:

- Turnkey Contract with the Project Company;
- EPC Contract with the EPC Consortium for the Power Facility, Interconnection Facilities and the Metering Equipment; and
- Project Management Agreement with Malakoff Engineering Sdn Bhd, governing the management of the Project, which shall continue in force until the earlier of (i) 31 May 2016; or (ii) the date falling the expiry of 3 months after the COD of the Power Facility.

#### 4.4.2 Turnkey Structure

Pursuant to the terms of the Turnkey Contract, the Issuer will procure and manage the development, construction and financing of the Power Facility, the Interconnection Facilities and the Metering Equipment for a pre-determined consideration ("**Turnkey Contract Price**"). The Turnkey Contract Price will be adjusted at COD to reflect the actual costs of performing the Turnkey Works and the Turnkey Services (as defined in section 4.43(h)).

### 4.4.3 Project Documents

#### (a) PPA

##### *General Overview*

The Project Company and TNB have entered into the PPA dated 2 December 2011 whereby the Project Company has agreed to sell and TNB has agreed to purchase from the Project Company capacity and electricity generated at the Power Facility upon the terms and conditions therein contained.

##### *Term of PPA*

The PPA takes effect for a period of 25 years (“**Term**”) from the Effective Date<sup>1</sup> and such Term may be extended in accordance with the PPA.

##### *Critical Milestones in which the Project Company is required to meet*

- (a) the Financial Closing Date<sup>2</sup> shall occur on or before 15 September 2012;
- (b) the Commencement Date shall occur no later than 13 August 2012;
- (c) each of the Project Documents shall be in full force and effect and all conditions precedent to their effectiveness (except for conditions relating to the PPA) shall be satisfied or waived thereunder no later than 15 September 2012; and
- (d) the IOD shall occur on 30 April 2015.

##### *Tariff*

The Project Company will receive revenues from TNB pursuant to the tariff mechanism where TNB pays the Project Company for available capacity, fixed and variable O&M costs, fuel costs and start-up costs. As such, the tariff consists of an ACP, Energy Payment<sup>3</sup> (“**EP**”), Test Energy Payment<sup>4</sup> (“**TEP**”) and Start-Up Payment<sup>5</sup> (“**SUP**”).

##### *Available Capacity Payment*

ACP is equal to the Fixed Availability Payment (“**FAP**”) adjusted for unavailability deductions. The FAP is calculated using the CRF and the Fixed Operating Rate (“**FOR**”).

The FAP (in RM) for one (1) day is calculated as CCR (as defined under Appendix G of the PPA) multiplied by the applicable available capacity for that year, where CCR consists of:

$$[ \text{CRF (in RM/ kW/ month)} + \text{FOR (in RM/ kW/ month)} ] * 12 / \text{actual days in year}$$

The CRF is designed to cover the finance service obligations of the Issuer and yield a return to the Project Company. The FOR is designed to cover the fixed operation and maintenance costs of the Project Company. The PPA provides for indexation of the FOR at a rate of 4% every four (4) years. No indexation is applicable to the CRF. CRF has a two-tiered structure.

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<sup>1</sup> “**Effective Date**” is defined as the date on which all conditions precedent under the PPA have been satisfied or waived.

<sup>2</sup> “**Financial Closing Date**” is defined as the date on which the Financing Documents relating to the financing or refinancing for the total construction costs of the Project have been entered into by the Project Company and/or the Issuer and the Financing Parties, and all of the conditions precedent for the initial drawdown under such Financing Documents have been satisfied by the Project Company and/or the Issuer or waived by the Financing Parties thereunder.

<sup>3</sup> “**Energy Payment**” is defined as payment determined in accordance to Appendix G to be made by TNB to the Project Company for Net Electrical Output generated and delivered from the Power Facility pursuant to a Despatch Instruction or Monitoring Test.

<sup>4</sup> “**Test Energy Payment**” is defined as payment determined in accordance with Appendix G to be made by TNB to the Project Company for the Test Energy generated by the Power Facility.

<sup>5</sup> “**Start-Up Payment**” is defined as payment determined in accordance with Appendix G to be made by TNB to the Project Company for start-ups of the Power Facility.

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Tier 1 CRF applies for the period commencing on the COD and ending on the day immediately preceding the seventeenth (17<sup>th</sup>) anniversary of the COD (“**Tier 1 Period**”). Tier 2 CRF applies from the day immediately following the expiry of the Tier 1 Period. Tier 2 CRF is lower than Tier 1 CRF.

#### *Energy Payment*

The EP consists of the Fuel Payment (“**FP**”) (as defined under Appendix G of the PPA) (in RM) and the variable operating payment (in RM) (“**VOP**”). The VOP is equal to the Variable Operating Rate (“**VOR**”) (in RM/ kWh) multiplied by the Net Electrical Output (in kWh) delivered by the Power Facility within the relevant billing period. The PPA provides for indexation of the VOR at a rate of 4% every 4 years.

The VOR is designed to cover the variable operating costs of the Project Company.

The FP will be calculated for each half-hour of operation for each day of a Billing Period and shall be the aggregate of the fuel payment for each day of the Billing Period which is the weighted average fuel price for the half hour period (in RM/GJ) using the Applicable Coal Price multiplied by the heat rate of the Power Facility applicable for the half hour period and multiplied by the Net Electrical Output (in kWh) from the Power Facility during the half hour period (excluding Test Energy paid) divided by one (1) million.

The Applicable Coal Price is the price of coal in RM per GJ which is set by TNB in consultation with TFS in accordance with Appendix J of the PPA. The Applicable Heat Rate will be the lower of the contracted heat rate and the heat rate as determined by testing procedures during completion but prior to COD, as adjusted to reflect the following:

- (i) 1% coal loss factor designed to cover potential losses during freight and/ or at site;
- (ii) Contracted degradation factors which will amount to 2% over the PPA term.

#### *Test Energy Payment*

The TEP is payment for the test energy generated from the Power Facility from IOD and throughout the Term.

#### *Start-Up Payment*

The SUP is paid by TNB for each start-up of the Power Facility (requiring re-connection to the Grid System) of the Power Facility requested pursuant to a Despatch Instruction following a prior Despatch Instruction to shut down (excluding such Despatch Instruction to shut down made pursuant to the Project Company's request to shut down or due to any outage) (“**Requested Start**”). For each Requested Start of the Power Facility, TNB shall pay to the Project Company, the weighted average of the price of Fuel (actually paid by the Project Company to fuel supplier(s) in RM/GJ) multiplied by the quantity of Fuel consumed by the Project Company for each Requested Start (in GJ).

The SUP for each Requested Start shall include all fuel costs associated with such start-up except the Nominated Fuel which is payable by TNB to the Project Company through Energy Payments.

#### *Sharing of Construction, Financing and Tax Cost Savings and Tariff Adjustment*

Pursuant to the terms of the PPA, if the cost of construction and financing of the Project are reduced below the amounts appearing in the Initial Financial Model, the Project Company is required to share 50% of the cost savings with TNB. If the Project Company or the Issuer receive any tax benefit from the date of the PPA up to one year after COD, the Project Company or the Issuer is required to pass 100% of the tax benefit to TNB. Where the tax benefit relates to sales tax and/ or import duty, TNB is only entitled to receive the tax benefits in excess of RM231,000,000.00 (being the amount factored in the Initial Financial Model).

The sharing of cost savings is achieved via an adjustment of the CRF (i) at COD and (ii) one year after COD; and (iii) where the Project Company fails to provide relevant Input Data to TNB and the Energy Commission (each event referred to as “**Financial Model Input Adjustment Event**”).

Upon the occurrence of the Financial Model Adjustment Event at COD and one year after COD, the Project Company shall furnish TNB and the Energy Commission the Input Data. The Input Data consists of specific values of actual construction and financing costs and tax benefits achieved by the Project Company and Issuer. The Initial Financial Model shall be updated for the Input Data and the CRF recalculated to achieve the sharing of cost savings achieved by the Project Company.

The PPA provides that the adjustment, if any, to the CRF shall not result in the FSCR<sup>6</sup> under the Financing Documents not being met. A dispute resolution mechanism applies where TNB disagrees with the Input Data. If the Project Company and TNB are unable to agree on the Input Data, the dispute is referred to the Energy Commission.

A penalty (equivalent to 75% of the prevailing CRF for the remainder of the Term) will be imposed on the Project Company if the Project Company fails to (i) deliver the Input Data, or (ii) provide TNB and the Energy Commission with unrestricted access to the Input Data and the Review Documents.

#### *Exceptions to TNB’s Obligations to Accept Electricity*

- (a) an Emergency Condition occurs within the Grid System as a result of which the Grid System is unable to accept electricity; or
- (b) the Power Facility delivers to TNB electricity which does not conform to the electrical characteristics provided under the PPA; or
- (c) TNB intentionally interrupts the acceptance of electrical energy from the Power Facility to conduct necessary maintenance of the Interconnection Facilities, the Metering Equipment or the Grid System.

#### *Exceptions to the Project Company’s Obligations to Sell Electricity*

In addition to an event of force majeure, the Project Company shall not be obliged to sell and deliver electricity from the Power Facility for so long as the Project Company cannot consistently with prudent utility practices generate and deliver electricity because of an Emergency Condition.

#### *Billing and Payment*

TNB is required to pay the Project Company amounts owed within 30 days of receipt of billing statement. Late payments will be subject to a default rate interest of 1% above the base lending rate then in effect at Malayan Banking Berhad (or its successor).

#### *Liquidated Damages*

- (a) If the COD does not occur on or before the scheduled COD (being 1 March 2016, as extended under the PPA), the Project Company shall pay to TNB liquidated damages in an amount equal to RM600,000.00 (“**PPA Delay LDs**”) per day for each day of delay following the scheduled COD until the earlier of (i) the COD, (ii) the date on which the PPA is terminated by TNB, and (iii) 180 days after the scheduled COD. If the Project Company or the Issuer abandons the Project after the Effective Date, the Project Company shall pay TNB liquidated damages in the amount equal to

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<sup>6</sup> The PPA refers to the “**debt service cover ratio**”.

RM108,000,000.00. The aggregate of liquidated damages payable by the Project Company shall not exceed RM108,000,000.00.

- (b) If the Project Company fails to comply with or operate in conformity with any of the operating standards or characteristics set out under Appendix B of the PPA, the Project Company shall pay TNB liquidated damages equal to RM100,000.00 for each of such failure. However the liquidated damages of RM100,000.00 are not payable to the extent that the Project Company pays the liquidated damages for failures set out in paragraph (f) below.
- (c) Neither party shall be liable to the other party for any indirect, incidental or consequential or punitive damages as a result of the performance or non-performance of the obligations imposed pursuant to the PPA, including failure to deliver or purchase electrical energy under the PPA, irrespective of the causes of such damages , including fault or negligence.
- (d) The Project Company shall secure payment of the PPA Delay LDs and the liquidated damages payable at RM108,000,000.00 by providing TNB, not later than the earlier of (i) seven (7) days from the Financial Closing Date and (ii) 210 days after the Effective Date, an irrevocable bank guarantee issued for an amount equal to RM108,000,000.00 which bank guarantee shall permit drawings by TNB to satisfy the performance obligations of the Project Company. The bank guarantee shall remain valid until the expiration of six (6) months after the scheduled COD. If the Project Company fails to furnish a bank guarantee to TNB within the time frame and valid for the duration set out herein, TNB may terminate the PPA.
- (e) If the Contractual Available Capacity is less than the Nominal Capacity as set out under Appendix C of the PPA, the Project Company shall forthwith pay to TNB liquidated damages (“**PPA Performance LDs**”) in an amount equal to RM5,000.00 per kW multiplied by the difference between the Normal Capacity and the Contractual Available Capacity. The parties agree that the PPA Performance LDs are only payable once by the Project Company. TNB shall be entitled to set-off any outstanding undisputed amount due to it against any sums due and payable to the Project Company under the PPA.
- (f) If the Power Facility fails to comply with the Despatch Instruction or if the Power Facility fails a Monitoring Test, the Project Company shall forthwith pay to TNB liquidated damages in an amount equal to RM250,000.00 for each failure to comply with the Despatch Instruction or the Monitoring Test save where such failure of compliance of the Despatch Instruction and Monitoring Test is the third such failure, within a period of 14 days, then, the Project Company shall promptly pay TNB an amount (in RM) equal to (x) the difference between the Reference Despatch Level<sup>7</sup> (in kW) and such Deemed Declared Available Capacity<sup>8</sup> (in kW), multiplied by (y) the Applicable Capacity Charge Rate (in RM//kW/day) for the prevailing Contract Year for the Power Facility (as determined pursuant to Appendix G of the PPA), multiplied by (z) the Reference Period<sup>9</sup> (in days or any fraction thereof).

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<sup>7</sup> “**Reference Despatch Level**” is defined as the level of generation specified in the relevant notice requesting the Monitoring Test or the relevant Despatch Instruction which the Power Facility failed to meet.

<sup>8</sup> “**Deemed Declared Available Capacity**” is defined as the availability in MW after (a) the Monitoring Test conducted by GSO fails to comply with a Despatch Instruction, the actual generating level achieved as metered by the Metering Equipment, or (d) in the circumstances set out in the PPA, the availability determined in accordance thereto, whichever is most recently established.

<sup>9</sup> “**Reference Period**” is defined as one half of the period from the date on which the Power Facility last complied with a Despatch Instruction at a level of generation at or above the level of generation specified in the relevant notice requesting the Monitoring Test or the relevant Despatch Instruction which the Power Facility failed to meet until the date of Availability of the Power Facility is next reestablished pursuant to a Revalidation Test or Despatch Instruction. If the Reference Period exceeds 180 days, it shall be capped at 180 days for the purposes of determining the amount payable by the Project Company to TNB.

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### *Maintenance Reserve*

The Project Company is required to maintain a replenishable maintenance reserve equal to RM24,000,000.00, to be built up in increments of RM8,000,000.00 annually from the COD.

### *Force Majeure*

Force majeure is defined under the PPA as an event, condition or circumstance or its effect which:

- (a) is beyond the reasonable control of and occurs without fault or negligence on the part of the party claiming it as a force majeure event;
- (b) causes a delay or disruption in the performance of any obligation under the PPA despite all reasonable efforts of the party claiming it as a force majeure event to prevent or mitigate its effects.

Subject to satisfying the above criteria, force majeure events specifically include:

- (i) strikes or lockouts and/or other work stoppages or industrial action (other than those solely affecting the party claiming the same as a force majeure event);
- (ii) acts of public enemies, terrorists or acts of war, whether or not war is declared, acts of force by a foreign nation or embargo;
- (iii) whether or not war is declared, acts of force by a foreign nation or embargo;
- (iv) explosions, fire, earthquakes, landslides, subsidence, sabotage, and/or other natural calamities and acts of God;
- (v) unusually severe weather conditions;
- (vi) expropriation or compulsory acquisition by any government entity;
- (vii) failure to obtain or renew any government authorisations;
- (viii) an Emergency Condition;
- (ix) any force majeure event affecting the performance of TNB relating to the construction of the Interbus Transformer and the transmission works;
- (x) any force majeure event affecting the performance of any person that is a party to the EPC Contract or other contract between the Project Company and such person relating to the construction, operation or maintenance of the Power Facility; and
- (xi) any interruption in the supply of TFS to the Power Facility due to the default or negligence of TFS under the CSTA or due to a force majeure event thereunder.

### *Consequences of Force Majeure*

If a party is unable to perform its obligations due to a force majeure event, the affected party will be excused from performing those obligations.

The scheduled COD shall be extended by one (1) day for each day the COD is delayed by a force majeure event. If the force majeure event affecting TNB occurs before scheduled COD and delays the COD, TNB shall pay the costs of finance service and unavoidable costs of the Project Company (to the extent not covered by insurance proceeds). The unavoidable costs reimbursed by TNB shall not exceed the amount of the FOR portion of the Fixed Availability Payment that would otherwise have been payable.

If a force majeure event occurs post-COD affecting the Project Company, TNB shall make ACPs to the Project Company to the extent the Power Facility is available. If the force majeure event affects TNB, TNB shall also pay the Project Company the difference between:

- (i) the costs of servicing debt (drawn down and expended in accordance with the terms of the Financing Documents) after the date such force majeure event occurred (but not including the Sponsor's gross equity contributions, the Sponsor's equity repayment or any cost relating thereto) and any unavoidable costs IPP necessarily and reasonably incurs for such duration; and

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- (ii) the total ACPs due to the Project Company for the period a force majeure event persists and any insurance proceeds which reimburse it for any costs for the period and any insurance proceeds received.

If a force majeure event prevents either party from substantially performing its material obligations under the PPA for a period in excess of 180 days, either party may terminate the PPA on 30 days' notice to the other party or 210 days' notice if the force majeure event cannot be remedied within 180 days. After the extended notice period, there are mechanisms for further consultation on how the PPA is to be terminated.

*Insurance*

The Project Company shall maintain or procure to be maintained the following insurance policies and coverage with respect of the Power Facility, and where applicable the Interconnection Facilities:

- (a) from the commencement date until the COD, "Erection All Risks" insurance and physical loss insurance against damage to the Power Facility and the Interconnection Facilities in amounts not less than the erection cost of such facilities and on a replacement cost basis subject to deductibles of no more than USD1,000,000.00;
- (b) throughout the Term, "Industrial All Risks" and "Machinery Breakdown" insurance as appropriate having regard to the Prudent Utility Practices;
- (c) throughout the Term, "Public Liability" insurance with combined single limits for bodily injury and property damage of at least RM25,000,000.00 per occurrence and in aggregate, including coverage for "Operational Liability";
- (d) throughout the Term, "Comprehensive Automobile Liability" or "Motor Vehicle Liability" insurance or similar insurance with combined single limit for third party property damage of at least RM3,000,000.00 per occurrence and in aggregate, where applicable, covering vehicles owned, hired and non-owned and unlimited liability for bodily injury; and
- (e) throughout the Term, "Workmen's Compensation" and/or "Employer's Liability" insurance that complies with the laws of Malaysia.

All amount referred to above shall be reviewed on an annual basis and may be revised subject to mutual agreement by the parties.

If any of the insurances referred to above are not available on reasonable commercial terms, the Project Company shall provide TNB detailed information as to the maximum amount of available coverage that it is able to purchase and shall be required to obtain TNB's consent as to the adequacy of such coverage.

The Project Company shall, where applicable, cause the insurers to amend or endorse each of policy to include TNB, its directors and officers as additional insureds and that such insurance is primary with respect to TNB's interests; a waiver of all rights of subrogation against TNB, its directors and officers; a severability of interest provision; and at least a 60 days written notice to TNB prior to cancellation, termination, non-renewal or material change of any such insurance coverage.

The Project Company shall apply the proceeds of any such insurance policies received following a claim for loss or damage to the Power Facility in accordance with the requirements of the Financing Documents and otherwise to repair the Power Facility.

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*EOD and Termination*

The following, inter alia, sets out the EOD by the Project Company:

- (i) failure to make a payment of any amount of substantial nature within 60 days of notice from TNB;
- (ii) the COD fails to occur within 6 months of the scheduled COD;
- (iii) the Project Company or the Issuer abandons the Project and fails to resume activities within a period of time agreeable to TNB;
- (iv) the Generation Licence is suspended or revoked and not replaced within the shorter of (i) one (1) year and (ii) the period permitted for reinstatement or renewal, and the Project Company has exhausted all applicable administrative or legal appeals;
- (v) without the consent of the Federal Government of Malaysia, the percentage of Malaysian shareholders drops below the percentage provided under the Generation Licence;
- (vi) the CSTA is terminated by TFS as a result of default by the Project Company thereunder;
- (vii) the major shareholders of the Project Company sell-down their interests in the Project Company before the 7<sup>th</sup> anniversary of the COD, without the prior written approval of the Federal Government of Malaysia;
- (viii) the Project Company or the Issuer fails to comply with or operate in conformity with any obligation of the PPA (other than a payment obligation) and such failure, if capable of remedy, continues uncured for a period of ninety (90) days, after receipt of notice of such failure from TNB; or
- (ix) the Project Company is dissolved or liquidated other than for the purpose of voluntary dissolution or liquidation as part of reorganisation or reincorporation, filed for bankruptcy, makes a general arrangement or composition with its creditors or applies for receivership.

The following, inter alia, sets out the EOD by TNB:

- (i) failure to make a payment of any amount of substantial nature within 60 days of notice from the Project Company ;
- (ii) TNB fails to comply with or operate in conformity with any obligation of the PPA (other than a payment obligation) and such failure, if capable of remedy, continues uncured for a period of ninety (90) days, after receipt of notice of such failure from the Project Company or the Issuer; or
- (iii) TNB commits the following acts – dissolved or liquidated, applies or consent to a receivership, admits in writing its inability to pay its debts as they fall due, files a petition for bankruptcy, insolvency, reorganisation of debts, winding-up, or composition or readjustment of its debts.

For failure by TNB, the Project Company or the Issuer to comply with or operate in conformity with any obligation of the PPA (other than a payment obligation), the PPA may be terminated by the non-defaulting party on 14 days' notice to the other party, and where the default cannot be cured within the 90 days' given, the defaulting party shall be given a further period of 180 days' to cure such breach.

Save where the Project Company or the Issuer abandons the Project, TNB shall not be entitled to terminate the PPA during any period in respect of which the Project Company is paying liquidated damages.

Under the PPA, the parties acknowledge that the electricity industry in Malaysia may be revamped in the future to set up a power pool or other market system. In such an event, the Project Company and TNB are required to negotiate the changes required to the PPA to effect the industry restructuring. If agreement cannot be reached within six (6) months of starting negotiations, TNB may terminate the PPA on notice to the Project Company and give notice in writing to the Project Company for the purchase of the Project whereupon TNB shall purchase and the Project Company shall sell the Project in the manner and for the purchase

price determined in accordance with the provisions of the PPA.

#### *Termination Payments*

If the PPA is terminated by TNB due to the Project Company's EOD, TNB has the option, but not the obligation, to purchase the Project for a purchase price equal to:

- (i) the Outstanding Indebtedness<sup>10</sup> if the Sponsor's gross equity contribution amounts to 20% or more of the Total Project Costs and 95% of the Outstanding Indebtedness if the Sponsor's gross equity contribution amounts to less than 20% of the Total Project Costs; plus
- (ii) RM 10; plus
- (iii) the Transfer Costs<sup>11</sup>; less
- (iv) the Retained Sum<sup>12</sup>.

If the PPA is terminated by the Project Company due to TNB's EOD, the Project Company has the option, but not the obligation, to require TNB to purchase the Project for a purchase price equal to:

- (i) If termination occurs prior to the COD:
  - a. the Outstanding Indebtedness; plus
  - b. the Sponsor's gross equity contribution; plus
  - c. Interest on the Sponsor's gross equity contribution (at 1% above the base lending rate then in effect at Malayan Banking Bhd); plus
  - d. the Transfer Costs; minus
  - e. the Retained Sum; and
- (ii) If termination occurs after the COD:
  - a. the Outstanding Indebtedness; plus
  - b. Purchase Price "B"<sup>13</sup>, being a return on equity at a predetermined level; plus
  - c. the Transfer Costs; minus
  - d. the Retained Sum; and

On payment by TNB of the relevant purchase price, the Project Company is required to transfer all of the assets of the Project and all other rights, title and interest in the Project to TNB including access rights.

The purchase price payable by TNB will be adjusted as follows:

- (i) reduced by any amount paid to the Project Company between the Calculation Date

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<sup>10</sup> "**Outstanding Indebtedness**" is defined as the lesser of (i) all amounts owing to the Financing Parties (other than the Project Company's shareholders and their affiliates), under the initial Financing Documents and as amortised in accordance with the Initial Financial Model, and (ii) the aggregate amount at the Calculation Date of all amounts owing to the Financing Parties (other than the Project Company's shareholders and their affiliates) as incurred by the Project Company under the Financing Documents, including any reasonable costs and fees related to accelerated repayment and other financing termination costs, but excluding costs and fees related to the Sponsor's gross equity contribution. "**Calculation Date**" is defined as the date of termination of the PPA.

<sup>11</sup> "**Transfer Costs**" is defined as an amount equal to all reasonable costs and expenses of the Project Company which are incurred or suffered as a result of purchase of the Project by TNB, including any termination payments or novation fees on contracts, taxes, reasonable breakage costs, registration fees).

<sup>12</sup> "**Retained Sum**" is defined as the aggregate of all cash balances at bank and in hand and liquid securities held by the Project Company and to be retained after the Calculation Date.

<sup>13</sup> "**Purchase Price B**" is defined as  $QR + SEC - SER$ , provided that if it results in a negative number, the "B" Purchase Price shall be zero, where:

SEC = the sum of all the Sponsor's Gross Equity Contribution paid to the Project Company prior to the Calculation Date.

SER = the sum of all Sponsors Equity Repayment paid on or prior to the Calculation Date.

QR = the quarterly return on the SEC.

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- and the Transfer Date<sup>14</sup> to avoid double-counting;
- (ii) increased to reflect the carrying costs of the transfer amount, for any amounts unpaid between the Calculation Date and the Transfer Date; and
- (iii) TNB is entitled to withhold and use the Maintenance Reserve for a period of twelve (12) months after the Transfer Date<sup>15</sup> and shall return any unutilised part within thirty (30) days of the end of such twelve (12) month period.

#### *Step-in rights of TNB and the Energy Commission*

TNB has the right, but not the obligation to assume partial or complete operational responsibility for the Power Facility in place of the Project Company on the occurrence and continuance of an EOD by the Project Company, which could be reasonably expected to materially and adversely affect the Project Company's ability to operate and maintain the Power Facility.

TNB may not exercise this step-in right until any applicable cure period has expired, unless the Financing Parties request TNB to step-in.

Within six (6) months of stepping-in, TNB may return the operational responsibility for the Power Facility to the Project Company, provided that TNB returns it in no worse a state than it received it (ordinary wear and tear excepted).

Subject to the Financing Documents, if the Energy Commission exercises its statutory right to operate the Power Facility, the EOD and termination provisions under the PPA shall continue to apply to TNB and the Project Company; and TNB will continue to make Energy Payments for Net Electrical Output Despatched by the Grid System Operator and ACPs to the Project Company as permitted by law, provided that any payment to the Energy Commission by TNB where required by law is deemed to be payment to the Project Company for the purposes of the PPA.

For so long the Financing Documents remain in effect, TNB shall not exercise its step-in rights if the operation of the Power Facility has been assumed by any of the Financing Parties within the cure period.

#### **(b) CSTA**

##### *General Overview*

The Project Company and TFS have on 2 December 2011 entered into the CSTA whereby TFS has agreed to sell to the Project Company coal in accordance with the terms and conditions set out therein so that the project Company can use such coal to meet its obligations to generate and deliver electricity to TNB under the PPA.

##### *Term of CSTA*

The CSTA becomes effective on the date of agreement and continues to be in effect until the early expiry or early termination of the PPA, unless extended by mutual agreement of the parties.

##### *Delivery and Shipment*

Quantities of coal nominated by the Project Company create a binding obligation on the Project Company to take such quantities, provided that the Project Company may cancel shipments if it gives notice of such cancellation at least 60 days prior to the start of the delivery month provided that TFS has not yet transmitted a corresponding confirmation or order to a supplier that cannot be cancelled or withdrawn (without TFS incurring cancellation

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<sup>14</sup> “**Transfer Date**” is defined as the date for the transfer of the Project, as agreed by the parties.

<sup>15</sup> “**Transfer Date**” is defined as the date for the transfer of the Project, as agreed by the parties

or withdrawal charges which are not compensated by the Project Company) or used for another purpose by TFS (without TFS incurring loss or additional cost which are not compensated by the Project Company) or TFS has not yet irrevocably committed to transport arrangements for the shipment of such coal to the discharge port.

If stockpiles of coals at the Power Facility drop below the minimum stockpile level by a specified delivery month caused by TNB or the Grid System Operator despatching the Power Facility higher than TNB's latest estimate of despatch levels, parties may mutually agree to revise the coal quantities nominated by the Project Company for delivery.

If a shipment scheduled to be delivered at the discharge port within a delivery month does not arrive at the discharge port and tender a notice of readiness within seven (7) days before or after that delivery month for any reason other than:

- (a) the inability of the Project Company to take delivery of such shipment due to an event of force majeure precluding the Project Company from discharging vessels at the discharge port;
- (b) an event of force majeure has resulted in stockpiles of coal at the Power Facility being at maximum;
- (c) unexpected congestion or a longer than normal queue of vessels at the loading port (not amounting to an event of force majeure) which causes or contributes to delays in the berthing and loading operations of the vessel at the loading port; or
- (d) where TFS is excused by an event of force majeure;

AND

- (i) as a result of such failure by TFS (including any antecedent failure of TFS) to deliver coal in the relevant delivery month (+/- 7 days), the aggregate amount of coal contained in the coal stockpile at the Power Facility (including the aggregate amount of coal contained in all vessels loaded with coal and en route to the discharge port) becomes less than the minimum stockpile level; and
- (ii) immediately prior to such failure of TFS (including any antecedent failure of TFS) to deliver coal in the relevant delivery month (+/- 7 days), the coal stockpile at the Power Facility held not less than the minimum stockpile level of coal (including the aggregate amount of coal contained in all vessels loaded with coal and en route to the discharge port), then TFS shall prepare a remedial plan (the "**CSTA Remedial Plan**").

The CSTA Remedial Plan also needs to be prepared by TFS pursuant to clause 6.2 of the CSTA dealing with the rejection rights of the Project Company.

#### *Base Price*

The base price for the coal supplied is the Applicable Coal Price multiplied by 23.0274 (being the factor to convert RM per gigajoule to RM per tonne of coal) using an assumed GAR<sup>16</sup> equal to the Reference GAR<sup>17</sup> and is subject to adjustment with respect to (i) the actual gross calorific value of the coal; (ii) the moisture content of the coal; (iii) the ash content of the coal; (iv) the sulphur content of the coal; and (v) the sizing shipment of a coal. The base price shall vary from time to time in accordance with variations in the Applicable Coal Price.

The typical value of a parameter for a shipment must not be less than or more than (as applicable) the Coal Quality Rejection Limits. Additional adjustments to the base price may be made where the specifications of the coal exceed the rejection limits and the Project Company does not reject the coal.

<sup>16</sup> "GAR" is defined as gross calorific value on an as received basis, measured in kcal/kg.

<sup>17</sup> "Reference GAR" is defined as the GAR of 5,500 kcal/kg.

### *Payment*

The Project Company is not entitled to delay any remittance of payment to TFS even if TNB has not paid the Project Company under the PPA. Interest shall be payable by the Project Company at the rate of base lending rate plus two percent (2%) per annum from the date when payment was due until the date when payment is made.

Any dispute regarding any amount of any initial invoice shall not excuse the Project Company from making payments to the TFS, however, that if it is later agreed or determined, by arbitration, an expert or otherwise, that the amount of any payment represents an underpayment, TFS shall promptly pay such amount plus interest at a rate of the base lending rate plus two percent (2%) per annum calculated from the due date of payment of such amount.

The Project Company's cure period for non-payment of an invoice, before TFS can terminate the CSTA, is 60 days from the date of the invoice but TFS may suspend deliveries of coal from the date which is 15 days after the date of the invoice.

### *Force Majeure*

The CSTA contains a general force majeure provision, similar to the PPA, but includes the following additional events:

- (i) damage to, or breakdown of, any of the wharf or loading gear at the loading port or the wharf or unloading gear at the discharge port;
- (ii) unavailability or breakdown of vessels, machinery or equipment used to produce or transport coal, other than due to negligence or wilful misconduct of the affected party;
- (iii) unavailability, obstruction or blockade of any loading port or the discharge port;
- (iv) unusually severe congestion or unusually long queue of vessels at any loading port, other than where reasonably foreseeable;
- (v) any event of force majeure duly declared by any supplier or TFS under related coal purchase contracts, provided that failures of any supplier to engage sufficient workforce, subcontractors or acquire adequate machinery or procure adequate raw material is not an event of force majeure thereunder; and
- (vi) unavailability or breakdown of machinery or equipment of the Power Facility that is a force majeure under the PPA.

The parties are entitled to relief from their affected obligations under the CSTA.

The Project Company may enter into contracts with third parties for the supply of coal. Alternatively, the Project Company is entitled to purchase coal from third parties if TFS is unable to supply coal due to a force majeure event, but the Project Company does not receive any compensation from TFS under the CSTA for any additional costs incurred.

### *EOD and Termination*

The following, inter alia, sets out the EOD by the Project Company:

- (i) the Project Company fails to pay in full when due the amount set out in any initial invoice (including any late payment interest), unless the amount is in dispute;
- (ii) the Project Company fails to pay any amounts that are required to be paid under the CSTA, unless the amount is in dispute;
- (iii) any representation of the Project Company is false or misleading in any material respect and this has a material adverse effect on the Project Company's ability to perform its material obligations under the CSTA;
- (iv) the Project Company's performance of any of its obligations under the CSTA conflicts with any laws, statutes, orders, decrees, injunctions, licenses, permits, approvals or regulations of the relevant Governmental Instrumentality<sup>18</sup> and the Project Company

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<sup>18</sup> "Governmental Instrumentality" is defined as such country and any ministry, department, political subdivision, instrumentality, agency, corporation or commission under the direct or indirect control of such

- (v) cannot perform a material obligation under the CSTA;
- (v) the Project Company breaches any of its material covenants under the CSTA and such breach is not remedied within thirty (30) days of notice from TFS, provided that an extended cure period of a further thirty (30) days is given if certain conditions are met;
- (vi) the Project Company fails to comply with the decision or award of an arbitrator or expert under the CSTA within five (5) days of it being handed down or the period stipulated in the decision or award; or
- (vii) the Project Company's insolvency.

The following, inter alia, sets out the EOD by TFS:

- (i) TFS fails to pay any amounts that are required to be paid under the CSTA, unless the amount is in dispute;
- (ii) any representation of TFS is false or misleading in any material respect and this has a material adverse effect on TFS's ability to perform its material obligations under the CSTA;
- (iii) in any Delivery Year<sup>19</sup>, any of the following events occur on three (3) occasions, resulting in the Project Company purchasing third party coal:
  - a. TFS fails to provide the CSTA Remedial Plan where required to do so;
  - b. TFS fails to implement the agreed CSTA Remedial Plan;
  - c. the Project Company, acting as a prudent power plant operator, reasonably rejects the CSTA Remedial Plan;
- (iv) TFS's performance of any of its obligations under the CSTA conflicts with any laws, statutes, orders, decrees, injunctions, licenses, permits, approvals or regulations of the relevant Governmental Instrumentality and TFS cannot perform a material obligation under the CSTA;
- (v) TFS breaches any of its material covenants under the CSTA and such breach is not remedied within thirty (30) days of notice from the Project Company, provided that an extended cure period of a further thirty (30) days is given if certain conditions are met;
- (vi) TFS fails to comply with the decision or award of an arbitrator or expert under the CSTA within five (5) days of it being handed down or the period stipulated in the decision or award;
- (vii) TFS's insolvency; or
- (viii) TFS fails to suspend deliveries of coal from a defaulting supplier in accordance with the CSTA.

If an EOD by the Project Company has occurred, TFS may terminate the CSTA on thirty (30) days' notice to the Project Company, provided that for any failure to pay an initial invoice, TFS may terminate the CSTA if the amount remains unpaid sixty (60) days after the due date for payment.

If the Project Company has failed to pay an invoice within fifteen (15) days of the due date, TFS may suspend deliveries of coal, and the Project Company must compensate TFS for the costs, expenses and damages it incurs as a result of such suspension.

If an EOD by TFS has occurred, the Project Company may either give thirty (30) days' notice of termination or require TFS to prepare a default CSTA remedial plan to remedy the EOD by TFS within sixty (60) days (subject to termination if this is not provided or properly actioned).

If an EOD by TFS has occurred, the Project Company may acquire coal from third parties, with any incremental cost being borne by TFS.

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<sup>19</sup> "Delivery Year" is defined as each calendar year (or lesser period in any year) from the first delivery date until the expiry or earlier termination of the CSTA.

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*Miscellaneous*

The Project Company is required to compensate TFS for the unavoidable costs TFS suffers as a result of the delay to the COD under the PPA.

**(c) OMA**

*General Overview*

Pursuant to the OMA executed between the Project Company and the Operator on 27 February 2012, the Project Company has agreed to engage the Operator and the Operator agrees to operate and maintain the Power Facility upon the terms and subject to the conditions therein contained.

*Term of OMA*

The OMA takes effect on the date of agreement and expires on the day before the twenty-fifth (25<sup>th</sup>) anniversary of the COD, unless otherwise extended.

*Operator Costs*

The Operator is responsible for payment of Operator Costs.

Operator Costs include, inter alia, manpower and staffing, office and administration, upkeep of motor vehicles, travelling costs, non-plant insurance, ancillary services costs, training, plant-related operating and maintenance costs (excluding outage), tools, import electricity, raw water, consumables, start-up costs due to any outage, variable operating costs and others.

*O&M Costs*

The Project Company shall pay or reimburse the Operator for O&M Costs.

O&M Costs are all costs, except for the Operator's Costs, that the Operator incurs in carrying out the services under the OMA. The Operator must submit an annual budget for the O&M Cost to the Project Company for approval 6 months before the start of each contract year. Once the budget is approved, it is then fixed for that year and used for the reconciliation and cost overrun process. The Project Company is required to ensure that an O&M account is fully funded with all amounts necessary to meet the O&M Costs, including if there is any cost overrun compared to the approved O&M Cost budget.

At the end of each 5 year contract year block during the operation period, if there is cost savings of more than 5%, the Operator is entitled to receive 25% of the cost saving from the Project Company. If there is a O&M Cost-overrun for a 5 year contract block (i) of more than 5% but less than 10% of the budgeted O&M Costs, the Operator shall reimburse the Project Company for 25% of the O&M Cost-overrun; or (ii) of more than 10% of the budgeted O&M Costs, the Operator shall reimburse the Project Company for 50% of the O&M Cost-overrun.

*Performance Guarantees*

The Operator is required to meet the Performance Guarantees under the OMA. These Performance Guarantees are:

- (i) Availability: the annual unplanned outage rate in any three hundred and sixty-five (365) day period will be no higher than six percent (6%);
- (ii) Capacity: the Power Facility will meet a capacity of the lower of (i) the Contractual Available Capacity as per the PPA, and (ii) 1,000 MW; and
- (iii) Heat Rate: the Power Facility will meet the tested heat rate established before the

COD, as per the PPA reduced in accordance with the degradation factor in the PPA.

#### *Operator's Fees*

During the mobilisation period, the Operator is entitled to receive the mobilisation fee and during the operational period, the Operator is entitled to receive the monthly operating fee which is subject to annual escalation.

The Operator is also entitled to receive a six monthly incentive fee reflecting the Operator's performance of its obligations under the OMA. The Base Incentive Fee is equal to 38.4% of the aggregate monthly operating fee during the incentive period and subject to adjustments as follows:

- (i) Availability: up to seventy percent (70%) of the Base Incentive Fee (as defined under the OMA) may be lost if the availability Performance Guarantee is not met;
- (ii) Capacity: up to fifty percent (50%) of the Base Incentive Fee may be lost if the capacity Performance Guarantee is not met;
- (iii) Fulfilling Despatch Instructions: if the Project Company incurs liquidated damages under the PPA due to not fulfilling a Despatch Instruction, the Base Incentive Fee will be reduced by fifty percent (50%) of liquidated damages imposed by TNB under the PPA;
- (iv) Heat Rate: the Operator can incur deductions from the Base Incentive Fee in respect of fifty percent (50%) of the additional Fuel costs during the period;
- (v) Demurrage and dispatch: the Operator can incur a deduction or receive a payment in respect of fifty percent (50%) of the dispatch or total demurrage costs due to delay caused by operations incurred or received by the Project Company; and
- (vi) Insurance: the Operator can incur a deduction or receive a payment in respect of fifty percent (50%) of any insurance premium refunds received by the Project Company or premium or deductible increases suffered by the Project Company.

A "**Persistent Performance Shortfall**" will be considered to have occurred in circumstances where, in three (3) out of five (5) Contract Years, either:

- (i) the availability, capacity and failed Despatch Instructions components of the incentive fee equal zero; or
- (ii) the heat rate component of the incentive fee is more than three percent (3%) of the total cost/amount of coal and any combustion support or other fuels used by the Power Facility (excluding start-up Light Fuel Oil).

If a Persistent Performance Shortfall occurs, the Operator must prepare a remedial plan to remedy the Persistent Performance Shortfall, within 30 days after the end of the Contract Year in which the Persistent Performance Shortfall arose, for approval by the Project Company.

#### *Payment*

Invoicing under the OMA is on a monthly basis, with invoices payable by the Project Company within thirty (30) days of receipt. The Project Company is required to pay the Operator 30% of the proceeds of any sale of ash from the Power Facility which has been received by the Project Company in the preceding month. Any late payment may incur interest at the default rate of KLIBOR + 2%. The Project Company is entitled to set-off any amount owing to it by the Operator against any amount of the incentive fee payable by the Project Company.

#### *Limitation of Liability*

The Operator's total aggregate liability under the OMA is limited to the aggregate of the monthly operating fee and incentive fee actually paid in the 12 months preceding a claim, but the following circumstances are excluded from the total aggregate liability:

- (i) liability that the Operator recovers under any insurances or would have recovered under any insurances, but for the Operator's failure to maintain the insurances it is required to maintain under the OMA;
- (ii) fraud, fraudulent misrepresentation, wilful or reckless misconduct or wilful default;
- (iii) liability arising out of any violation of any laws or government authorisations; and
- (iv) liability arising out of the Operator's indemnities under the OMA.

#### *Force Majeure*

The OMA contains a definition of force majeure which is consistent with the definition under the PPA and provides for the suspension or excuse from the performance of obligations affected by a force majeure event. The parties however, may not terminate the OMA during a force majeure.

On the occurrence of a force majeure event:

- (a) if the force majeure event occurs during the mobilisation period, the Project Company must continue to pay the mobilisation Fee until the COD occurs;
- (b) if the force majeure event occurs after the COD, the Project Company must, where the performance of the affected party's obligations are suspended or excused, and to the extent that the Power Facility is available in accordance with the PPA, continue to pay the Operator the monthly operating fee; and
- (c) the Project Company must pay the Operator the costs the Operator incurs in mitigating, remedying or dealing with a force majeure event.

#### *EOD and Termination*

- (a) the OMA terminates automatically upon the termination of the PPA.
- (b) the Operator's EOD include, inter alia, (i) material breach of the OMA which is not cured within 60 days of notice from the Project Company; (ii) total aggregate liability of the Operator being exceeded and the parties are not agreeable to the increase; (iii) the parties fail to agree on a draft remedial plan within ninety (90) days of the end of the contract year in which the Persistent Performance Shortfall arose (termination on thirty (30) days' notice); (iv) the Operator fails to implement a remedial plan within six (6) months of the end of the contract year in which the Persistent Performance Shortfall arose (termination on thirty (30) days' notice); (iv) the Operator ceases to carry on power generation and power station operation as its principal business; and (v) a wilful and unexcused failure by the Operator to operate the Power Facility for more than seven (7) consecutive days.
- (c) the Project Company's EOD, inter alia, (i) material breach of the OMA by the Project Company that is not cured within 60 days of notice from the Operator, where such breach materially disrupts or materially adversely affects or prejudices the Operator's ability to perform the services.

If the OMA is terminated due to the Operator's default or the PPA is terminated as a direct consequence of a default by the Operator under the OMA, the following amounts are payable:

- (i) the Project Company is required to pay any outstanding amount representing the value of the services properly performed by the Operator up to the date of termination;
  - (ii) the Operator is responsible for its own demobilisation costs and other termination related costs; and
  - (iii) if the termination occurs after the COD, the Operator is required to pay all costs and expenses incurred by the Project Company as a result of termination, including those relating to the employment of a replacement operator, up to the total aggregate
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liability.

If the OMA is terminated due to the Project Company's default or the PPA is terminated other than as a direct consequence of a default by the Operator under the OMA, the Project Company must pay:

- (i) any outstanding amount representing the value of the services properly performed by the Operator up to the date of termination;
- (ii) all demobilisation costs and other termination related costs; and
- (iii) if the OMA is terminated before the COD and if the Operator has commenced mobilisation, all amounts of the mobilisation fee payable prior to the termination excluding the final monthly mobilisation fee payable on the first day of the month prior to COD; and
- (iv) if the termination occurs after the COD, an amount equal to six (6) months of Fixed Operating Fees (calculated by reference to the contract year in which the termination occurs).

#### *Step-In Rights*

The Operator acknowledges that the Energy Commission, TNB and the Financing Parties have the right to assume partial or complete operational responsibility for the Power Facility in place of the Project Company.

During any period that TNB is operating the Power Facility, the Operator is not entitled to be paid any part of the mobilisation fee, monthly operating fee or incentive fee, or to utilise the O&M account. However, the Project Company is required to pay the Operator all unavoidable costs, including personnel costs it incurs in performing its obligations under the OMA during the step-in period. If the Energy Commission exercised its right to operate the Power Facility, the Project Company must continue to pay the monthly operating fee.

#### **(d) Tripartite Lease Agreement – with Seaport and the Security Agent**

The Tripartite Lease Agreement will be terminated upon the registration of the charge on the Leased Lands (referred to below) and a new Lease Agreement between the Project Company and Seaport will be executed in place of the Tripartite Lease Agreement.

#### *General Overview*

Seaport and the Security Agent has entered into the Tripartite Lease Agreement dated 7 March 2012 with the Project Company in respect of the lease of all that piece of land which is to be subdivided from the land identified as H.S.(D) 10923, Lot PTD 1770, Mukim of Serkat, District of Pontian, Johor to be used for (i) the construction of the Power Facility (Plot 1 land, measuring approximately 8.052 hectares) and (ii) the construction of the coal yard (Plot 2 land, measuring approximately 21.896 hectares) (collectively referred to as the "**Leased Lands**").

#### *Term of Tripartite Lease Agreement*

The Tripartite Lease Agreement shall take effect on the effective date of the agreement and will terminate when a charge over the Leased Lands is registered in favour of the Financing Parties.

#### *Project Company's Obligations*

The Project Company agrees, inter alia, the following:

- (i) to use the Leased Lands for the purposes as provided under the Tripartite Lease Agreement. The Project Company may use the Leased Lands for other purposes subject to the prior written consent of Seaport; and

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- (ii) save as otherwise provided, not to sublease, assign, transfer, sell, charge or otherwise deal with the Leased Lands or any part thereof or any interest therein or make the same subject to any burden charge, encumbrance, liability or lien whatsoever or make any application for the alteration of the category of land use or for the imposition of any fresh category of land use in respect of the Leased Land or for rescission, removal or amendment of any condition or restriction affecting the Leased Lands without a written consent from Seaport.

#### *Seaport's Obligations*

Seaport agrees, inter alia, the following:

- (i) save as otherwise provided in the Tripartite Lease Agreement, not to permit any sale, assignment, transfer, disposal of or otherwise permit any new dealings with, or any subsequent creation of any charge or encumbrance on or over the Leased Lands, except with the prior written consent of the Project Company and their Financing Parties; and
- (ii) to notify the Project Company of the occurrence of any event which has a material adverse effect or any other matter or circumstance which would materially prejudice the rights of the Project Company under the Tripartite Lease Agreement.

#### *Security Agent's Rights*

- (i) The Security Agent may be entitled, following an EOD under the Project Company's Financing Documents, to exercise certain rights and perform certain obligations of the Project Company, in its role as security agent under the Project Company's Financing Documents.
- (ii) Seaport shall give the Security Agent notice of any proposed termination of the Tripartite Lease Agreement.
- (iii) The Security Agent shall have no liability whatsoever to Seaport or any other party, including with respect to any failure to perform any obligations under the Tripartite Lease Agreement.
- (iv) Seaport shall have no liability whatsoever to the Security Agent or the Project Company in respect of any breaches by the Project Company of its obligations under the Project Company's Financing Documents.
- (v) The Project Company, Seaport and the Security Agent agree that, in relation to any new lease agreement that may replace the Tripartite Lease Agreement, such new lease agreement shall provide that the terms of the Tripartite Lease Agreement shall prevail over such new lease agreement until the charge over such lease agreement in favour of the Financing Parties has been registered.

#### *Termination*

The provision of termination grounds under the Tripartite Lease Agreement is similar to those provided under the Sub-Lease Agreement. Save as otherwise provided herein, the Tripartite Lease Agreement shall not be terminated by either party.

#### **(e) Tripartite Lease Agreement – SWW and the Security Agent**

The Tripartite Lease Agreement will be terminated upon the registration of the charge on the Leased Lands (referred to below) and a new Lease Agreement between the Project Company and SWW will be executed in place of the Tripartite Lease Agreement.

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*General Overview*

SWW and the Security Agent has entered into the Tripartite Lease Agreement dated 7 March 2012 with the Project Company in respect of the lease of all that piece of land which is to be subdivided from the land identified as H.S.(D) 11153, Lot PTD 1851, Mukim of Serkat, District of Pontian, Johor comprising Plot 1 land measuring approximately 2.47 acres and Plot 2 land measuring 1.38 acres ("**Leased Lands**") for the construction of the . Plot 1 of the Leased Lands is to be used to construct and complete the Interconnection Facilities.

*Term of Tripartite Lease Agreement*

The Tripartite Lease Agreement shall take effect on the effective date of the agreement and will terminate when a charge over Plot 2 is registered in favour of the Financing Parties.

*Project Company's Obligations*

The Project Company agrees, inter alia, the following:

- (i) to use the Leased Lands for the purposes as provided under the Tripartite Lease Agreement. The Project Company may use the Leased Lands for other purposes subject to the prior written consent of SWW; and
- (ii) save as otherwise provided, not to sublease, assign, transfer, sell, charge or otherwise deal with the Leased Lands or any part thereof or any interest therein or make the same subject to any burden charge, encumbrance, liability or lien whatsoever or make any application for the alteration of the category of land use or for the imposition of any fresh category of land use in respect of the Leased Lands or for rescission, removal or amendment of any condition or restriction affecting the Leased Lands without a written consent from SWW.

*SWW's Obligations*

SWW agrees, inter alia, the following:

- (i) save as otherwise provided, not to permit any sale, assignment, transfer, disposal of or otherwise permit any new dealings with, or any subsequent creation of any charge or encumbrance on or over the Leased Lands, except with the prior written consent of the Project Company and their Financing Parties; and
- (ii) to notify the Project Company of the occurrence of any event which has a material adverse effect or any other matter or circumstance which would materially prejudice the rights of the Project Company under the Tripartite Lease Agreement.

*Security Agent's Rights*

- (i) The Security Agent may be entitled, following an EOD under the Project Company's Financing Documents, to exercise certain rights and perform certain obligations of the Project Company, in its role as security agent under the Project Company Financing Documents.
  - (ii) SWW shall give the Security Agent notice of any proposed termination of the Tripartite Lease Agreement.
  - (iii) The Security Agent shall have no liability whatsoever to SWW or any other party, including with respect to any failure to perform any obligations under the Tripartite Lease Agreement.
  - (iv) SWW shall have no liability whatsoever to the Security Agent or the Project Company in respect of any breaches by the Project Company of its obligations under the Project Company's Financing Documents.
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- (v) The Project Company, SWW and the Security Agent agree that, in relation to any new lease agreement that may replace the Tripartite Lease Agreement, such new lease agreement shall provide that the terms of the Tripartite Lease Agreement shall prevail over such new lease agreement until the charge over Plot 2 in favour of the Financing Parties has been registered.

#### *Termination*

The provision of termination grounds under the Tripartite Lease Agreement is similar to those provided under the Sub-Lease Agreement. Save as otherwise provided herein, the Tripartite Lease Agreement shall not be terminated by either party.

#### **(f) Sub-Lease Agreement**

##### *General Overview*

TBP has entered into the Sub-Lease Agreement dated 29 February 2012 with the Project Company in respect of the sub-lease by the Project Company of part of the land measuring approximately 6.956 hectares in area held under H.S.(D) 11438, Lot PTD 1859, Mukim of Serkat, District of Pontian, Johor ("**Sub-Leased Land**") to be used to construct, own, operate and maintain part of the Power Facility.

##### *Term of Sub-Lease Agreement*

The Sub-Lease shall take effect on the date of the agreement and will expire on 31 January 2042 ("**Term**"). At the expiry of the Term, the Project Company is entitled to automatically renew the term for a further period of six (6) years from 1 February 2042 ("**Extended Term**"). If the Project Company exercises its right to extend the Term, TBP shall forthwith execute in favour of the Project Company, a new valid and registrable Sub-Lease in respect of the Sub-Leased Land for the Extended Term.

##### *Project Company's Obligations*

The Project Company agrees, inter alia, the following:

- (i) to use the Sub-Leased Land for the purposes as provided under the Sub-Lease Agreement. The Project Company may use the Sub-Leased Land for other purposes subject to the prior written consent of Seaport, TBP and the Financing Parties;
- (ii) save as otherwise provided, not to assign its rights to the Sub-Lease Agreement or any part thereof without the prior written approval of Seaport, TBP and the Financing Parties; and
- (iii) save as otherwise provided, not to transfer, sell, charge or otherwise deal with the Sub-Leased Land or any part thereof or any interest therein or make the same subject to any burden, charge, encumbrance, liability or lien whatsoever or make any application for the alteration of the category of land use or for the imposition of any fresh category of land use in respect of the Sub-Leased Land or for rescission removal or amendment of any condition or restriction affecting the Sub-Leased Land without a written consent from the Project Company, the Financing Parties or Seaport.

##### *TBP's Obligations*

TBP agrees, inter alia, the following:

- (i) not to enter into any new lease agreement(s) with Seaport which may affect the Sub-Leased Land or agree to or agree on any new terms in respect of the Lease Agreement (as defined in the Sub-Lease Agreement) or vary, terminate and/or agree and/or consent to any variation or termination of, the terms and/or conditions of the

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Lease Agreement unless with the prior written consent of the Project Company or the Financing Parties;

- (ii) save as otherwise provided, not to permit any sale, assignment, transfer, disposal of or otherwise permit any new dealings with, or any subsequent creation of any charge or encumbrance on or over the land, which may affect the Sub-Lease Land, except with the prior written consent of the Project Company or the Financing Parties;
- (iii) to notify the Project Company of any breach of or default of the terms of the Lease Agreement of which TBP has knowledge of which shall affect the Project Company's interest in the Sub-Leased Land;
- (iv) to notify the Project Company of: (i) the occurrence of any event which has a material adverse effect or any other matter or circumstance which would materially prejudice the rights of the Project Company under the Sub-Lease Agreement; (ii) any event constituting or which may constitute a breach by Seaport or TBP under the Lease Agreement; and (iii) any dispute or claims between Seaport or TBP in respect of the Lease Agreement.

#### *TNB's Rights*

If the PPA expires or is terminated prior to the end of the term of the Sub-Lease, the Power Facility may be transferred to TNB or its nominee. If the Power Facility is transferred to TNB or its nominee, the Project Company may require TBP to and TBP shall promptly upon the request of the Project Company:

- (i) execute a novation to transfer all the rights, interests and benefit and all the obligations of the Project Company under the Sub-Lease Agreement to TNB or its nominee; or
- (ii) enter into an agreement with TNB or its nominee upon the terms and conditions similar to the Sub-Lease Agreement for a period equivalent to the remainder of the term of the Sub-Lease.

#### *Project Company's Financing Parties' Rights*

If the PPA expires or is terminated prior to the end of the term or other circumstances where the Financing Parties exercise their rights to sell the Power Facility to a third party, the Project Company may require TBP to and TBP shall promptly upon the request of the Project Company:

- (i) execute a novation to transfer all the rights, interests and benefit and all the obligations of the Project Company under the Sub-Lease Agreement to a third party or its nominee; or
- (ii) enter into an agreement with the third party or its nominee upon the terms and conditions similar to the Sub-Lease Agreement for a period equivalent to the remainder of the term of the Sub-Lease.

If the Sub-Lease expires or is terminated prior to the end of the, the Project Company may require TBP to and TBP shall promptly upon the request of the Project Company:

- (i) execute a novation to transfer all the rights, interests and benefit and all the obligations of the Financing Parties under the Sub-Lease Agreement to the Financing Parties or its nominee; or
  - (ii) enter into an agreement with the Financing Parties or its nominee upon the terms and conditions similar to the Sub-Lease Agreement for a period equivalent to the remainder of the term of the Sub-Lease.
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*Insurance*

The Project Company shall effect and maintain the Public Liability Insurance pursuant to the PPA. If the Project Company fails to effect and keep in force the insurance it is required to effect and maintain, TBP may effect the insurance for the relevant coverage and the Project Company shall reimburse TBP.

*Force Majeure*

The Sub-Lease Agreement contains a definition of force majeure which is consistent with the definition under the PPA and provides that the parties shall not be in breach of its respective obligations if it is unable to perform its obligations under the Sub-Lease Agreement (or any part of them), as a result of the occurrence of a force majeure event.

*Assignment and creation of charge*

The Sub-Lease Agreement shall not be subject to assignment by either Party without the prior written approval of the other party except:

- (a) the Project Company may assign this Agreement to their Financing Parties as security for providing financing or refinancing for the Project. TBP shall, if so required, enter into an acknowledgement of assignment and/or direct agreement with the Financing Parties;
- (b) TBP may assign this Agreement to the Financing Parties as security for providing financing or refinancing for the Project. The Project Company shall, if so required, enter into an acknowledgement of assignment and/or direct agreement with TBP's financing parties; or
- (c) The Financing Parties are entitled to create a charge over the Sub-Leased Land as security for providing financing or refinancing for the Project.

*Termination*

- (a) if the Project Company fails, neglects or refuses to pay the rent and such failure, neglect or refusal is not remedied by the Project Company within 60 days of the Project Company's receipt of a written notice from TBP of such default, TBP may terminate this Sub-Lease Agreement subject to the rights of TNB and the Financing Parties under the Sub-Lease Agreement; and
- (b) if
  - (i) an order is made or resolution is passed for the winding-up of either party;
  - (ii) either party goes into liquidation or a receiver is appointed over the assets or enters into an arrangement or composition with its creditors
  - (iii) execution is levied against a substantial portion of either party's assets;

the Sub-Lease Agreement may be terminated subject to the rights of TNB and Financing Parties under the Sub-Lease Agreement. Save as otherwise provided, the Sub-Lease Agreement shall not be terminated by either party.

If the Lease Agreement is terminated prior to the expiry of the Sub-Lease Agreement or the Sub-Lease Agreement is terminated due to TBP's default, TBP shall ensure that Seaport enters into a direct lease agreement with the Project Company substantially on the same terms and conditions set out in the Sub-Lease Agreement.

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## **(g) Shared Facilities Agreement**

### *General Overview*

TBP has entered into the SFA dated 27 February 2012 with the Project Company whereby TBP has agreed to grant the Project Company an irrevocable non-exclusive licence for the period of the Term to make use of Shared Facilities (as set out under Appendix I of the SFA) for the purpose of operating the Power Facility on the terms and conditions contained therein.

### *Term of Shared Facilities Agreement*

The SFA shall commence on the date of the SFA and shall continue in effect for a term which expires on the day before the 25<sup>th</sup> anniversary of the COD ("**Term**"), provided that if the term of the PPA is extended, the Term of the SFA is automatically extended. Any further extensions are to be agreed between the parties.

### *Description of Shared Facilities*

The shared facilities available for use by the Project Company during the construction, installation, erection, commissioning, testing and operation of the Power Facility are:

- (i) a cooling water intake;
- (ii) the coal unloading jetty;
- (iii) coal receiving belts;
- (iv) the existing ash pond and any new ash pond constructed from time to time by TBP;
- (v) the gatehouse, workshop area and chemical laboratory;
- (vi) the telecom line main distribution facility;
- (vii) the sewage treatment plant;
- (viii) the auxiliary jetty; and
- (ix) such other facilities listed in the shared facilities manual and other facilities as agreed by the parties.

### *Failure to provide the Shared Facilities*

If TBP fails to properly operate and maintain the shared facilities and the Project Company is unable to make use of the shared facilities, the Project Company may on 7 days notice to TBP take over the operation of the shared facilities and repair and replace the shared facilities.

The Project Company will not be required to pay TBP amounts under the SFA where it is not able to use the shared facilities or where it assumes control of the shared facilities. TBP must reimburse the Project Company for its costs in operating the shared facilities.

### *Payment*

The Project Company is required to pay TBP, as consideration for the use of the shared facilities.

### *Force Majeure*

The SFA includes a general definition of force majeure events which are consistent with the PPA. The SFA provides for the suspension or excuse from the performance of obligations affected by a force majeure event. If a force majeure event affecting either party occurs, no amount will be payable by the Project Company under the SFA.

Neither party may terminate the SFA during the force majeure event.

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**(h) Turnkey Contract**

*General Overview*

The Project Company has entered into the Turnkey Contract dated 23 February 2012 with the Issuer ("**Turnkey Contractor**") for the procurement of the supply, transportation, delivery to site, construction, erection, installation, testing, commissioning, completion and training in the use of the Turnkey Works (through the engagement of the EPC Consortium) and Turnkey Services.

*Turnkey Contractor's Obligations*

The provisions of the Turnkey Contract are almost back-to-back with the provisions of the EPC Contract. The Turnkey Contractor's obligations are to manage, develop and procure the Turnkey Works which works refers to inter alia, the Power Facility, the Interconnection Facilities and the Metering Equipment and all other works required in or about the procurement of the Turnkey Works (as particularly described in the Turnkey Contract).

In addition to the Turnkey Works, the Turnkey Contractor is required to carry out and complete a specified scope of Turnkey Services in accordance with the Turnkey Contract. The commencement of the Turnkey services is upon the issuance of the notice to proceed by the Project Company.

*Turnkey Contract Price*

In consideration for performance of the Turnkey Works and the Turnkey Services, the Project Company shall pay to the Turnkey Contractor the Turnkey Works price and the Turnkey services price.

*Payment*

The Turnkey Contractor can submit an application for payment subject to a provisional acceptance certificate in respect of the Interconnection Facilities, the Metering Equipment and the Power Facility (as applicable) having been issued.

The application for payment shall contain, inter alia, an adjustment to the Turnkey Contract Price reflecting the actual cost incurred in performing the Turnkey Works and the Turnkey Services.

*Completion*

The Turnkey Contractor is required to achieve the following milestones:

- (a) substantial completion of the Interconnection Facilities and the Metering Equipment by 14 July 2014; and
- (b) substantial completion of the Power Facility by 1 March 2016.

The Turnkey Contractor's rights to extension of time are largely back-to-back with the rights of the EPC Consortium under the EPC Contract.

*Liquidated Damages*

The Liquidated Damages provisions under the Turnkey Contract are largely back-to-back with the EPC Contract.

*Defects Liability Period*

The obligations and period under the Turnkey Contract in relation to defects liability and rectification are back-to-back with the EPC Contract.

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#### *Variation to Turnkey Works*

The Project Company is entitled to instruct variations to the Turnkey Works at any time prior to the issuance of the provisional acceptance certificate for the Interconnection Facilities, the Metering Equipment and the Power Facility (as applicable). The Project Company can instruct a variation (i) without receiving a proposal from the Turnkey Contractor for all variations with a value of less than USD2,000,000.00 or if the total value of all variations does not exceed USD15,000,000.00, or (ii) for all variations in excess of those values, the Turnkey Contractor must submit a proposal before the Project Company can instruct the variation.

If the Project Company instructs a variation, to the extent that the Turnkey Contractor suffers delay, it will be entitled to extensions of time for substantial completion.

#### *Termination by the Project Company*

The Project Company is entitled to terminate the Turnkey Contractor's engagement upon the following EOD:

- (i) insolvency of the Turnkey Contractor;
- (ii) the Turnkey Contractor's material breach of its obligations under the Turnkey Contract that directly resulted in the termination of the PPA;
- (iii) the Turnkey Contractor's abandonment of the Site and not returning within 38 days of the notice from the Project Company;
- (iv) failing to commence procurement of the Turnkey Works or suspending the progress of the Turnkey Works within 38 days of the notice to proceed, without reasonable excuse;
- (v) failure to repair or replace the whole or parts of any materials or equipment which are not in accordance with the Turnkey Contract, which is not remedied within 38 days of notice from the Project Company;
- (vi) the Turnkey Contractor subcontracts all of the Turnkey Works in breach of the Turnkey Contract;
- (vii) the Turnkey Contractor fails to achieve the substantial completion of the Power Facility by the Longstop Substantial Completion Date;
- (viii) the Turnkey Contractor has incurred liability in excess of the cap on liability or a cap on liquidated damages; or
- (ix) the EPC Contract is terminated.

The Project Company may also terminate the Turnkey Contract on convenience, by giving five (5) weeks notice to the Turnkey Contractor in which case the Turnkey Contractor will be entitled to remedies as if the Turnkey Contract was terminated due to the Project Company's default.

#### *Termination by Turnkey Contractor*

The Turnkey Contractor may terminate the Turnkey Contract on 12 days' notice to the Project Company (other than for paragraph (iii) below, where termination is on immediate notice) where:

- (i) the Turnkey Contractor has not received a payment outstanding within 50 days of the Project Company's notice regarding suspension for non-payment, after the expiry of such notice;
- (ii) following a 90 day suspension by the Project Company, the Turnkey Contractor has given notices requesting resumption of the Turnkey Works and the Project Company has failed to request the Turnkey Contractor to resume the Turnkey Works;
- (iii) insolvency of the Project Company;
- (iv) a force majeure occurs for a period in excess of 180 days; or
- (v) the EPC Contract is terminated.

### *Force Majeure*

The procedure under the Turnkey Contract in relation to force majeure is back-to-back with the EPC Contract.

## **(i) EPC Contract**

### *General Overview*

The Issuer has entered into the EPC Contract dated 23 February 2012 with the EPC Consortium.

Pursuant to the terms of the EPC Contract, the Issuer has appointed the EPC Consortium for the design, engineering, procurement, construction, testing, commissioning and completion of the Interconnection Facilities, the Metering Equipment and the Power Facility and any other permanent structures as required thereunder ("**EPC Works**") at an agreed EPC Contract Price and the EPC Consortium has accepted such appointment upon the terms and subject to the conditions contained therein.

### *EPC Consortium's Obligations*

The EPC Consortium's obligations include, inter alia, the following:

- (i) the supply, transportation, delivery to the site, construction, erection, installation, testing, commissioning, completion, and training in the use, of the EPC Works; and
- (ii) preparation and/or delivery (as appropriate) of all information, drawings and manuals in respect of the works required under the EPC Contract, the provision of such spare parts and tools required to be provided, the performance of the punch list items and the remedying of defects and latent defect.

The parties comprising the EPC Consortium undertake their obligations under the EPC Contract on a joint and several basis.

### *Contract Price and Payment*

The EPC Contract Price is a fixed, lump-sum price comprising of an onshore and offshore portion, with the onshore portion being the Ringgit portion of the EPC Contract Price and the offshore portion being the USD and EUR portion of the EPC Contract Price.

Payment under the EPC Contract is based on milestones, with the EPC Consortium being entitled to payment within fourteen (14) days of confirmation by the Issuer's representative, that a milestone has been achieved, and at least thirty (30) days after the receipt of a valid application for payment.

An advance payment of ten percent (10%) of the EPC Contract Price is payable to the EPC Consortium within fifteen (15) days of the later of (i) the receipt by the Issuer's representative of an invoice of the advance payment, (ii) the date of the notice to proceed or (iii) the advance payment bond. The advance payment is repaid during the execution of the EPC Works by the Issuer deducting ten percent (10%) from each milestone payment.

Any overdue payments are subject to interest at the default rate, which is the interbank offered rate applicable to the currency of the delayed payment plus two percent (2%).

### *Warranties*

The EPC Consortium provides certain warranties regarding the quality and standard of the EPC Works, including the following:

- (i) executing the EPC Works will all due care and diligence and in accordance with the EPC Contract, prudent utility practices, applicable law and applicable codes and standards;
- (ii) having the expertise, experience and ability to design and execute the EPC Works, including through the employment of all necessary employees and the possession of sufficient financial means to meet its obligations under the EPC Contract; and
- (iii) that the EPC Works once completed will be fit for the purposes intended under the EPC Contract.

#### *Assignment and Subcontracting*

The EPC Consortium is not permitted to assign its obligations under the EPC Contract to any person without the Issuer's consent, but may grant a charge over any accounts into which amounts under the EPC Contract will be paid. The EPC Consortium may with the agreement in writing by the Issuer novate its obligations under the EPC Contract to an affiliate. The EPC Consortium is also subject to restrictions on its rights to subcontract its obligations.

#### *Completion*

The EPC Consortium is required to achieve the following milestones:

- (a) achieve the substantial completion of the Interconnection Facilities and the Metering Equipment by 30 June 2014; and
- (b) achieve the substantial completion of the Power Facility by 1 March 2016.

However, if the notice to proceed is issued after 1 March 2012, the dates listed in (a) and (b) will be extended on a day-for day basis.

#### *Security*

Under the EPC Contract, the EPC Consortium is required to provide the following forms of security:

- (i) an on-demand performance bond in an amount equivalent to ten percent (10%) of the EPC Contract Price, which is required to be valid from the notice to proceed until the later of (i) substantial completion of the Power Facility, or (ii) payment of final performance liquidated damages ("**Final Performance LDs**");
- (ii) an on-demand advance payment bond in an amount equivalent to ten percent (10%) of the EPC Contract Price, which is required to be valid until the advance payment is fully repaid and to be reduced consistent with the reduction of the advance payment;
- (iii) an on-demand warranty bond in amount equivalent to five percent (5%) of the EPC Contract Price, which is required to be valid from the date the performance bond is returned to the EPC Consortium until the end of the extended warranty period for the Power Facility of 24 months from the date of completion of the repair and/or replacement of any parts of the Power Facility; and
- (iv) a parent company guarantee from:
  - a. Alstom Holdings;
  - b. Eversendai Corporation Berhad; and
  - c. Mudajaya Group Berhad.

Under the PCG, the parent company of each of the companies comprising the EPC Consortium (each, a "**Guarantor**") each gives a separate guarantee to the Issuer in respect of, the due and punctual performance of the obligations of its subsidiary or subsidiaries which form part of the EPC Consortium (the "**Subsidiary**") under the EPC Contract. Each Guarantor's guarantee explicitly covers the obligation of its Subsidiary (as applicable) under

the EPC Contract to be jointly and severally liable for all of the obligations of the other companies comprising the Contractor.

The EPC Consortium is also required to enter into a notice of acknowledgement of assignment with the Financing Parties, which provides the Financing Parties certain step-in and additional cure periods.

#### *Performance Guarantees*

The EPC Consortium warrants that, on carrying out of the performance guarantee tests, the Power Facility shall attain and satisfy the Performance Guarantees.

The Performance Guarantees include the guaranteed net electrical output of 1000 MW ("**Capacity Performance Guarantee**") and the guaranteed weighted net heat rate of 9,429 kJ/kWh ("**Heat Rate Performance Guarantee**").

#### *Liquidated Damages*

If the EPC Consortium fails to achieve the substantial completion of the Power Facility by 1 March 2016, the EPC Consortium is liable for delay liquidated damages ("**Delay LDs**") of RM2,000,000.00 per day of delay between the scheduled date for substantial completion of the Power Facility and the date on which the substantial completion is actually achieved. The maximum amount of Delay LDs payable is 15% of the EPC Contract Price.

If the EPC Consortium fails to achieve the Key Performance Guarantees<sup>20</sup> at scheduled substantial completion of the Power Facility, it must pay the Issuer interim performance liquidated damages ("**Interim Performance LDs**"). The Interim Performance LDs are equal to RM5,000.00 per kW that the actual tested capacity of the Power Facility is less than the Capacity Performance Guarantee.

In addition, the EPC Consortium may elect to pay the Final Performance LDs at substantial completion of the Power Facility. The Final Performance LDs are equal to:

- (i) RM5,500.00 per kW that the actual tested capacity of the Power Facility is less than the Capacity Performance Guarantee; and
- (ii) RM920,000.00 per kJ/kWh that the actual tested heat rate of the Power Facility is greater than the Heat Rate Performance Guarantee.

If the EPC Consortium does not elect to pay Final Performance LDs at substantial completion of the Power Facility, it is entitled to carry out further work on the Power Facility during scheduled shutdowns of the Power Facility during the operational period, in an attempt to improve the performance of the Power Facility. If the EPC Consortium manages to achieve the Key Performance Guarantees before the Dropdead Completion Date<sup>21</sup> it will not be liable to pay any Final Performance LDs. However, if (i) the EPC Consortium elects to discontinue any further work, or (ii) the EPC Consortium has not attained the Key Performance Guarantees by the Dropdead Completion Date, the EPC Consortium must, within ten days of the Dropdead Completion Date, pay all amounts of Final Performance LDs.

The maximum amount of Interim Performance LDs and Final Performance LDs is 15% of the EPC Contract Price.

The maximum amount of the aggregate of the Delay LDs, Interim Performance LDs and Final Performance LDs is 20% of the EPC Contract Price.

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<sup>20</sup> "**Key Performance Guarantees**" are defined as the Capacity Performance Guarantee and/or the Heat Rate Performance Guarantee, as context may require.

<sup>21</sup> "**Dropdead Completion Date**" is defined as the earlier of 11 months after the substantial completion of the Facility or 1 February 2017.

*Failure to Achieve Minimum Performance Guarantees*

If, by the Longstop Substantial Completion Date<sup>22</sup>, the EPC Consortium has failed to achieve (i) one or both of the Key Minimum Performance Levels<sup>23</sup>, and/or (ii) any of the other core criteria of the performance guarantees specified in the EPC Contract, the Issuer may elect to exercise one of the following:

- (a) if the PPA has been terminated, reject the EPC Works, in which case the EPC Consortium must dismantle and remove the works and must repay the whole of the EPC Contract Price received minus any Delay LDs received by the Issuer;
- (b) require the EPC Consortium to carry out remedial works and/or tests to attain the requisite standards and if the Key Minimum Performance Levels are not met within fourteen (14) days (or longer period as agreed), the Issuer may either (i) terminate the EPC Consortium's engagement and have a third party complete the EPC Works, or (ii) if the PPA has been terminated, reject the EPC Works as described in paragraph (a); or
- (c) issue a Provisional Acceptance Certificate for the Power Facility.

If the Issuer issues a Provisional Acceptance Certificate for the Power Facility in the circumstances described in this paragraph, it is entitled to receive a reduction of the EPC Contract Price.

*Warranty Period and Latent Defects Period*

In respect of the Power Facility:-

- (a) the warranty period for the Power Facility shall be 24 months commencing on the date of substantial completion of the Power Facility ("**Initial Warranty Period for the Power Facility**"). On the expiry of the Initial Warranty Period for the Power Facility, there shall be a further warranty period of 36 months in respect of any latent defect discovered in the Power Facility.
- (b) if any parts of the Power Facility are repaired and/or replaced during the Initial Warranty Period for the Power Facility, the Initial Warranty Period for the Power Facility for such parts which are replaced and/or repaired shall be extended for a further period, subject to paragraph (c) herein, of 24 months commencing on the date of the completion of repair and/or replacement of such parts (the "**Extended Warranty Period for the Power Facility**"). On the expiry of any Extended Warranty Period for the Power Facility, there shall be a further warranty period of 36 months in respect of any latent defects discovered in such parts of the Power Facility which are repaired and/or replaced, subject to paragraph (d) herein.
- (c) the aggregate length of the Initial Warranty Period for the Power Facility and the Extended Warranty Period for the Power Facility shall not exceed 48 months, commencing on the date of substantial completion of the Power Facility.
- (d) the latent defects period in respect of the Power Facility shall not exceed 72 months, commencing on the date of substantial completion of the Power Facility.

In respect of the Interconnection Facilities:-

- (a) the warranty period for the Interconnection Facilities shall be 24 months commencing on the date of substantial completion of the Interconnection Facilities (the "**Initial**

<sup>22</sup> "**Longstop Substantial Completion Date**" is defined as the date which is six months after the scheduled substantial completion date for the Power Facility.

<sup>23</sup> "**Key Minimum Performance Levels**" are defined as 95% of the guaranteed Net Electrical Output and 105% of the guaranteed net weighted heat rate of the Power Facility.

**Warranty Period of the Interconnection Facilities**”). On the expiry of the Initial Warranty Period of the Interconnection Facilities, there shall be a further warranty period of 24 months in respect of any latent defects discovered in the Interconnection Facilities.

- (b) if any parts of the Interconnection Facilities are repaired and/or replaced during the Initial Warranty Period for the Interconnection Facilities, the Initial Warranty Period for the Interconnection Facilities for such parts which are repaired and/or replaced shall be extended for a period, subject to paragraph (c) herein, of 24 months commencing on the date of the completion of repair and/or replacement of such parts (the **“Extended Warranty Period for the Interconnection Facilities”**). On the expiry of any Extended Warranty Period for the Interconnection Facilities, there shall be a further warranty period of 24 months in respect of any latent defects discovered in such parts of the Interconnection Facilities which are repaired and/or replaced.
- (c) the aggregate length of the Initial Warranty Period for the Interconnection Facilities and the Extended Warranty Period for the Interconnection Facilities shall not exceed 48 months, commencing on the date of substantial completion of the Interconnection Facilities.
- (d) the latent defects period in respect of the Interconnection Facilities shall not exceed 60 months, commencing on the date of substantial completion of the Interconnection Facilities.

In respect of the Metering Equipment:-

- (a) the warranty period for the Metering Equipment is 24 months commencing on the date of substantial completion of the Metering Equipment (the **“Initial Warranty Period for the Metering Equipment”**). On the expiry of the Initial Warranty Period for the Metering Equipment, there shall be a further warranty period of 24 months in respect of any latent defects discovered in the Metering Equipment.
- (b) if any parts of the Metering Equipment are repaired an/or replaced during the Initial Warranty Period for the Metering Equipment, the Initial Warranty Period for such parts which are repaired and/or replaced shall be extended for a period of, subject to paragraph (c) herein, of 24 months commencing on the date of completion of repair and/or replacement of such parts (the **“Extended Warranty Period for the Metering Equipment”**). On the expiry of the Extended Warranty Period for the Metering Equipment, there shall be a further warranty period of 24 months in respect of latent defects discovered in such parts of the Metering Equipment which are replaced and/or repaired.
- (c) the aggregate length of the Initial Warranty Period for the Metering Equipment and the Extended Warranty Period for the Metering Equipment shall not exceed 36 months from the date of substantial completion of the Metering Equipment.
- (d) the latent defects period in respect of the Metering Equipment shall not exceed 60 months from the date of substantial completion of the Metering Equipment.

#### *The Issuer’s Risks*

If any of the following events occur, the Issuer must bear the cost and delay of reinstatement of the works:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies in Malaysia;
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within Malaysia;

- (iii) riot, commotion or disorder within Malaysia by persons other than the EPC Consortium's personnel and other employees of the EPC Consortium and his subcontractors;
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within Malaysia, except as may be attributable to the EPC Consortium's use of such munitions, explosives, radiation or radio-activity;
- (v) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds in Malaysia;
- (vi) any uninsured force majeure occurring in Malaysia;
- (vii) use or occupation by the Issuer of any part of the Works; and
- (viii) any malfunction, failure or breakdown of the Grid System or any part thereof.

*Termination by the Issuer*

The Issuer is entitled to terminate the EPC Consortium's engagement upon the following EOD:

- (i) insolvency of the EPC Consortium;
- (ii) the EPC Consortium's material breach of its obligations under the EPC Contract that directly resulted in the termination of the PPA;
- (iii) the EPC Consortium's abandonment of the Site and not returning within 28 days of the notice from the Issuer;
- (iv) failing to commence design of execution of the EPC Works or suspending progress of the works within 28 days of the notice to proceed, without reasonable excuse;
- (v) failure to repair or replace the whole or parts of any materials or equipment which are not in accordance with the EPC Contract, which is not remedied within 28 days of notice from the Issuer;
- (vi) the EPC Consortium assigns or charges the EPC Contract or subcontracts all of the EPC Works in breach of the EPC Contract;
- (vii) the EPC Consortium fails to achieve the substantial completion of the Power Facility by the Longstop Substantial Completion Date;
- (viii) the EPC Consortium has incurred liability in excess of the cap on liability or a cap on liquidated damages;
- (ix) the EPC Consortium has failed to replace the parent company guarantee or any bond where required under the EPC Contract; or
- (x) the EPC Consortium has failed to pay an amount exceeding EUR20.0 million which is not reasonably in dispute for more than 28 days after notice from the Issuer.

On termination of the EPC Consortium's engagement due to EPC Consortium's default, the EPC Consortium must pay to the Issuer amounts including, inter alia, the Issuer's expected additional cost of completing the EPC Works.

The Issuer may also terminate the EPC Contract on convenience, by giving one month notice to the EPC Consortium in which case the EPC Consortium will be entitled to remedies as if the EPC Contract was terminated due to the Issuer's default.

*Termination by EPC Consortium*

The EPC Consortium may terminate the EPC Contract on 14 days' notice to the Issuer (other than for paragraph (vi) below, where termination is on immediate notice) where:

- (i) the EPC Consortium has not received a payment outstanding within 30 days after the expiry of the Issuer's notice regarding suspension for non-payment;
- (ii) following a 90 day suspension by the Issuer, the EPC Consortium has given 28 days notice requesting resumption of EPC Works and the Issuer has failed to request the EPC Consortium to resume works;
- (iii) the Issuer fails to pay the advance payment or achieve Financial Close within 120 days' of the EPC Consortium's suspension of EPC Works;

- (iv) the finance parties' have not made a decision regarding reinstatement following an insurance claim above the loss payee threshold, within 180 days of the EPC Consortium's suspension;
- (v) the Issuer have not made a decision regarding reinstatement following the Issuer's risk event, within 90 days of the EPC Consortium's suspension;
- (vi) insolvency of the Issuer; or
- (vii) a force majeure occurs for a period in excess of 180 days.

On termination of the EPC Contract due to Issuer's default, the Issuer must pay to the EPC Consortium amounts including, inter alia, the contract price payable for the works properly executed and the amount of any loss of profit or other loss or damage sustained by the EPC Consortium as a result of the termination.

#### *Force Majeure*

In addition to the list of events of force majeure provided under the PPA, the additional events constituting force majeure under the EPC Contract includes:

- (i) worldwide epidemic and declared as such by the World Health Organisation (WHO); and
- (ii) the presence of munitions of war, explosive materials, ionising radiation or contamination of radio-activity, except as may be attributable to the EPC Consortium's use of such munitions, explosives, radiation or radio-activity.

#### *Collateral Warranty*

The purpose of the collateral warranty is to provide the Project Company with a direct contractual claim against the EPC Consortium in the event of any defect in the EPC Works, once the Project Company becomes the owner of the Power Facility as the Issuer is not a party under the EPC Contract.

The collateral warranties given to the Project Company by the EPC Consortium are similar to those given to the Issuer by the EPC Consortium and such warranties shall continue until the end of the initial warranty period, extended warranty period or latent defects period.

The EPC Consortium's aggregate liability under the collateral warranty and the EPC Contract shall not exceed:

- (a) the maximum liability of the EPC Consortium to the Issuer under the EPC Contract for the corresponding warranty or obligation under the EPC Contract; and
- (b) the aggregate amount of the EPC Consortium's liability under the EPC Contract.

The collateral warranty is assignable by the Project Company in favour of the Financing Parties as security.

#### **(j) Project Management Agreement**

##### *General Overview*

The Issuer has entered into the Project Management Agreement dated 27 February 2012 with the project manager, Malakoff Engineering Sdn Bhd ("**Project Manager**") whereby Malakoff has agreed to provide technical advisory services and project management services in relation to the Project.

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*Term of Project Management Agreement*

The term of the Agreement shall be effective from the date of execution of the Agreement and shall continue in force until the earlier of (i) 31 May 2016; or (ii) the date falling the expiry of 3 months after the COD of the Power Facility.

*Payment*

The fee payable by the Issuer to the Project Manager is a fixed lump sum amount to be paid in accordance with under the Project Management Agreement.

Where the Issuer fails to pay monies when due, the Project Manager shall be entitled to payment of interest, calculated on daily balances at two per cent (2%) per annum over the prevailing base lending rate of Malayan Banking Berhad.

The Issuer shall not be entitled to set off the fee and any sum owing under the Project Management Agreement to the Project Manager against any sum due and payable by the Project Manager to the Issuer under the Agreement or any other agreements.

*Termination*

- (a) If the Issuer shall fail to pay the Project Manager on the Due Date and such default has not been remedied within 30 days after receipt of a written notice from the Project Manager to do so, the Project Manager may terminate this Agreement upon expiry of fourteen (14) days after receipt by the Issuer of the Project Manager's intention to terminate.
- (b) If the Project Manager has committed a material breach of its obligations under the Agreement or under any of its agreements with the technical consultants, the Issuer may give to the Project Manager notice in writing of the relevant alleged breach and if the Project Manager shall not within thirty (30) days after receipt of Issuer's notice either:
  - (i) rectify such material breach; or
  - (ii) establish that the Project Manager has not committed a material breach under the Agreement or under its agreements with the technical consultants, as the case may be; or
  - (iii) if such material breach cannot be rectified within the said period, establish that such breach will be rectified promptly after the expiration of such period,then the Issuer may terminate the Project Management Agreement upon expiry of seven (7) days after receipt by the Project Manager of the Issuer's notice of its intention to terminate.
- (c) A party shall be entitled to terminate the Agreement by seven (7) days written notice to the other party or if the other party is dissolve or liquidated, makes a general arrangement or composition with the creditors or files a petition for bankruptcy or where.

*Force Majeure*

The Project Management Agreement contains a general force majeure provision.

Should force majeure render it impossible or unlawful under the laws of Malaysia for either party to fulfil its contractual obligations during a period of one hundred eighty (180) days, either Party may elect to release from further performance upon giving thirty (30) days prior written notice.

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### *Insurance*

The Project Manager shall take up and maintain in effect at the time of performance of the services: (i) the Project Professional Indemnity insurance which shall not be less than RM5,000,000.00 per occurrence; and (ii) the Workman's Compensation insurance and/or Employer's Liability insurance in respect of death or injury for its employees.

The Issuer shall effect and maintain the following insurance:

- (i) Contractor's All Risks" insurance and physical loss insurance against damage to the Facility and the Interconnection Facilities in amounts not less than the construction cost of Facility and the Interconnection Facilities and on a full replacement value thereof;
- (ii) "Third Party General Liability" insurance with combined single limits for bodily injury and property damages with 'per occurrence' limits and aggregate limits as are generally accepted for power projects of similar size and type under the same or similar circumstances and such insurance shall include a cross liability clause and a severability of interest provision; and
- (iii) Workmen's compensation insurance and/or Employer's Liability insurance in respect of death or injury for its employees in compliance with all applicable laws.

## **4.5 Project Insurance**

The Project Company and the Issuer will procure and maintain the insurance policies listed in sections 4.5.1 - 4.5.3 below over the construction period, with licensed insurers in Malaysia.

Both the Project Company and the Issuer will be named as insured parties under the insurance policies procured for the Project. The Financing Parties' Insurance Advisor has opined that this can be done due to the interest each will acquire in the other via the Turnkey Contract, as both will effectively be deemed to have insurable interest.

### **4.5.1 Marine Cargo**

The Marine Cargo insurance policy covers all risks (subject to agreed policy exclusions between the insured and the insurer) in relation to all materials, merchandise and goods of every kind and description including but not limited to plant, machinery, equipment, accessories and materials (including spare parts) in connection with the design, engineering, procurement, manufacture, supply, construction, erection, installation, testing, commissioning and preparation of the Project ("**Interest Insured**").

The Marine Cargo insurance policy is a continuous cover, open for the full amount for shipments/conveyance commencing from the inception date of the policy and shall remain in full force until completion of all shipments for the Project. The estimated value of cargo insured under the Marine Cargo insurance policy is up to RM3,700,000,000.00.

The limit per conveyance is RM400,000,000.00 on any one conveyance and/or location or equivalent in other currencies and subject to deductibles of EUR15,000.00 or equivalent in other currencies.

The Interest Insured under the Marine Cargo's policy is applicable worldwide.

### **4.5.2 Construction and Erection All Risks ("CEAR")**

The CEAR insurance policy covers all risks (subject to agreed policy exclusions between the insured and the insurer) in relation to:

- (i) Material Damage

All contract works whether permanent or temporary & all ancillary works & all other property or equipment, (other than constructional plant & equipment), temporary structures and buildings including those on loan, camps & contents of the insured or for which they may be responsible for incorporation or use in connection with the EPC contract of work as per EPC Contract. The coverage will be for the full EPC Contract value.

- (ii) Third Party Liability  
Insured's legal liability for damages & claimants costs & expenses arising out of the Project.
- (iii) Delay In Start-Up ("DSU")  
Loss of revenue and/or increased cost of working resulting from a delay in the scheduled COD caused by an insured peril. The coverage will be for an amount representing debt service (interest and principal repayments) and all other fixed operating expenses of the Project for the duration of the indemnity period (i.e. 20 months).

collectively, referred to as the Interest Insured.

The CEAR insurance policy is estimated to commence from the inception date of the policy and shall remain in full force until the COD, inclusive of testing and commissioning and the duration of the maintenance period of 24 months after the issuance of the Provisional Acceptance Certificate. The estimated value of sum insured under the CEAR insurance policy is as follows:

- (i) Material Damage: RM4,700,000,000.00 (for the EPC contract work) and RM100,000,000.00 (for shared facilities property);
- (ii) Third Party Liability: RM25,000,000.00 (any one accident) and unlimited (any one period);
- (iii) DSU: RM1,195,986,000.00 (on loss of revenue and/or increase cost of working) and RM250,000.00 (on auditors fee).

The deductibles under the CEAR insurance policy are as follows:

- (i) Material Damage: in respect of testing and commissioning/maintenance warranty period; force majeure, civil/erection works and all other losses, to be in the range of EUR50,000.00 to EUR500,000.00;
- (ii) Third Party Liability: in respect of third party property damage and underground service/vibration, removal and weakening of support, to be in the amount of EUR25,000.00 or 20% of loss;
- (iii) DSU: in respect of time excess, to be in the first 60 days each and every loss.

The Interest Insured under the CEAR's policy for Material Damage and DSU is only applicable within Malaysia (on or about the project site & including inland transit & storage anywhere (which are not covered under the Marine Open Cover insurance) whilst for Third Party Liability, the Interest Insured hereunder applied anywhere in Malaysia and extended to worldwide in respect of visits for the purposes of the location of projects beyond Malaysia.

#### 4.5.3 Marine Cargo DSU

This insurance policy covers all risks (subject to agreed policy exclusions between the insured and the insurer) in relation to loss of revenue and/or increased cost of working resulting from a delay in the scheduled COD caused by an insured peril under the Marine Cargo policy. The coverage will be for an amount representing debt service (interest and principal repayments) and all other fixed operating expenses of the Project for the duration of indemnity period (i.e. 20 months).

The Marine Cargo DSU (also referred to as the Marine Open Cover) insurance policy is a continuous cover, open for the full amount for shipments/conveyance commencing from the inception date of the policy and shall remain in full force until completion of all shipments for the Project. The estimated sum insured is up to RM1,195,986,000.00 (on loss of revenue and/or increase cost of working) and RM250,000.00 (on auditors fee).

The Interest Insured under the Marine Cargo's policy is applicable worldwide.

#### 4.6 Generation Licence

The Power Facility is operated under a licence granted by the Energy Commission pursuant to the Electricity Supply Act 1990. The Generation Licence shall come into force from the date of issuance of licence (i.e. 27 January 2012), and shall expire 25 years after the completion date of the generating unit (targetted for 1 March 2016) unless otherwise revoked. The Generation Licence to operate the Power Facility may be suspended or revoked by the Energy Commission upon breach of any of the conditions stipulated in the licence.

##### 4.6.1 Conditions of the Licence

The Generation Licence provides for the following conditions to be observed by the Project Company, during the tenure of the licence period, inter alia:

- (i) **Compliance with Environmental Protection Measures**  
To comply with and implement all measures, conditions and requirements imposed by the Director General of Environmental Quality and/or other relevant authorities in accordance to the approved environmental impact assessment report (EIA Report);
- (ii) **Step-in Rights of the Energy Commission**  
In the event this Licence is suspended upon breach of any of the conditions of this licence and without prejudice to any right and remedy of the Project Company, the Energy Commission shall issue a 90 days notice to step in, solely for the purpose of exercising its duties and functions prescribed under the Act and the Regulations made thereunder;
- (iii) **Performance Monitoring**  
To submit to the Energy Commission at monthly interval, information on the maximum daily load, electricity sold per month, overall plant efficiency and performance, quantity and type of fuel used per month, accidents, breakdown of major plants or equipment, forced and mandatory outages and schedule of maintenance and overhaul programme
- (iv) **Refinancing Activities**  
To notify the Energy Commission as soon as practicable of its intention to refinance its existing debt and shall not carry out such refinancing activities without the prior written approval of the Energy Commission;
- (v) **Restriction of Changes in Shareholdings**  
To undertake to the Government that the present shareholders and shareholding structure as declared by the Project Company remain the same within a period of seven years (7) from the date of signing of the PPA or until the completion of this project, whichever shall occur first, save for the listing of the Project Company in the Kuala Lumpur Stock Exchange subject to the prior written approval of the Minister;
- (vi) **No Right To Extension**  
Nothing in this licence shall be deemed to entitle the Project Company, as of right to an extension of the period of the licence or to renewal thereof, provided that the Energy Commission in consultation with the Minister may extend the period of the licence upon such terms and conditions as the Energy Commission may deem fit to

impose; and

- (vii) **Suspension of Licence**  
If the Project Company has failed to comply with any directive or order or notice in writing by the Energy Commission pursuant to conditions of the licence or the provision of the Act or if the Project Company has failed to comply with or is in breach of any condition of the licence, the Energy Commission may, upon service of written notice to the Project Company request the Licensee to remedy the breach within 90 days and where the breach has not been remedied, the Energy Commission may suspend the licence.

#### 4.6.2 Revocation of Licence

If the Project Company constitute, inter alia, any of the following circumstances:

- (a) upon breach of any of the conditions imposed in the licence;
- (b) if the Project Company ceases to work or operate and maintain the installation;
- (c) if the PPA is revoked and terminated by TNB; and
- (d) insolvency of the Project Company;

the Energy Commission may allow the Project Company to remedy the non-compliance within 90 days from the date the Project Company receiving the notice of non-compliance from the Energy Commission. If the non-compliance still persists or cannot be remedied within the time stipulated above, the Energy Commission shall have the full right to revoke the licence by giving 30 days notice of revocation in writing to the Project Company.

Where the licence is revoked, the Project Company shall not be entitled to any payment of compensation whatsoever from the Government or the Energy Commission for any loss or damage that may have occurred or suffered by him.

#### 4.7 Environmental Requirements

The construction of the Project is a prescribed activity (under Regulation 13 of the Environmental Quality (Prescribed Activities) Environmental Impact Assessment Order 1987) having a significant environmental impact which requires a submission of a detailed environmental impact assessment report to the DOE ("**DEIA Report**") for the purposes of obtaining an EIA Approval to carry out the prescribed activity.

Upon obtaining the relevant EIA Approval, the DOE will issue a license for the prescribed activity to be carried out at the Site ("**DOE Licence**"). The EIA Approval was granted by the DOE on 14 October 2011. Among the conditions is that an Environmental Management Plan ("**EMP**") be submitted and approved by the DOE.

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# Section 5

## Financing Facilities Overview

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### 5.1 Financing Facilities

5.1.1 Pursuant to the terms of the Senior Facilities, the Issuer and the Project Company, shall create the following securities ("**Securities**"):-

- (a) a charge ("**Lease charge**") over the lease ("**Lease**") of the land on which the Project is situated upon issuance of the separate issue document of title and upon the receipt of the consent from the relevant authorities or financiers;
- (b) in relation to the sub-lease ("**Sub-lease**") of the land on which the Project is situated, a charge over the Sub-lease ("**Sub-lease Charge**" and collectively with Lease Charge be hereinafter referred to as "**Charge**") upon the receipt of the consent from the relevant authorities or financiers;
- (c) a debenture incorporating a first ranking fixed and floating charge on the assets of the Issuer and the Project Company, both present and future;
- (d) an assignment of all the Issuer's and the Project Company's rights, interests, titles and benefits under the Project Documents (save and except for the Lease Agreements, the Sub-Lease Agreement and the Generation Licence) and proceeds therefrom (including the PPA and revenues thereunder);
- (e) an assignment of all the Project Company's rights, interests, titles and benefits under the Generation Licence and proceeds therefrom upon the receipt of the consent from the relevant authorities;
- (f) an assignment of the Issuer's and the Project Company's rights, interests, titles and benefits in all performance and/ or maintenance bonds in relation to the Project;
- (g) an assignment of the Issuer's and the Project Company's rights, interests, titles and benefits in all relevant insurance policies/Takaful contracts of the Issuer and the Project Company in respect of the Project;
- (h) an assignment of the Issuer's and Project Company's rights, interests, titles and benefits in all Designated Accounts and the credit balances therein; and
- (i) a first ranking charge over all the Shariah compliant shares in the Issuer and in the Project Company.

It is a term of the Senior Facilities that the Securities will be created and shared on a pari passu basis to secure the payment and repayment of the Senior Facilities and the Senior Hedging Banks, 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.

5.1.2 The Junior Facilities are secured by:-

- (i) The Sponsor providing the following cash deficiency support ("**CDS**"):-
    - (a) unconditional corporate undertaking to ensure that the Issuer is able to meet in full all its interest obligations under the Junior Term Loan Facility;
    - (b) upon the occurrence of an EOD under the Junior Term Loan Facility ("**Junior**")
-

**EOD**”), the Junior Lenders shall have the right (but not the obligation) to sell and the Sponsor shall have the obligation to purchase, the rights of the Junior Lenders to receive the Junior Facility Outstanding Amounts in consideration for the Junior Facility Put Exercise Price. The rights and obligations described under this paragraph shall be referred to as the "**Junior Facility Put**";

- (c) upon the occurrence of a Junior EOD, the junior hedge providers shall have the right (but not the obligation) to sell and the Sponsor shall have the obligation to purchase, the rights of the junior hedge providers to receive the Junior Hedge Outstanding Amounts in consideration for the Junior Hedge Put Exercise Price. The rights and obligations described under this paragraph shall be referred to as the "**Junior Hedge Put**".

- (ii) a first ranking charge over the CJFRA and the PJFA and the credit balances therein.

The CDS shall operate as follows:-

- (a) in the event the Issuer is unable to meet its interest obligations under the Junior Facility, the Sponsor shall make payments to the Junior Security Agent in an amount equal to the full amount of accrued interest as at that date;
- (b) in the event the Junior Lenders exercise the Junior Facility Put, the Sponsor shall make payments to the Junior Security Agent in an amount equal to the Junior Facility Put Exercise Price; and
- (c) in the event the junior hedge providers exercise the Junior Hedge Put, the Sponsor shall make payments to the Junior Security Agent in an amount equal to the Junior Hedge Put Exercise Price.

5.1.3 The Junior Lenders and the Junior Hedging Banks ("**Junior Creditors**") shall be subordinated to the Senior Sukukholders, Senior Lenders and Senior Hedging Banks ("**Senior Creditors**") in all respects other than in respect of the CDS and the first ranking charge over the CJFRA and the PJFA pursuant to the Subordination Deed.

5.1.4 Upon the occurrence of the Junior EOD, the Junior Facility Agent shall immediately exercise their rights under the CDS. Pursuant thereto, the Senior Intercreditor Agent acting on instructions of the Senior Financing Parties can enforce their rights under the Equity Call Option Agreement.

## 5.2 Tripartite Lease Agreements

The Project Company intends to enter into tripartite lease agreements ("**Tripartite Lease Agreements**") with the Security Agent, Seaport and SWW in relation to the lease of Lease Land A and Lease Land B (collectively, the "**Leased Lands**"). The execution of the Tripartite Lease Agreements are necessary as under the Generation Licence, an assignment or charge over the Leased Lands is not permitted to be made without the prior written approval of the Minister and in order to enable the Financing Parties to enforce their rights over the Leased Lands pending the approval granted by the Minister, the Tripartite Lease Agreements are executed.

Pursuant to the Tripartite Lease Agreements for the Leased Lands, Seaport and SWW, the land owners of the Leased Lands respectively, will grant a lease to the Project Company over the Leased Lands. The purpose of the said Tripartite Lease Agreement is to ensure that the Security Agent may in certain circumstances, on behalf of the Financing Parties, exercise certain rights and obligations under the relevant Tripartite Lease Agreements in accordance with the terms thereto.

Seaport and SWW, respectively, grants to the Project Company, a lease over the Leased Lands, with vacant possession and on an “as is where is” basis, for a term commencing from date of the agreement. The Tripartite Lease Agreement will be terminated when a charge over the Leased Lands is registered in favour of the Financing Parties. New Lease Agreements in place of the Tripartite Lease Agreements will then be executed between the Project Company and the land owners of the Leased Lands on similar terms as the Tripartite Lease Agreements.

### 5.3 Principal Terms and Conditions (“PTC”) of the Sukuk Murabahah (as per the Securities Commission Malaysia approval on 28 February 2012)

Words and expression used and defined in this Section 5.3 shall, in the event of inconsistency with the definition section of this Information Memorandum, only be applicable for this Section 5.3.

<b>1</b>	<b>Background Information</b>										
(a)	Issuer (where the issue is a special purpose vehicle and is a conduit to another entity which receives proceeds from the Proposal, the following information on the said entity shall also be provided):										
(i)	Name	Tanjung Bin Energy Issuer Berhad (formerly known as Powerfield Sdn. Bhd.), a 100% owned subsidiary of Tanjung Bin Energy Sdn. Bhd. (“ <b>Project Company</b> ”)									
(ii)	Address	Level 8, Kompleks Antarabangsa, Jalan Sultan Ismail, 50250 Kuala Lumpur, Wilayah Persekutuan									
(iii)	Business Registration No.	969142-W									
(iv)	Date and Place of Incorporation	22 November 2011, Malaysia									
(v)	Date of Listing	Not applicable									
(vi)	Status	Resident controlled company									
(vii)	Principal Activities	To develop, administer and manage the construction of an electricity generating capacity in Malaysia or elsewhere and all related works thereto and to enter into any contracts, agreements, concessions, arrangements or other transactions in relation thereto									
(viii)	Board of Directors	<table border="1"> <thead> <tr> <th style="text-align: center;">Name</th> <th style="text-align: center;">Resident Status</th> <th style="text-align: center;">I/C No.</th> </tr> </thead> <tbody> <tr> <td>Zainal ‘Abidin bin Abd Jalil</td> <td>Malaysian</td> <td>590122-01-5247</td> </tr> <tr> <td>Habib bin Husin</td> <td>Malaysian</td> <td>600814-01-5949</td> </tr> </tbody> </table>	Name	Resident Status	I/C No.	Zainal ‘Abidin bin Abd Jalil	Malaysian	590122-01-5247	Habib bin Husin	Malaysian	600814-01-5949
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Habib bin Husin	Malaysian	600814-01-5949									

<p>(ix) Structure of shareholdings and names of shareholders or, in the case of a public company, names of all substantial shareholders</p>	<table border="1"> <thead> <tr> <th data-bbox="735 248 987 342">Name</th> <th data-bbox="987 248 1182 342">No. of shares held</th> <th data-bbox="1182 248 1385 342">Shareholding</th> </tr> </thead> <tbody> <tr> <td data-bbox="735 342 987 436">Tanjung Bin Energy Sdn. Bhd.</td> <td data-bbox="987 342 1182 436">2</td> <td data-bbox="1182 342 1385 436">100%</td> </tr> </tbody> </table>	Name	No. of shares held	Shareholding	Tanjung Bin Energy Sdn. Bhd.	2	100%									
Name	No. of shares held	Shareholding														
Tanjung Bin Energy Sdn. Bhd.	2	100%														
<p>(x) Authorised and paid-up capital</p>	<p><b>Authorised capital:</b> RM100,000.00 divided into 100,000 ordinary shares of RM1.00 each;</p> <p><b>Paid-up capital:</b> RM2.00 divided into 2 ordinary shares of RM1.00 each</p>															
<p>(b)</p>	<p>Project Company</p>															
<p>(i) Name</p>	<p>Tanjung Bin Energy Sdn. Bhd. (formerly known as Transpool Sdn. Bhd.)</p>															
<p>(ii) Address</p>	<p>Level 8, Kompleks Antarabangsa, Jalan Sultan Ismail, 50250 Kuala Lumpur, Wilayah Persekutuan</p>															
<p>(iii) Business Registration No.</p>	<p>481582-X</p>															
<p>(iv) Date and Place of Incorporation</p>	<p>21 April 1999, Malaysia</p>															
<p>(v) Date of Listing</p>	<p>Not applicable</p>															
<p>(vi) Status</p>	<p>Resident controlled company</p>															
<p>(vii) Principal Activities</p>	<p>To design, engineering, procurement, installation and commissioning, testing, operations and maintenance of 1000 megawatts coal fired electricity generating facilities.</p> <p>Sale of electrical energy and generating capacity of the power plant.</p>															
<p>(viii) Board of Directors</p>	<table border="1"> <thead> <tr> <th data-bbox="735 1610 987 1704">Name</th> <th data-bbox="987 1610 1150 1704">Resident Status</th> <th data-bbox="1150 1610 1385 1704">I/C No.</th> </tr> </thead> <tbody> <tr> <td data-bbox="735 1704 987 1798">Zainal 'Abidin bin Abd Jalil</td> <td data-bbox="987 1704 1150 1798">Malaysian</td> <td data-bbox="1150 1704 1385 1798">590122-01-5247</td> </tr> <tr> <td data-bbox="735 1798 987 1859">Habib bin Husin</td> <td data-bbox="987 1798 1150 1859">Malaysian</td> <td data-bbox="1150 1798 1385 1859">600814-01-5949</td> </tr> <tr> <td data-bbox="735 1859 987 1953">Datuk Hj Hasni bin Harun</td> <td data-bbox="987 1859 1150 1953">Malaysian</td> <td data-bbox="1150 1859 1385 1953">570602-06-5421</td> </tr> <tr> <td data-bbox="735 1953 987 2009">Lee Khuan Eoi (Alternate to</td> <td data-bbox="987 1953 1150 2009">Malaysian</td> <td data-bbox="1150 1953 1385 2009">550925-08-6122</td> </tr> </tbody> </table>	Name	Resident Status	I/C No.	Zainal 'Abidin bin Abd Jalil	Malaysian	590122-01-5247	Habib bin Husin	Malaysian	600814-01-5949	Datuk Hj Hasni bin Harun	Malaysian	570602-06-5421	Lee Khuan Eoi (Alternate to	Malaysian	550925-08-6122
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Lee Khuan Eoi (Alternate to	Malaysian	550925-08-6122														

		Datuk Hj Hasni)		
(ix)	Structure of shareholdings and names of shareholders or, in the case of a public company, names of all substantial shareholders			
(x)	Authorised and paid-up capital	<p><b><u>Authorised capital:</u></b></p> <p>RM100,000.00 divided into 100,000 ordinary shares of RM1.00 each;</p> <p><b><u>Paid-up capital:</u></b></p> <p>RM2.00 divided into 2 ordinary shares of RM1.00 each</p>		
<b>2</b>	<b>Principal Terms and Conditions</b>			
(a)	Names of parties involved in the Proposal, (where applicable):			
(i)	Joint Principal Advisers	HSBC Amanah Malaysia Berhad (" <b>HSBC</b> ") & Maybank Investment Bank Berhad (" <b>Maybank IB</b> ")		
(ii)	Joint Lead Arrangers	HSBC & Maybank IB		
(iii)	Co-arranger	Not applicable		
(iv)	Solicitor	Messrs. Albar & Partners, acting for Joint Principal Advisers and the Joint Lead Arrangers		
(v)	Financial Adviser	Not applicable		
(vi)	Technical Adviser	Mott Macdonald		
(vii)	Trustee	HSBC (Malaysia) Trustee Berhad		
(viii)	Guarantor	Tanjung Bin Energy Sdn. Bhd.		
(ix)	Valuer	Not applicable		
(x)	Facility Agent	HSBC Bank Malaysia Berhad		
(xi)	Primary subscriber (under a bought-deal arrangement) and amount subscribed	To be identified prior to the issuance of the Sukuk Murabahah		

(xii) Underwriter and amount underwritten	None
(xiii) Joint Shariah Advisers	HSBC & Maybank Islamic Berhad
(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)	<p><b><u>Joint Lead Managers:</u></b> HSBC and Maybank IB and/or such other financial institution(s) to be appointed prior to issuance of the Sukuk Murabahah</p> <p><b><u>Senior Intercreditor Agent:</u></b> HSBC Bank Malaysia Berhad</p> <p><b><u>Security Agent:</u></b> HSBC Bank Malaysia Berhad</p>
(b) Facility description (including the description of Islamic principle)	<p><b><u>The Sukuk Murabahah</u></b></p> <p>Issuance of Islamic Medium Term Notes (“<b>Sukuk Murabahah</b>”) of up to RM4,500 million in nominal value under the Islamic principle of Tawaruq (Commodities Murabahah) (“<b>Proposal</b>”).</p> <p><b>Transaction Description</b></p> <p>The issuance for the Sukuk Murabahah shall be effected as follows:</p> <ol style="list-style-type: none"> <li>1. The holders of the Sukuk Murabahah (“<b>Sukukholders</b>”) and the Issuer shall enter into an agreement (“<b>Service Agency Agreement</b>”), pursuant to which the Issuer (in such capacity, the “<b>Purchase Agent</b>”) is appointed as the agent of the Sukukholders for the purchase and sale of Shariah compliant commodities (“<b>Commodities</b>”). The Purchase Agent will then appoint a sub-agent (“<b>Sub-Purchase Agent</b>”) for the purchase and sale of Commodities.</li> <li>2. Pursuant to an agreement (“<b>Commodity Murabahah Master Agreement</b>”), prior to the date on which the relevant series of Sukuk Murabahah is issued, the Issuer (acting as purchaser for itself) issues a purchase order (“<b>Purchase Order</b>”) in relation to the said series to the Purchase Agent and the Sub-Purchase Agent (acting as the sub-agent of the Purchase Agent). In the Purchase Order,</li> </ol>

	<p>the Issuer (acting as purchaser for itself) will request the Purchase Agent and the Sub-Purchase Agent to purchase the Commodities and will irrevocably undertake to purchase the Commodities from the Sukukholders via the Sub-Purchase Agent.</p> <p>3. Based on the Purchase Order, the Sub-Purchase Agent (pursuant to an agreement ("<b>CTP Purchase Agreement</b>") entered into between the Sub-Purchase Agent and the Commodity Trading Participant ("<b>CTP</b>")), will purchase on a spot basis the Commodities from commodity vendor(s) in the Bursa Suq Al-Sila' commodity market (through a CTP) at a purchase price ("<b>Purchase Price</b>") which shall be an amount equivalent to the Sukuk Murabahah proceeds. The Purchase Price of the Commodities shall be in line with the asset pricing requirement stipulated under the Sukuk Guidelines issued by the Securities Commission Malaysia ("<b>SC</b>") as may be amended from time to time ("<b>Sukuk Guidelines</b>").</p> <p>4. The Issuer (acting as the Issuer) shall then issue Sukuk Murabahah whereby the proceeds thereof shall be used to pay for the Purchase Price of the Commodities. The Sukuk Murabahah shall evidence, amongst others, the Sukukholders' ownership of the Commodities and subsequently once the Commodities are sold to the Issuer (as the Purchaser for itself) the entitlement to receive the deferred sale price ("<b>Deferred Sale Price</b>") which shall be the Purchase Price plus the profit margin.</p> <p>5. Thereafter, pursuant to an agreement ("<b>Sale and Purchase Agreement</b>"), the Sub-Purchase Agent (acting on behalf of the Purchase Agent) shall sell the Commodities to the Issuer (acting as Purchaser for itself) at the Deferred Sale Price.</p> <p>6. Upon completion of such purchase, the Issuer (pursuant to an agreement ("<b>CTP Sale Agreement</b>") entered into between the Issuer (acting as Purchaser for itself) and the CTP) shall sell the Commodities to Bursa Malaysia Islamic Services Sdn. Bhd. (through the CTP) on a spot basis for an amount equal to the Purchase Price. The CTP Sale Agreement will provide for the CTP to directly sell the Commodities into Bursa Malaysia Islamic Services Sdn. Bhd. upon notice by the Sub-Purchase Agent that the Sale and Purchase Agreement has been completed and executed.</p>
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	<p>7. During the tenure of the Sukuk Murabahah, the Issuer shall make profit payments to the Sukukholders. On the date of maturity of the Sukuk Murabahah, mandatory prepayment or upon declaration of an Event of Default (as the case may be), the Issuer shall pay all amounts then outstanding on the Deferred Sale Price (subject to the Rebate (Ibra') as set out below, where applicable) whereupon the redeemed Sukuk Murabahah shall be cancelled.</p> <p>As the Deferred Sale Price is calculated based on the Purchase Price and profit margin up to the date of maturity of the Sukuk Murabahah, the Rebate may be granted at the absolute discretion of the Sukukholders. The Sukukholders in subscribing or purchasing the Sukuk Murabahah irrevocably consent to grant such Rebate, if the Sukuk Murabahah is redeemed before the date of maturity of the Sukuk Murabahah pursuant to the mandatory prepayment or upon the declaration of an Event of Default.</p> <p>The Rebate (Ibra') shall be the unearned profit due to the Sukukholders from the date of redemption of the Sukuk Murabahah upon declaration of the Event of Default or mandatory prepayment up to the date of maturity of the Sukuk Murabahah.</p> <p>The redemption amount payable ("<b>Redemption Amount</b>") by the Issuer on the mandatory prepayment date or the declaration of an Event of Default is an amount as determined by the Facility Agent, which shall be calculated in accordance with the formula below:</p> <p>Redemption Amount is the amount equivalent to the Deferred Sale Price determined at the Issue Date less the aggregate of profit payments paid (if any) less the Rebate.</p> <p>For the purposes of this paragraph, "<b>Issue Date</b>" means, the date of issue of that Sukuk Murabahah.</p> <p>Please refer to Annexure 1 for the structure diagram of the issuance of Sukuk Murabahah.</p>
(c) Issue/ programme size	<p><b><u>Issue Size</u></b></p> <p>Issuance of Sukuk Murabahah of up to RM4,500 million in nominal value.</p> <p><b><u>Issue Price</u></b></p>

		<p>The Sukuk Murabahah are to be issued at par or at discount and the issue price is calculated in accordance with the Operational Procedures for Securities Services issued by Malaysian Electronic Clearing Corporation Sdn Bhd (“<b>MyClear</b>”), as amended or substituted from time to time (“<b>MyClear Procedures</b>”).</p>																																																																
(d)	Tenure of issue/ sukuk programme (or facility)	<p>More than one (1) year and up to twenty (20) years from the date of issuance provided always that the issuance of the Sukuk Murabahah must take place within six (6) months from Financial Close (as defined in item 2(v) below).</p> <p>The Sukuk Murabahah shall be issued in series with the following maturities:-</p> <table border="1"> <thead> <tr> <th>Series</th> <th>Tenure (from the date of issue) (years)</th> </tr> </thead> <tbody> <tr><td>1</td><td>5.0</td></tr> <tr><td>2</td><td>5.5</td></tr> <tr><td>3</td><td>6.0</td></tr> <tr><td>4</td><td>6.5</td></tr> <tr><td>5</td><td>7.0</td></tr> <tr><td>6</td><td>7.5</td></tr> <tr><td>7</td><td>8.0</td></tr> <tr><td>8</td><td>8.5</td></tr> <tr><td>9</td><td>9.0</td></tr> <tr><td>10</td><td>9.5</td></tr> <tr><td>11</td><td>10.0</td></tr> <tr><td>12</td><td>10.5</td></tr> <tr><td>13</td><td>11.0</td></tr> <tr><td>14</td><td>11.5</td></tr> <tr><td>15</td><td>12.0</td></tr> <tr><td>16</td><td>12.5</td></tr> <tr><td>17</td><td>13.0</td></tr> <tr><td>18</td><td>13.5</td></tr> <tr><td>19</td><td>14.0</td></tr> <tr><td>20</td><td>14.5</td></tr> <tr><td>21</td><td>15.0</td></tr> <tr><td>22</td><td>15.5</td></tr> <tr><td>23</td><td>16.0</td></tr> <tr><td>24</td><td>16.5</td></tr> <tr><td>25</td><td>17.0</td></tr> <tr><td>26</td><td>17.5</td></tr> <tr><td>27</td><td>18.0</td></tr> <tr><td>28</td><td>18.5</td></tr> <tr><td>29</td><td>19.0</td></tr> <tr><td>30</td><td>19.5</td></tr> <tr><td>31</td><td>20.0</td></tr> </tbody> </table>	Series	Tenure (from the date of issue) (years)	1	5.0	2	5.5	3	6.0	4	6.5	5	7.0	6	7.5	7	8.0	8	8.5	9	9.0	10	9.5	11	10.0	12	10.5	13	11.0	14	11.5	15	12.0	16	12.5	17	13.0	18	13.5	19	14.0	20	14.5	21	15.0	22	15.5	23	16.0	24	16.5	25	17.0	26	17.5	27	18.0	28	18.5	29	19.0	30	19.5	31	20.0
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31	20.0																																																																	
(e)	Availability period of sukuk programme (or facility)	<p>The Sukuk Murabahah shall be available for issuance upon completion of the documentation and compliance of all conditions precedent as set out in item 2(q) below and such other applicable conditions (to be agreed with the Issuer) to the satisfaction of the</p>																																																																

		<p>Joint Principal Advisers and the Joint Lead Arrangers.</p> <p>The Sukuk Murabahah shall be issued within one (1) year from the date of the SC's approval.</p>
(f)	Profit/ coupon/ rental rate	To be determined and agreed between the Issuer and the Joint Lead Managers prior to the issuance of the Sukuk Murabahah.
(g)	Profit/ coupon/ rental payment frequency	Payable semi-annually in arrears with the first profit payment commencing six (6) months from the date of issue of the respective series of the Sukuk Murabahah with the last profit payment for each series of the Sukuk Murabahah to be made on the respective maturity dates of each series of the Sukuk Murabahah.
(h)	Profit/ coupon/ rental payment basis	Actual/ 365 days
(i)	Security/ collateral (if any)	<p>Including, but not limited to:-</p> <p>(a) a charge ("<b>Lease Charge</b>") over the lease of the land on which the Project is situated upon issuance of the separate issue document of title and upon the receipt of the consent from the relevant authorities or financiers;</p> <p>(b) in relation to the sub-lease of the land on which the Project is situated, a charge over the Sub-lease ("<b>Sub-lease Charge</b>" and collectively with Lease Charge be hereinafter referred to as "<b>Charge</b>") upon the receipt of the consent from the relevant authorities or financiers;</p> <p>(c) a debenture incorporating a first ranking fixed and floating charge on the assets of the Issuer and the Project Company, both present and future;</p> <p>(d) a first ranking assignment of all the Issuer's and the Project Company's rights, interests, titles and benefits under the Project Documents (as defined in item 2(v) below) (save and except for the lease agreement, the sub-lease agreement, the Tripartite Lease Agreement (as defined in item 2(v) below) and the generation licence) and proceeds therefrom (including the PPA (as defined in item 2(v) below) and revenues thereunder);</p> <p>(e) a first ranking assignment of all the Project Company's rights, interests, titles and benefits under the generation licence and proceeds therefrom upon the receipt of the consent from the relevant authorities;</p> <p>(f) a first ranking assignment of the Issuer's and</p>

	<p>the Project Company's rights, interests, titles and benefits in all performance and/ or maintenance bonds in relation to the Project;</p> <p>(g) a first ranking assignment of the Issuer's and the Project Company's rights, interests, titles and benefits in all relevant insurance policies/ Takaful contracts of the Issuer and the Project Company in respect of the Project;</p> <p>(h) a first ranking assignment of the Issuer's and Project Company's rights, interests, titles and benefits in all Designated Accounts and the credit balances therein;</p> <p>(i) a first ranking charge over all the Shariah compliant shares in the Issuer; and</p> <p>(j) any other security as may be required by the rating agency to achieve the requisite rating as stated in item 2(l) below or as advised by the legal counsel and to be mutually agreed between the Issuer, the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities (as defined in item 2(v) below).</p> <p>Note: The above securities are to be shared on a pari passu basis with the financiers of the Senior Loan Facilities and the senior hedging banks. The priority and security sharing of the securities and the application of proceeds received from such securities will be governed by an agreement to be entered into between, amongst others, the Trustee on behalf of the Sukukholders, the financiers of the Senior Loan Facilities and the senior hedging banks.</p>
<p>(j) Details on utilisation of proceeds by the Issuer. If proceeds are to be utilised for project or capital expenditure, description of the project or capital expenditure, where applicable</p>	<p>The proceeds of the Sukuk Murabahah shall be utilised for Shariah-compliant purposes to fund up to eighty per centum (80%) of the Project Costs (as defined in item 2(v) below).</p>
<p>(k) Sinking fund and designated accounts (if any)</p>	<p><b><u>Sinking Fund</u></b></p> <p>Not applicable.</p> <p><b><u>Designated Accounts</u></b></p> <p>The Issuer and the Project Company shall open and maintain the following Shariah-compliant Designated Accounts with an account bank.</p> <p>Upon the occurrence of an Event of Default which remains unremedied or unwaived after such number of days as may be agreed, the Security Agent will be</p>

the sole signatory of all the Designated Accounts. If such Event of Default has been waived in accordance with the principles of the intercreditor deed (to be entered into between inter alia, the Senior Intercreditor Agent acting on behalf of amongst others, the Trustee who acts on behalf of the Sukukholders, the financiers of the Senior Loan Facilities and the senior hedging banks ("**Intercreditor Deed**")), the respective signatories of the Designated Accounts shall revert to those entitled to so operate before the occurrence of such Event of Default.

#### **Issuer Designated Accounts**

##### Escrow Account ("**EA**")

The Senior Intercreditor Agent and the Issuer shall be the joint signatories.

The purpose of the EA is to deposit and/ or remit the issuance proceeds of the Sukuk Murabahah. Upon issuance, the Sukuk Murabahah proceeds shall be deposited into the EA. Proceeds from the EA shall be paid into the IDA subject to the conditions to each disbursement under the EA having been satisfied.

##### Issuer Disbursement Account ("**IDA**")

The Senior Intercreditor Agent and the Issuer shall be the joint signatories.

The purpose of the IDA is to deposit the proceeds of the Senior Facilities (as defined in item 2(v) below), the Junior Term Loan Facility and Equity in relation to the Issuer and the relevant insurance/ compensation proceeds received by the Issuer during construction, and to withdraw to pay Project Costs incurred by the Issuer.

##### Issuer Operating Account ("**IOA**")

The Issuer is the sole signatory.

The Issuer shall open the IOA for purposes of depositing amounts that are transferred from the RA and other relevant accounts if any, and be used to pay operating and maintenance costs, Senior Facilities Maintenance Fees (as defined in item 2(v) below), and taxes and duties incurred by the Issuer in respect of the Project when they fall due.

##### Senior Facilities Repayment Account ("**SFA**")

The Senior Intercreditor Agent shall be the sole signatory.

The purpose of the SFA is to deposit amounts from relevant accounts for the payment of the following

amounts when due:

- (a) Profit payments, interest (in relation to the Senior Loan Facilities) and other amounts payable (excluding Senior Facilities Maintenance Fees and repayment of principal obligations/amount) under the Senior Facilities and the associated hedging facilities:
- (b) for repayment of all principal obligations under the Senior Facilities.

**Issuer Insurance Proceeds Account (“IPA”)**

The Senior Intercreditor Agent and the Issuer shall be joint signatories.

The purpose of the IPA is to deposit all proceeds of Takaful/ insurance claims received by the Issuer (other than any insurance claims relating to business interruption or delay in start up).

The monies in the IPA shall be applied towards reinstatement of the damaged property or otherwise towards mandatory prepayment of the Senior Facilities in accordance with the Financing Documents (as defined in item 2(v) below).

**Project Company Designated Accounts**

**Project Company Disbursement Account (“PDA”)**

The Senior Intercreditor Agent and the Project Company shall be the joint signatories.

The purpose of the PDA is to deposit the proceeds of the Shareholders’ Equity Contribution (as defined in item 2(v) below) (other than the Junior Term Loan Facility (as defined in item 2(v) below)), intercompany advances from the Issuer to the Project Company, and relevant insurance/ compensation proceeds received by the Project Company, and to withdraw to fund any Equity (as defined in item 2(v) below) injection into the Issuer or to pay Project Costs incurred by the Project Company.

**Revenue Account (“RA”)**

The Senior Intercreditor Agent and the Project Company shall be the joint signatories.

The RA shall be operational from the Financial Close for the purpose of depositing all revenue, income, relevant insurance/ compensation proceeds and other amounts received by the Project Company.

Balances in the RA shall be applied on the first business day of each month commencing from the month in which commissioning revenues are first

received in accordance with the “**Priority of Cashflow**” below:

- (i) for transfers to the Project Company Operating Account (“**POA**”) for the next one (1) month payment of operating and maintenance (excluding the Subordinated O&M Margin (as defined in item 2(v) below)), fuel costs, cess fund, start-up, taxes, duties and capital expenditures incurred by the Project Company in respect of the Project, subject to the Senior Intercreditor Agent’s receipt of the Project Company’s approved budget for the relevant period and satisfactory documentary evidence for the aforesaid payments;
- (ii) for periodic transfers to the Project Company Finance Service Account (“**PFSA**”) for the accumulation of the amounts to be agreed to meet the next interest payment (including sums payable under any hedging facilities), profit payments and principal payments under the Senior Facilities;
- (iii) for transfers to the Maintenance Reserve Account (“**MRA**”) for compliance with the MRA requirements;
- (iv) for transfers to the Finance Service Reserve Account (“**FSRA**”) for compliance with the FSRA requirements;
- (v) for payment of the Subordinated O&M Margin;
- (vi) to the extent elected by the Issuer, for transfers to the SFA for making voluntary prepayments under the Senior Loan Facilities and associated hedging termination payments; and
- (vii) for making a Restricted Payment (as defined in item 2(v) below).

Project Company Operating Account (“**POA**”)

The Project Company is the sole signatory.

The Project Company shall open the POA for purposes of depositing and remitting:

- (a) amounts transferred from the RA for payment of the next one (1) month payment of operating and maintenance (excluding the Subordinated O&M Margin), cess fund, start-up, taxes, duties and capital expenditures incurred by the Project Company in respect of the Project when due;

- (b) amounts transferred to the IOA (by way of an intercompany advance from the Project Company to the Issuer) for the next one (1) month payment of operation and maintenance, Senior Facilities Maintenance Fees, taxes and duties incurred by the Issuer in respect of the Project, subject to the Senior Intercreditor Agent's receipt of the Issuer's approved budget for the relevant period and satisfactory documentary evidence for the aforesaid payments; and
- (c) amounts transferred to the Project Company O&M Costs Account ("**POMCA**") for the next one (1) month of operation and maintenance costs incurred by the operator on behalf of the Project Company, in accordance with the provisions of the O&M Agreement (as defined in item 2(v) below).

**Project Company O&M Costs Account ("**POMCA**")**

The Project Company and Teknik Janakuasa Sdn Bhd (Company No. 271559-H) as the operator under the O&M Agreement shall be joint signatories.

The Project Company shall open the POMCA for purposes of depositing and remitting amounts transferred from the POA for payment of operation and maintenance costs incurred by the operator on behalf of the Project Company when due and in accordance with the provisions of the O&M Agreement.

**Project Company Finance Service Account ("**PFSA**")**

The Senior Intercreditor Agent shall be the sole signatory.

The Project Company shall open the PFSA for purposes of depositing amounts from the RA and remitting to the SFA amounts necessary to pay all amounts due under the Senior Facilities and associated hedging facilities, on the date that such amounts fall due.

**Finance Service Reserve Account ("**FSRA**")**

The Project Company shall open and maintain a Shariah compliant FSRA with a licensed Islamic financial institution acceptable to the Security Agent. Alternatively, the Project Company, at the Project Company's option shall procure a Qualified SBLC (as defined in item 2(v) below) ("**SBLC Option**") and such Qualified SBLC is referred to as the "**FSRA SBLC**".

The Senior Intercreditor Agent is the sole signatory of the FSRA and the beneficiary of the FSRA SBLC, as the case may be. However, upon the occurrence of an

Event of Default which shall remain unremedied or unwaived in accordance with the principles of the Intercreditor Deed after such number of days as may be agreed, the Security Agent will then be the sole signatory of the FSRA and the beneficiary of the FSRA SBLC, as the case may be.

In the event the SBLC option is exercised, the Senior Intercreditor Agent shall have the right to draw on the FSRA SBLC if it is not renewed by the Project Company one (1) month prior to expiry.

The Issuer shall establish a financial service reserve in an amount equal to the projected Senior Finance Service (as defined in item 2(v) below) for the next six (6) months (the "**Minimum Required Balance**"). In the event that the SBLC Option is exercised, the amount of the FSRA SBLC undertaking shall be no less than the Minimum Required Balance.

The FSRA shall be fully funded prior to the Scheduled COD (as defined in item 2(v) below) by transfers from the IDA (by way of an intercompany advance from the Issuer to the Project Company) and shall remain in place as long as any amounts under the Senior Facilities remain outstanding. The FSRA shall be operated as follows:

- (a) if at any time there is insufficient amounts in the PFSA for transfer to the SFA to pay any amounts due under the Senior Facilities (other than Senior Facilities Maintenance Fees), an amount equal to the shortfall shall be transferred from the FSRA to the SFA by way of an intercompany advance from the Project Company to the Issuer;
- (b) if at any time the balance in the FSRA is less than the Minimum Required Balance, the FSRA shall be replenished to the Minimum Required Balance in accordance with the Priority of Cashflow for the RA;
- (c) if any time the balance in the FSRA exceeds the Minimum Required Balance, such difference between the total in FSRA and the Minimum Required Balance shall be transferred to the RA to be utilised in accordance with the Priority of Cashflow for the RA; and
- (d) the balance of the FSRA will be available to repay the Senior Facilities on the final repayment date on a pro rata basis.

In the event that the SBLC Option is exercised, the FSRA SBLC shall be procured prior to the Scheduled COD and shall remain in place as long as any obligations under the Senior Facilities remain

	<p>outstanding. The FSRA SBLC shall be drawn to pay any shortfall in the balance in the PFSA for transfer to the SFA to pay any amounts due under the Senior Facilities (other than Senior Facilities Maintenance Fees). The FSRA SBLC shall be replenished to the Minimum Required Balance within such period to be agreed upon drawing thereof.</p> <p>Maintenance Reserve Account (“<b>MRA</b>”)</p> <p>The Project Company is the sole signatory.</p> <p>The Project Company shall, in order to fulfil its obligations under the PPA, establish a Shariah compliant reserve account or accounts in the sum of Ringgit Malaysia Twenty Four Million (RM24,000,000.00). The MRA shall be built up over a three (3) year period commencing on the COD (as defined in item 2(v) below) at the rate of Ringgit Malaysia Eight Million (RM8,000,000.00) per annum.</p> <p>The MRA will remain in place as long as any Senior Finance Service remains outstanding.</p> <p>The Project Company is allowed to draw from the MRA to pay for maintenance expenses of the Project, including any repair or replacement, however the balance must be reinstated to the minimum balance over the three (3) months following the withdrawal (or such other date as may be agreed between Tenaga Nasional Berhad (“<b>TNB</b>”) and the Project Company) in accordance with the Priority of Cashflow for the RA.</p> <p>Project Company Insurance Proceeds Account (“<b>PIPA</b>”)</p> <p>The Senior Intercreditor Agent and the Project Company shall be joint signatories.</p> <p>The purpose of the PIPA is to deposit all proceeds of Takaful/ insurance claims received by the Project Company (other than any insurance claims relating to business interruption or delay in start up).</p> <p>The monies in the PIPA shall be applied towards reinstatement of the damaged property or otherwise towards Senior Facilities Mandatory Prepayment (as defined in item 2(v) below) in accordance with the Financing Documents.</p>
<p>(l) Rating</p> <ul style="list-style-type: none"> <li>• Credit rating(s) assigned (Please specify if this is an indicative rating)</li> <li>• Name of rating agency</li> </ul>	<p>An indicative rating of AA3</p> <p>RAM Rating Services Berhad</p>

(m) Mode of issue	Subject to the agreement by the Issuer, the Joint Lead Managers and the Joint Lead Arrangers, the Sukuk Murabahah may be issued on a direct/ private placement, book running or bought deal basis, all without prospectus. The Sukuk Murabahah shall be issued in accordance with (1) the "Participation and Operation Rules for Payment and Securities Services" issued by MyClear (" <b>MyClear Rules</b> ") and (2) the MyClear Procedures, or their replacement thereof (collectively the " <b>MyClear Rules and Procedures</b> ") applicable from time to time.
(n) Selling restriction, including tradability (i.e. tradable or non-tradable)	<p>The Sukuk Murabahah are tradable subject to the following selling restrictions:-</p> <p><b><u>At issuance</u></b></p> <p>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) or Schedule 7 or Section 230(1)(b) of the Capital Markets and Services Act 2007 as amended from time to time ("<b>CMSA</b>") and would fall within Schedule 9 or Section 257(3) of the CMSA.</p> <p><b><u>Thereafter</u></b></p> <p>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 and would fall within Schedule 9 or Section 257(3) of the CMSA.</p>
(o) Listing status and types of listing	The Sukuk Murabahah will not be listed on Bursa Malaysia Securities Berhad or any other stock exchange.
(p) Other regulatory approvals required in relation to the issue, offer or invitation and whether or not obtained (please specify)	None.
(q) Conditions precedent	Upon completion of documentation and, unless waived by the Senior Intercreditor Agent (acting on the instructions of the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities), compliance of all conditions precedent, including but not limited to the conditions precedent set out below, and other applicable conditions (to be agreed with the Issuer) to the satisfaction of the Senior Intercreditor Agent (acting on the instructions of the Joint Lead Arrangers and the mandated lead

	<p>arrangers of the Senior Loan Facilities):</p> <p>A. Main Documentation</p> <p>(i) The Financing Documents (save and except for the Charge), such Project Documents (save and except for the lease agreement) as may be agreed between the Issuer and the Senior Intercreditor Agent (acting on the instructions of the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities) and such other documents as may be advised by the legal counsel (and agreed upon by the Issuer) have been executed and, where applicable, stamped and presented for registration;</p> <p>(ii) All relevant notices and acknowledgements and where applicable, consents from the relevant counterparties to the Project Documents which are to be assigned (save and except for the generation licence) shall have been made or received, as the case may be; and</p> <p>(iii) Receipt from the Issuer and/ or Project Company, as the case may be, certified true copies of all the executed and stamped Project Documents (save and except for the lease agreement) and any other supplemental documentation in relation thereto, together with the certified true copies of the board of directors' resolution(s) of the Issuer and/ or Project Company, as the case may be, authorizing the execution and performance of each of the Project Documents to which each of the Issuer and/ or Project Company is a party.</p> <p>B. Issuer</p> <p>Receipt from the Issuer of:</p> <p>(i) certified true copies of its Certificate of Incorporation, and the Memorandum and Articles of Association of the Issuer;</p> <p>(ii) certified true copies of the latest Forms 24, 44 and 49 of the Issuer;</p> <p>(iii) certified true copies of the board resolutions of the Issuer authorising, among others, the execution of the relevant Financing Documents to which it is a party and other documents as advised by the legal counsel and which are acceptable to the Issuer;</p> <p>(iv) a list of the Issuer's authorised signatories and their respective specimen signatures;</p>
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	<p>(v) a report of the relevant company search of the Issuer;</p> <p>(vi) a report of the relevant winding up search of the Issuer; and</p> <p>(vii) evidence satisfactory to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities that the Issuer has an issued and paid-up share capital of not less than Ringgit Malaysia One Hundred Thousand (RM100,000.00).</p> <p>C. Project Company</p> <p>Receipt from the Project Company of:</p> <p>(i) the documents corresponding to those under items B(i) to B(vi) (both inclusive) in respect of the Project Company;</p> <p>(ii) certified true copies of the generation licence from the Energy Commission of Malaysia established under the Energy Commission Act 2001 and any successor thereof, which shall have been issued to the Project Company together with documentary evidence satisfactory to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities that the conditions therein (which are required to be complied with at such time) have been complied to the satisfaction of the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities and all other relevant and material licences, permits and approvals which have been identified and advised by the legal counsel prior to the signing of the Financing Documents and which are mutually acceptable to the Project Company, the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities; and</p> <p>(iii) documentary evidence in form and substance satisfactory to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities that the ordinary paid-up shares component of the Shareholders' Equity Contribution to the Project Company is Ringgit Malaysia Five Million (RM5,000,000.00).</p> <p>D. General</p> <p>(i) Evidence, satisfactory to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities that Malakoff Corporation Berhad (as "<b>Sponsor</b>") (or in the case where an Additional Sponsor (as defined</p>
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	<p>in item 2(t) below) has been elected, the Additional Sponsor also) has made irrevocable commitments for the agreed Shareholders' Equity Contributions in the form of shareholder loans/ advances;</p> <p>(ii) Confirmation from facility agent of the Junior Term Loan Facility that all the conditions precedent for initial drawdown under the Junior Term Loan Facility have been satisfied or waived;</p> <p>(iii) The approval from the SC in respect of the issuance of the Sukuk Murabahah, and where applicable, the approval of any other regulatory authorities in respect of the Senior Loan Facilities, the Junior Term Loan Facility and the Sukuk Murabahah;</p> <p>(iv) The Sukuk Murabahah has received the requisite rating as stated in item 2(l) of this Principal Terms and Conditions;</p> <p>(v) The relevant Financing Documents shall have been presented to the High Court of Malaya for the registration of the power of attorney therein contained;</p> <p>(vi) Evidence that the Forms 34 (as prescribed under the Companies Act), where applicable, in respect of the charges created pursuant to the relevant Financing Documents (save and except for the Charge) (for the purpose of registration of such charges with the Companies Commission of Malaysia in accordance with Section 108 of the Companies Act 1965) have been duly lodged with the Companies Commission of Malaysia and that immediately prior to the lodgement of such Forms 34, a search conducted on such company in respect of which the Form 34 is filed, revealed that there are no other charges that have been registered by it with the Companies Commission of Malaysia;</p> <p>(vii) Evidence that all the Designated Accounts have been opened in accordance with the provisions of the Financing Documents;</p> <p>(viii) Receipt of a written report from Mott Macdonald (as "<b>Independent Technical Adviser ("ITA")/ Environmental Consultant</b>") in form and substance satisfactory to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities;</p> <p>(ix) Delivery of a construction budget, construction schedule and operating budget;</p>
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	<p>(x) Receipt of a certified true copy of the environmental impact assessment report (“EIA”) in respect of the Project and evidence that all conditions in the EIA reports (which are required to have been met at such time) have been met and approved by the Department of Environment (“DOE”);</p> <p>(xi) Receipt of a written report from A.oN Singapore Pte Ltd (as “<b>Takaful/ Insurance Consultant</b>”) satisfactory to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities;</p> <p>(xii) Confirmation from the Takaful/ Insurance Consultant that the Security Agent has been named as loss-payee in respect of such Takaful/ insurances to be assigned to the Security Agent and that all requisite insurance which are required to be taken out at such time has been obtained;</p> <p>(xiii) Receipt of satisfactory legal opinions from (i) the legal counsel addressed to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities advising the legality, validity and enforceability of the Financing Documents (save and except for the Charge) and confirming that all the conditions precedent have been fulfilled or waived, as the case may be; and (ii) the Project Company’s and/or the Issuer’s counsel addressed to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities advising the legality, validity and enforceability of the Project Documents and confirming that all the conditions precedents of the Project Documents have been fulfilled and (iii) any other legal opinions deemed necessary by legal counsel and notified to and accepted by, the Issuer prior to the execution of the Financing Documents (save and except for the Charge);</p> <p>(xiv) Delivery of a financial model, reviewed by the Reporting Accountant, showing a projected base case minimum FSCR (as defined in item 2(v) below) of at least 1.25x (“<b>Base Case FSCR</b>”) and the Senior DE Ratio (as defined in item 2(v) below) not exceeding 80:20 and satisfactory to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities (“<b>Base Case Financial Model</b>”). For the purposes of clause 6.7(c) of the PPA, the Base Case FSCR shall be the debt service cover ratio referred to therein;</p> <p>(xv) The hedging agreements in respect of the</p>
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	<p>hedging of the foreign currency and interest rate exposure in relation to the Senior Loan Facilities in accordance with the senior hedging policy shall have been provided by the Issuer;</p> <p>(xvi) Certification from the Issuer that no Event of Default or Potential Event of Default (as defined in item 2(v) below) has occurred and is continuing or may occur at the date of such certification;</p> <p>(xvii) Evidence satisfactory to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities of appointment of process agents by the relevant parties in respect of the Senior USD Loan (as defined in item 2(v) below);</p> <p>(xviii) Evidence satisfactory to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities that all transaction fees, costs and expenses have been or will be paid in full;</p> <p>(xix) Evidence satisfactory to the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities of confirmation from the Joint Shariah Advisers that the structure and mechanism of the Sukuk Murabahah and the associated document are in compliance with Shariah principles; and</p> <p>(xx) Such other conditions precedent as advised by the legal counsel and mutually acceptable to Issuer, the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities).</p>
<p>(r) Representations and warranties</p>	<p>Applicable to both the Issuer and the Project Company – together (“<b>Companies</b>”).</p> <p>To include, inter alia, the following:</p> <p>(a) Each of the Companies is a company with limited liability duly incorporated and validly existing under the laws of Malaysia, has full power to carry on its business and to own its property and assets, and has full beneficial ownership of all its property and assets.</p> <p>(b) The memorandum and articles of association of each of the Companies incorporate provisions which authorise, and all necessary corporate and other relevant actions have been taken to authorise, and all relevant consents and approvals of any administrative, governmental or other authority or body in Malaysia have been duly</p>

	<p>obtained and are in full force and effect which are required to authorise each of the Companies to:</p> <ul style="list-style-type: none"><li>(i) own its assets;</li><li>(ii) carry on its business as it is being conducted which, if not obtained, would have a Material Adverse Effect (as defined in item 2(v) below); and</li><li>(iii) execute and deliver and perform the transactions contemplated in the Transaction Documents (as defined in item 2(v) below) to which it is a party in accordance with their terms.</li></ul> <p>(c) Neither the execution and delivery of any of the Transaction Documents to which each of the Companies is a party nor the performance of any of the transactions contemplated by the Transaction Documents to which each of the Companies is a party did or does as at the date this representation and warranty is made or repeated:</p> <ul style="list-style-type: none"><li>(i) contravene or constitute a default under any provision contained in any agreement, instrument, law, ordinance, decree, judgment, order, rule, regulation, licence, permit or consent by which each of the Companies or any of their assets is bound or which is applicable to each of the Companies or any of their assets and which in the case of the Project Documents, will have a Material Adverse Effect; or</li><li>(ii) cause any limitation on each of the Companies or the powers of their directors, whether imposed by or contained in its memorandum and articles of association or in any agreement, instrument, law, ordinance, decree, order, rule, regulation, judgment or otherwise, to be exceeded.</li></ul> <p>(d) No step has been taken by either of the Companies or, to the best of each of the Companies' knowledge, any of their shareholders nor has any legal proceeding including a winding up proceeding been commenced, instituted or threatened for the dissolution or for the appointment of a receiver, receiver and manager, liquidator, judicial manager or such similar officer of the Companies, or any of their assets which in</p>
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	<p>the case of any proceeding undertaken by a person other than the Companies or any of their shareholders, has not been discharged, suspended or set aside within thirty (30) days from the date of service of the notice for such proceeding;</p> <p>(e) No event has occurred which constitutes, or which with the giving of notice and/ or the lapse of time and/ or a relevant determination would constitute, a contravention of, or default under any agreement or instrument by which the Companies or any of their assets is bound or affected, being a contravention or default which would have a Material Adverse Effect;</p> <p>(f) No litigation, arbitration or administrative proceeding or claim or lawsuits by a governmental agency or body or other regulatory authority which would by itself or together with any other such proceeding or claim have a Material Adverse Effect is presently in progress or pending or, to the best of the knowledge, information and belief of each of the Companies, threatened or instituted against the Companies, or any of their assets and which has not been suspended, set aside, settled or had any defence entered in respect thereof by any Company, within thirty (30) days of the service or notification thereof on the relevant Company;</p> <p>(g) All necessary returns have been delivered by or on behalf of each of the Companies to the relevant taxation authorities and each of the Companies is not in default in the payment of any tax save and except for taxes that are being contested in good faith and by appropriate means and it is not required under the applicable law to pay the taxes pending determination of the matter and an adequate reserve has been set aside with respect to taxes which are not disclosed in each of the Companies' latest audited financial statements;</p> <p>(h) The audited financial statements of each of the Companies have been prepared on a basis consistently applied and in accordance with approved accounting standards in Malaysia and give a true and fair view of the results of its operations for each respective year and the state of affairs at that date, and in particular disclose all of its material liabilities (actual or contingent);</p> <p>(i) The information memorandum in relation to</p>
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	<p>the Sukuk Murabahah (“<b>IM</b>”), any projection and any information in whatever form, document, statement or instrument furnished or to be furnished by either of the Companies in connection with the Transaction Documents is true in all material respects and does not contain any statement or information that is false or misleading in any material respect and there is no material omission in respect thereof, and all expressions of expectations, intentions, belief and opinion contained therein were honestly made on reasonable grounds after due and careful query by the Companies;</p> <p>(j) Save and except as disclosed in the IM or as created or to be created or otherwise required under any Project Document or permitted under any Financing Document, each of the Companies is the legal and beneficial owner of all its assets and none of such assets is affected by any mortgage, charge, pledge, lien, caveat, title retention, right of set off or any security whatsoever, howsoever created or arising (“<b>Security Interest</b>”), and each of the Companies is not a party to, nor is it or any of their assets bound by any order, agreement or instrument under which either of the Companies is, or in certain events may be required to create, assume or permit to arise any Security Interest;</p> <p>(k) Each of the Companies is in compliance and will comply with all applicable laws, guidelines, permits and regulations, including but not limited to EMP and all relevant environmental laws, permits and guidelines where non-compliance would have a Material Adverse Effect;</p> <p>(l) There is no environmental or social claim outstanding, pending or likely to occur in respect of, or in connection with the Project, which would have a Material Adverse Effect on the implementation or operation of the Project in accordance with all applicable laws, guidelines, permits and regulations, including the International Finance Corporation guidelines;</p> <p>(m) No registration, recording, filing or notarisation of the Transaction Documents and no payment of any duty or tax and no other action whatsoever is necessary to ensure the legality, validity or enforceability in Malaysia of the liabilities and obligations of either of the Companies, or the rights of the Trustee, the Joint Lead Arrangers, the Joint</p>
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	<p>Lead Managers, the mandated lead arrangers of the Senior Loan Facilities, the Sukukholders, the senior hedging banks and the financiers of the Senior Loan Facilities under the Financing Documents in accordance with their terms, save and except for the registration of the Security Interests created or to be created under the Financing Documents with the Companies Commission of Malaysia, where applicable, the registration of the power of attorney contained in any of the Financing Documents with the High Court of Malaya, the registration of the charge over the lease/ sub-lease with the relevant land office (when created) and the payment of stamp duty on the relevant Transaction Documents;</p> <p>(n) Each of the Companies has fully disclosed in writing to the Trustee, the Facility Agent and the facility agents of the Senior Loan Facilities and the Junior Term Loan Facility all facts relating to the Companies which either of the Companies knows or should reasonably know and which are material for disclosure to the Trustee, the Joint Lead Arrangers, the Joint Lead Managers, the mandated lead arrangers of the Senior Loan Facilities, the senior hedging banks and the financiers of the Senior Loan Facilities in the context of the Transaction Documents;</p> <p>(o) The Issuer and/ or the Project Company, as the case may be, is the legal and beneficial owner of all its rights under the lease/ sub-lease agreement(s) which have been entered by it (and has not in any way disposed of, assigned, charged or divested itself of the same other than as required under the Project Documents or as permitted under the Financing Documents);</p> <p>(p) No Event of Default or event or circumstance which, with the passing of time, the giving of notice, the making of a determination or any combination thereof constituting an Event of Default has occurred and is continuing;</p> <p>(q) Each of the Transaction Documents to which it is a party constitute legal, valid, binding and enforceable obligations of such Company;</p> <p>(r) To the best of each of the Company's knowledge, no person has disputed, repudiated or disclaimed liability under any of the Project Documents or evidenced an intention to do so where, in each case, such action would have a Material Adverse Effect;</p>
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	<p>(s) There has been no material adverse change in the financial condition of each of the Companies since the date of its last audited financial statements;</p> <p>(t) The Sukuk Murabahah and the Senior Loan Facilities constitute direct, unconditional and secured obligations of the Issuer and the Project Company and at all times rank:</p> <p>(i) pari passu, without discrimination, preference, priority amongst themselves;</p> <p>(ii) at least pari passu with all other present and future unsecured and unsubordinated obligations of the Issuer,</p> <p>subject to those preferred by law;</p> <p>(u) Each copy of the Project Documents delivered to the Senior Intercreditor Agent is true and complete;</p> <p>(v) Save for the Project Documents delivered to the Senior Intercreditor Agent there is no other agreement in connection with the Project, or arrangements which amend, supplement or change the effect of any Project Document;</p> <p>(w) There is no material dispute in connection with any Project Document;</p> <p>(x) (i) The execution by each of the Companies of each Transaction Document to which it is a party constitutes, and the exercise by it of its rights and performance of its obligations under each Transaction Document to which it is a party will constitute, private and commercial acts performed for private and commercial purposes; (ii) it will not be entitled to claim immunity from suit, execution attachment or other legal process in any proceedings taken in Malaysia in relation to any Transaction Document to which it is a party; and (iii) its agreement not to claim any immunity to which it or its assets may be entitled is legal valid and binding under the laws of Malaysia;</p> <p>(y) No step has been taken by any of the Companies, or any of their shareholders or any other person on their behalf, or to the best of the knowledge of the Companies, by their creditors nor to the best of the knowledge of the Companies, have any legal proceedings or applications been started or</p>
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	<p>threatened under Section 176 of the Companies Act, 1965 against any of the Companies;</p> <p>(z) All Takaful/ insurances required under the Project Documents have been effected and are valid and binding and all Takaful contributions/ premiums due have been paid and, so far as the Companies are aware, nothing has been done or omitted to be done which has made or could make any such policy void or voidable; and</p> <p>(aa) Any other representations and warranties as advised by the legal counsel and mutually acceptable to the Companies, the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities.</p> <p>The representations and warranties shall be made on the date of the Financing Documents and repeated on each drawdown date, the first day of each interest period and each profit payment date and on each date of disbursement from the Escrow Account to the IDA (as defined in item 2(k) above).</p>
<p>(s) Event of Default (or enforcement event, where applicable)</p>	<p>To include, inter alia, the following:</p> <p>Applicable to both the Issuer and the Project Company – together (“<b>Companies</b>”)</p> <p>(a) Any Company fails to observe or perform their obligations (other than the payment obligations specified in items (t) and (u) below) under any of the Financing Documents in respect of the Senior Facilities (including, without limitation, any Financial Covenants (as defined in item 2(t) below)) or the hedging documents relating to the Senior Facilities or under any undertaking or arrangement entered into in connection therewith and, in the case of a failure which in the opinion of the Trustee or the agent as may be approved is capable of being remedied, the Issuer or the Project Company, as the case may be, does not remedy the failure within a period of thirty (30) days after the Issuer or the Project Company, as the case may be, became aware or having been notified by the Trustee or such agent of the failure;</p> <p>(b) Any Company fails to observe or perform any of their obligations under any of the Project Documents or under any undertaking or arrangement entered into in writing in connection therewith between any of the Companies and the relevant project counterparty and such failure would have a</p>

	<p>Material Adverse Effect, and in the case of a failure which in the opinion of the Trustee or the agent as may be approved is capable of being remedied, the Issuer or the Project Company, as the case may be, does not remedy the failure within the period to be agreed between the Companies, the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities;</p> <p>(c) An event of default under the Junior Term Loan Facility has occurred and/ or is continuing;</p> <p>(d) An encumbrancer takes possession of, or a trustee, receiver, receiver and manager or similar officer is appointed in respect of the whole or substantial part of the business or assets of the Issuer or the Project Company, or distress, legal process, sequestration or any form of execution is levied or enforced or sued out against the Issuer or the Project Company, or any Security Interest which may for the time being affect any substantial part of its assets becomes enforceable, and is not discharged, suspended or set aside by the Issuer or the Project Company within thirty (30) days from the date of such taking of possession or appointment or of service of notice of execution or enforcement;</p> <p>For the purpose of this item, references to "substantial" shall mean such value equivalent to or more than Ringgit Malaysia Fifty Million (RM50,000,000.00).</p> <p>(e) The Issuer or the Project Company fails to satisfy any judgment passed against it by any court of competent jurisdiction and no appeal against such judgment or no application for a stay of execution has been made to any appropriate appellate court within the time prescribed by law or such appeal or application for a stay of execution has been dismissed;</p> <p>(f) (i) Any step is taken for the winding up, dissolution or liquidation of the Issuer or the Project Company or (ii) a resolution is passed for the winding up of the Issuer or the Project Company or (iii) a petition for winding up is presented against the Issuer or the Project Company and the Issuer or the Project Company, as the case may be, has not taken any action in good faith to set aside such winding up petition within thirty (30) days from the date of service of such winding up petition or a winding up order has been made against the Issuer or the Project</p>
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	<p>Company, as the case may be Provided That this event of default shall not apply to any step taken or any petition for winding up, dissolution or liquidation which is frivolous or vexatious;</p> <p>(g) The Issuer or the Project Company changes or threatens to change the nature or scope of any part of its business, or suspends or threatens to suspend or cease or threatens to cease the operation of any part of its business which it now conducts directly or indirectly;</p> <p>(h) At any time it is illegal or unlawful for any of the Companies to perform any of their respective obligations under the Transaction Documents or at any time any of the provisions of the Transaction Documents is or becomes illegal, void, voidable or unenforceable;</p> <p>(i) All or any part of the assets, undertakings, rights or revenue of the Issuer or the Project Company are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any governmental body and such seizure, nationalisation, expropriation or compulsory acquisition would have a Material Adverse Effect;</p> <p>(j) Any of the Project Documents is terminated, or there has been a breach of any obligation or term by any project counterparty under any such Project Documents which would, in the opinion of the Trustee or the agent as may be approved have a Material Adverse Effect and which, if in the opinion of the Trustee or such agent is capable of remedy, has not been remedied to the satisfaction of the Trustee or such agent within the period to be agreed between the Companies, the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities;</p> <p>(k) Where there is a revocation, termination, withholding, invalidation or modification of any license, permit, authorisation, approval or consent that may impair or prejudice any of the Companies' ability to comply with the terms or perform any of its obligations under the Transaction Documents in accordance with the terms thereof and (in the case of Project Documents) the Trustee or the agent as may be approved is of the opinion that such event would have a Material Adverse Effect;</p> <p>(l) Any governmental approval required for the</p>
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	<p>construction or operation of the Project is revoked, suspended, terminated, withdrawn or has expired and is not renewed or otherwise ceases to be in full force and effect and the Trustee or the agent as may be approved is of the opinion that such event would have a Material Adverse Effect;</p> <p>(m) The Issuer or the Project Company repudiates any of the Transaction Documents to which it is a party or the Issuer or the Project Company does or causes to be done any act or thing evidencing an intention to repudiate any of the Transaction Documents to which it is a party and which, in relation to the Project Documents, such repudiation, act or thing evidencing an intention to repudiate would in the opinion of the Trustee or the agent as may be approved have a Material Adverse Effect;</p> <p>(n) Any event or events has or have occurred or a situation exists which gives reasonable grounds for the Trustee or the agent as may be approved to believe that such event would have a Material Adverse Effect, provided that no Event of Default shall be deemed to have occurred if such event or situation is in the opinion of the Trustee or such agent, capable of being remedied and the Issuer or the Project Company, as the case may be, remedies such event or situation to the satisfaction of the Trustee or such agent within a period of thirty (30) days (or such other longer remedy period as may be allowed under the Transaction Documents for the relevant event or situation) after the Issuer or the Project Company, as the case may be, became aware or having been notified in writing by the Trustee or such agent of the event or situation;</p> <p>(o) Suspension of construction work on the whole or any material part of the Project and such suspension either:</p> <p>(i) continues uncured or is not remedied to the satisfaction of the Trustee or the agent as may be approved for a period ending on the date falling on the earlier of (a) sixty (60) days prior to the end of any cure or remedy period relating to such suspension expressly provided for under the relevant Project Document and (b) one hundred and twenty (120) days from the date of such suspension, unless the Project Company has demonstrated to the satisfaction of the</p>
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	<p>Trustee or such agent (acting in consultation with the ITA) that (1) the Project Company is actively taking steps to procure an extension of time under the PPA to avoid triggering an event of default under the PPA and (2) the COD will be achieved within the time for which extension is sought; or</p> <p>(ii) in the Trustee's or such agent's opinion is likely to delay the achievement of:</p> <p>(1) the Initial Operation Date (as defined in the PPA) beyond 30 April 2015; or</p> <p>(2) the COD beyond the Scheduled COD, unless the Project Company has demonstrated to the satisfaction of the Trustee or the agent as may be approved (acting in consultation with the ITA) that (1) the Project Company is actively taking steps to procure an extension of time under the PPA to avoid triggering an event of default under the PPA and (2) the COD will be achieved within the time for which extension is sought;</p> <p>(p) Any representation or warranty made by the Issuer or the Project Company under any provision of the Financing Documents to which it is a party or any information, notice, opinion or certificate or other document delivered pursuant to the terms of the Financing Documents proves to have been incorrect or misleading in any material respect as of the date at which such representation or warranty is made or repeated, or the date at which such information, notice, opinion or certificate or other document is delivered (in each case) by reference to the facts and circumstances existing at such date;</p> <p>(q) For whatever reason any of the Security Interests created under any of the Financing Documents cannot be perfected or is in jeopardy or rendered invalid or defective in any way or ceases to have first ranking priority (save and except for those which are preferred by law);</p>
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	<p>(r) The occurrence of total loss or destruction of, or damage to the whole (and not part only) of the Power Facility (as defined in item 2(v) below) or any event or occurrence that renders the whole (and not part only) of the Power Facility permanently unfit for any economic use and in each case, beyond economic repair or reinstatement of such thresholds to be agreed with the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities or so declared by the relevant insurers;</p> <p>(s) An environmental or social claim is brought against the Issuer and/ or the Project Company which individually or in aggregate results in Material Adverse Effect on the implementation of the Project in accordance with applicable environmental standards and regulations;</p> <p>(t) The Issuer or the Project Company, fails to pay any amount due from it under the Sukuk Murabahah, any principal amount due from it under the Senior Loan Facilities or any amount due from it under the hedging documents in respect of the Senior Facilities (in each case) on the due date or, if so payable, on demand;</p> <p>(u) The Issuer or the Project Company fails to pay any amount (other than the amounts specified in item (t) above) due from it under any of the Financing Documents on the due date or, if so payable, on demand and such failure to pay is not remedied within three (3) Business Days from the date such amount is due or demanded;</p> <p>(v) Any indebtedness for borrowed moneys of the Issuer or the Project Company exceeding (in aggregate) a threshold to be agreed becomes due or payable or capable of being declared due or payable prior to its stated maturity or any guarantee or similar obligations of the Issuer or the Project Company, as the case may be, is not discharged at maturity or when called and such declaration of indebtedness being due or payable or such call on the guarantee or similar obligations is not discharged or disputed in good faith by the Issuer or the Project Company, as the case may be within thirty (30) days from the date of such declaration or call;</p> <p>(w) The Issuer or the Project Company convenes a meeting of its creditors or proposes or</p>
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	<p>makes any arrangement including any scheme of arrangement or composition or begins negotiations with its creditors, or takes any proceedings or other steps, with a view to a rescheduling or deferral of all or any part of its indebtedness 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 or makes 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 or the agent as may be approved, unless during or following such reconstruction the Issuer or the Project Company, as the case may be, becomes or is declared to be insolvent) or where a scheme of arrangement under Section 176 of the Companies Act 1965 has been instituted against the Issuer or the Project Company;</p> <p>(x) Anything analogous to any of the events specified in items (d), (f), (w) or (aa) occurs under the laws of any applicable jurisdiction;</p> <p>(y) The Issuer or the Project Company is deemed unable to pay any of its debts within the meaning of Section 218(2) of the Companies Act 1965 or becomes unable to pay any of its debts generally as they fall due or suspend or threaten to suspend making payments with respect to all or any class of its debts;</p> <p>(z) At any time there shall occur any change in any applicable law, order, decree or regulation (including any environmental laws or any change in the terms and conditions attaching to any environmental licences taking into account any moratorium, waiver or grace period granted in respect of such change) which has a Material Adverse Effect;</p> <p>(aa) TNB (and pre-Project Completion (as defined in item 2(v) below), Alstom Holdings, Alstom Power Systems SA or Alstom Services Sdn Bhd):</p> <ul style="list-style-type: none"><li>(i) is wound up, dissolved or liquidated, other than voluntary dissolution or liquidation as part of a reorganization or re-incorporation;</li><li>(ii) applies for or consents to a receiver, manager, custodian, trustee or liquidator being appointed over or taking possession of all of its assets;</li><li>(iii) makes a general assignment or an</li></ul>
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	<p>arrangement or composition with or for the benefit of all its creditors;</p> <p>(iv) commences a voluntary case or files a petition seeking to take advantage of any law relating to bankruptcy, insolvency, insolvent reorganization of its debts, winding-up of its debts;</p> <p>(v) fails to set aside any petition filed against it in an involuntary case under any bankruptcy or similar law and no appeal against such petition has been made to any appropriate appellate court within the time prescribed by law; and</p> <p>(vi) acquiesces in writing to any petition filed against it in an involuntary case under any bankruptcy or similar law,</p> <p>unless, in the case of either Alstom Power Systems SA or Alstom Services Sdn Bhd, the Companies provide to the Trustee or the agent as may be approved, within thirty (30) days of the occurrence of any of the foregoing events relating to the Alstom entities, a plan (in form and substance satisfactory to the Trustee or such agent) for the appointment of a replacement entity satisfactory to the Trustee or such agent to complete their portion of the Project; or</p> <p>(bb) If the final recomputed CRF (as defined in the PPA) as agreed with TNB or, as the case may be, determined by TNB or the Energy Commission of Malaysia results in the Base Case FSCR of less than 1.25x.</p> <p>Applicable to the Project Company only</p> <p>(a) Where:</p> <p>(i) the generation licence is terminated, revoked or ceases to be in full force and effect without a substitute licence being issued therefor within one hundred eighty (180) days of such termination, revocation or cessation; or</p> <p>(ii) the generation licence is modified and the effect of such modification would be to prevent the implementation or carrying out of the Project or in the opinion of the Trustee or the agent as may be approved would have a Material Adverse Effect; or</p>
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	<ul style="list-style-type: none"><li data-bbox="842 217 1398 763">(iii) any condition or provision of the generation licence is not complied with and such non-compliance has not been remedied or waived by the Energy Commission in writing (in each case) within thirty (30) days of its occurrence unless the Energy Commission has permitted the Project Company to remedy such non-compliance and the Project Company has demonstrated to the satisfaction of the Senior Intercreditor Agent by the thirtieth (30<sup>th</sup>) day of its occurrence, that it will remedy such non-compliance within ninety (90) days of its occurrence or such other cure period as may be allowed by the Energy Commission;</li><li data-bbox="735 797 1398 913">(b) Failure of the Project Company to achieve COD within four (4) months from Scheduled COD and in the manner outlined in the PPA, unless:<ul style="list-style-type: none"><li data-bbox="842 947 1398 1160">(i) the Project Company has demonstrated to the satisfaction of the Trustee or the agent as may be approved (acting in consultation with the ITA) that the COD will be achieved within six (6) months from Scheduled COD; or</li><li data-bbox="842 1193 1398 1771">(ii) the Project Company has demonstrated to the satisfaction of the Trustee or the agent as may be approved (acting in consultation with the ITA) that (i) the Project Company is actively taking steps to procure an extension of time under the PPA to avoid triggering an event of default under the PPA and (ii) the COD will be achieved within the time for which extension is sought, provided that if by the sixth (6<sup>th</sup>) month after Scheduled COD, the Project Company has not been able to procure an extension of time under the PPA and COD is still not achieved, it shall be an Event of Default under the Financing Documents;</li></ul></li><li data-bbox="735 1805 1398 1957">(c) If the Project Company has obtained an extension of time under the PPA pursuant to item (b)(ii) above, failure of the Project Company to achieve COD by the date falling two (2) months from such extended date; or</li><li data-bbox="735 1991 1398 2018">(d) If TNB or the Energy Commission of</li></ul>
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	<p>Malaysia exercises its step-in rights under the PPA as a result of the Project Company's default under the PPA, or evinces an intention to exercise such step-in rights.</p> <p>On and at any time after the occurrence of an Event of Default which is continuing, and so long as the Sukukholders have not waived such Event of Default according to the principles of the Intercreditor Deed, the Trustee may and shall, if so directed by the Sukukholders by way of an extraordinary resolution, by written notice to the Issuer, declare that an Event of Default has occurred and that all amounts under the Sukuk Murabahah then outstanding be immediately due and payable whereupon they shall become immediately due and payable.</p> <p>On and at any time after the occurrence of an Event of Default which is continuing, and so long as the Sukukholders and/or the financiers of the Senior Loan Facilities have not waived such Event of Default according to the principles of the Intercreditor Deed, the Sukukholders, the financiers of the Senior Loan Facilities and the senior hedging banks may, upon reaching the level of consents as required by the Intercreditor Deed, exercise the following remedies:</p> <ul style="list-style-type: none"> <li>(a) exercise their rights under the Financing Documents to step-in to complete and/ or operate the Project;</li> <li>(b) enforce security and/ or exercise any and all such other rights granted to the Sukukholders and the financiers of the Senior Loan Facilities under the security documents;</li> <li>(c) demand that the Sponsor and the Additional Sponsor (if applicable) immediately accelerates all its Equity contribution such that the full amount of Equity committed to the Project and outstanding is contributed immediately (without prejudice to the lenders of the Junior Term Loan Facility's right to demand the Sponsor and the Additional Sponsor (if applicable) to contribute such proportion of its Equity contribution to repay the then outstanding Junior Term Loan Facility).</li> </ul>
(t) Covenants	<p><b><u>Financial Covenants</u></b></p> <p>To include, inter alia, the following:</p> <ul style="list-style-type: none"> <li>(a) Maximum Senior DE Ratio of 80:20;</li> <li>(b) Minimum FSCR (semi-annual) of 1.05x.</li> </ul> <p><b><u>Information Covenants</u></b></p>

	<p>To include, inter alia, the following:</p> <ul style="list-style-type: none"><li data-bbox="735 309 1388 398">(a) The Issuer and/ or the Project Company shall deliver to the Trustee or the agent as may be approved the following:<ul style="list-style-type: none"><li data-bbox="842 434 1388 1196">(i) 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 years) copies of the Issuer's, the Project Company's and the Sponsor's consolidated financial statements for that financial year which shall contain the comprehensive income statements, statements of financial position and balance sheets of the Issuer, the Project Company and the Sponsor and which are audited and certified by the reputable auditors or the reputable firm of auditors for the time being appointed by the Issuer, the Project Company and the Sponsor, as the auditor of the Issuer, the Project Company and the Sponsor, as the case may be ("<b>Auditors</b>") (provided that the Sponsor's financial statements are only required to be provided prior to the later of (i) the full repayment of the Junior Term Loan Facility and (ii) COD);</li><li data-bbox="842 1227 1388 1868">(ii) As soon as they become available (and in any event within ninety (90) days after the end of the first half of its financial year) copies of the Issuer's, the Project Company's and the Sponsor's unaudited half yearly consolidated financial statements for that period which shall contain the comprehensive income statements, statements of financial position and balance sheets of the Issuer, the Project Company and the Sponsor, certified by at least one director of each of the Issuer, the Project Company and the Sponsor, as the case may be (provided that the Sponsor's financial statements are only required to be provided prior to the later of (i) the full repayment of the Junior Term Loan Facility and (ii) COD);</li><li data-bbox="842 1899 1388 2016">(iii) Simultaneously with (i) and (ii), the FSCR calculation for the balance sheet closing date of the relevant financial statements. The first of the</li></ul></li></ul>
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	<p>FSCR calculation will be based on the audited, or as the case may be, unaudited financial statements of the Issuer and the Project Company (on a consolidated basis) for the period ending on the last day of the first semi-annual period post-COD. The FSCR calculation shall be certified by at least one director of each of the Issuer and the Project Company and shall be certified by the Auditors if it is calculated on the basis of audited financial statements;</p> <p>(iv) Simultaneously with (i) and (ii), the Senior DE Ratio calculation for the balance sheet closing date of the relevant financial statements. The first of such Senior DE Ratio calculation will be based on the audited or, as the case may be, unaudited financial statements of the Issuer and the Project Company (on a consolidated basis) for the period ending on the last day of the first semi-annual period post-COD. The Senior DE Ratio calculation shall be certified by at least one director of each of the Issuer and the Project Company and shall be certified by the Auditors if it is calculated on the basis of audited financial statements;</p> <p>(v) Promptly, such additional financial or other information relating to the Issuer's, the Project Company's or the Sponsor's business, the Project and its operations as the Trustee or the Senior Intercreditor Agent (for and on behalf of the Sukukholders, financiers of the Senior Loan Facilities and senior hedging banks) may from time to time reasonably request in order to discharge their duties and obligations under the Financing Documents and provided such disclosure is not prohibited by law (and in the case of the Sponsor, provided such disclosure is not prohibited by contract also), (provided that the Sponsor's financial and other information under this paragraph are only required to be provided prior to the later of (i) the full repayment of the Junior Term Loan Facility and (ii) COD); and</p> <p>(vi) Promptly, all notices or other documents received by the Issuer and the Project Company from any of</p>
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	<p>their respective shareholders or creditors the contents of which would have a Material Adverse Effect, and a copy of all documents dispatched by the Issuer and the Project Company to their respective shareholders (or any class of them) in their capacity as shareholders or their creditors generally at the same time as these documents are dispatched to these shareholders or creditors;</p> <p>(b) The Issuer and/ or the Project Company shall, within fourteen (14) days, notify the Trustee or the agent as may be approved of any change in the Issuer's and/ or the Project Company's board of directors;</p> <p>(c) The Issuer and/ or the Project Company shall promptly notify the Trustee or the agent as may be approved of any change in the Issuer's and/ or the Project Company's condition (financial or otherwise) or any circumstances that have occurred that would materially prejudice the Security Interest given under the Financing Documents and of any litigation or other proceedings of any nature whatsoever being threatened or initiated against the Issuer and/ or the Project Company before any court or tribunal or administrative agency which would have a Material Adverse Effect;</p> <p>(d) Upon the Issuer and/ or the Project Company or any of their directors becoming aware of the same, the Issuer and/ or the Project Company shall promptly give notice in writing to the Trustee or the agent as may be approved of the occurrence of any Event of Default or Potential Event of Default or that such other right or remedy under the terms, provisions and covenants of the Transaction Documents have become immediately enforceable and it shall take all reasonable steps and/ or such other steps as may reasonably be requested by the Trustee or such agent to remedy and/ or mitigate the effect of the Event of Default;</p> <p>(e) The Issuer and/ or the Project Company shall deliver to the Trustee or the agent as may be approved, the Issuer's and the Project Company's proposed annual budgets for information or approval, as the case may be, under circumstances to be agreed with the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities;</p> <p>(f) The Issuer and/or the Project Company shall</p>
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	<p>provide to the ITA the final Shared Facilities Manual for approval by the ITA upon such timeframe to be agreed;</p> <p>(g) The Issuer and/ or the Project Company shall provide to the Trustee or the agent as may be approved at least on an annual basis, a certificate signed by a director of each of the Issuer and the Project Company confirming that:</p> <p>(i) The Issuer and the Project Company has observed, performed and complied with all its covenants, representations, warranties and other relevant obligations under the Transaction Documents save, in relation to the Project Documents such confirmation shall relate to its obligations where the non-observance, non-performance or non-compliance therewith would have a Material Adverse Effect;</p> <p>(ii) No Event of Default or Potential Event of Default has occurred since the date the Sukuk Murabahah were issued, the Senior Loan Facilities were first drawn or the date of the previous certificate (as the case may be), and if a Event of Default or Potential Event of Default has occurred or did exist since the date stipulated above, the Issuer shall provide the details of such Event of Default or Potential Event of Default; and</p> <p>(iii) the Issuer and the Project Company is compliant with EMP and all relevant material environmental laws, permits, guidelines and regulations;</p> <p>(h) The Issuer and/ or the Project Company shall, promptly upon becoming aware of any litigation involving itself which would have a Material Adverse Effect, inform the Trustee or the agent as may be approved of the same (including reasonable details thereof);</p> <p>(i) The Issuer and/ or the Project Company shall, promptly upon becoming aware of any environmental proceeding, claim, liability or regulatory action which would have a Material Adverse Effect, inform the Trustee or the agent as may be approved of the same (including reasonable details thereof);</p> <p>(j) The Issuer and/ or the Project Company shall, promptly upon becoming aware of any</p>
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	<p>events resulting in the release of environmental contaminants, death or multiple injury, significant community or worker-related protest which would have a Material Adverse Effect, inform the Trustee or the agent as may be approved of the same (including reasonable details thereof);</p> <p>(k) The Issuer and/ or the Project Company will:</p> <p>(i) during normal business hours following the occurrence of an Event of Default; or</p> <p>(ii) otherwise upon seven (7) days' prior written notice during normal business hours;</p> <p>cause to be made available for inspection by the Trustee or the agent as may be approved, the Facility Agent, the Sukukholders, the facility agents and financiers of the Senior Loan Facilities and the senior hedging banks or their representatives:</p> <p>(1) at the Issuer's and/ or the Project Company's offices, copies of all Project Documents and books, each notice to shareholders issued by the Issuer and the Project Company, the Issuer's and the Project Company's annual balance sheet and profit and loss statement sent to the Trustee or the agent as may be approved; and</p> <p>(2) access to the Project Site (as defined in item 2(v) below);</p> <p>(l) The Issuer and/ or the Project Company will promptly give to the Trustee or the agent as may be approved a certified copy of any notice or document relating, inter alia, to the Issuer's and the Project Company's rights and obligations under the Project Documents and/ or the Takaful/ insurances, received or given by any of the Companies from or to any party (including any governmental authority and/ or the EPC contractor) under the Project Documents and/ or the Takaful/ insurances where such notice or document concerns any matter which would have a Material Adverse Effect;</p> <p>(m) The Issuer and/ or the Project Company will immediately notify the Trustee or the agent as may be approved in writing, as soon as the Issuer and/ or the Project Company becomes aware:</p>
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	<ul style="list-style-type: none"><li>(i) of any change in the withholding tax position or tax jurisdiction of any of the Companies;</li><li>(ii) of any substantial change in the nature of the business of any of the Companies;</li><li>(iii) of any change in the usage of the proceeds arising from the Sukuk Murabahah and the Senior Facilities, the details of such usage;</li><li>(iv) of any other matter or information that may materially prejudice the interests of the Sukukholders and the financiers of the Senior Loan Facilities under the Transaction Documents;</li><li>(v) of any circumstances that has occurred that would materially prejudice each of the Issuer and/ or the Project Company or the Security Interests created under the Financing Documents; and</li><li>(vi) of the occurrence of any event that has caused or could cause, one or more of the following:<ul style="list-style-type: none"><li>(1) any amount secured or payable under the Senior Facilities to become immediately payable;</li><li>(2) the securities created for the Senior Facilities to become immediately enforceable; or</li><li>(3) any other right or remedy under the terms, provisions or covenants of the Senior Facilities to become immediately enforceable.</li></ul></li></ul> <p>(n) During the construction period, the Issuer and/ or the Project Company shall on a monthly basis submit to the Trustee or the agent as may be approved a summary of the progress of work done, including (a) a quarterly report prepared by the ITA on amongst others, the progress of construction, the construction budget, (b) for each semi-annual report delivered at the end of each semi-annual period of each financial year, details of compliance with applicable environmental and social standards and the EMP and details of action taken to rectify</p>
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	<p>non-compliance (together with a report of the ITA confirming the same) in respect of such semi-annual period, and (c) all such matters as are to be undertaken by the ITA based on the terms of their appointment;</p> <p>(o) The Issuer and/ or the Project Company shall promptly inform the Trustee or the agent as may be approved of:</p> <p>(i) any change (or changes) in the Project Cost, which solely or in aggregate exceeds US\$5 million (or its equivalent in other currencies) from the original estimated Project Cost; or</p> <p>(ii) any variation orders which may result in a delay of either (i) the Initial Operation Date (as defined in the PPA) beyond 30 April 2015 or (ii) the COD beyond the Scheduled COD;</p> <p>(p) During the operations period, the Project Company and/or the Issuer shall on an annual basis submit to the Trustee or the agent as may be approved a copy of an annual audited environment report as submitted to the relevant governmental authorities;</p> <p>(q) Upon agreement with the operator of (i) any operation and maintenance cost budget and (ii) any reconciliation of such budget with actual operation (in each case) prepared by the operator under the O&amp;M Agreement, the Issuer and/or the Project Company shall deliver such agreed budget and reconciliation to the Trustee or the agent as may be approved;</p> <p>(r) The Companies shall deliver to the Trustee or the agent as may be approved as soon as reasonably practicable, the Input Data (as defined in the PPA) which has been certified by the ITA for the purposes of the Financial Model Input Adjustment Event (as defined in the PPA); and</p> <p>(s) Any other covenants as advised by the legal counsel and mutually acceptable to the Companies, the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities.</p> <p><b><u>Shareholding Covenant</u></b></p> <p>The Sponsor to hold, either directly or indirectly, minimum:</p>
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	<p>(a) eighty per centum (80%) of the ordinary share capital in the Project Company until COD;</p> <p>(b) fifty one per centum (51%) of the ordinary share capital and management control in the Project Company post-COD.</p> <p>Any new shareholder proposed at any time shall not be acceptable unless it has satisfied the KYC requirements of the financiers of the Senior Loan Facilities.</p> <p>In addition to the above requirement, any new shareholder proposed at any time before the later of (i) the full repayment of the Junior Term Loan Facility and (ii) COD shall not be acceptable unless:</p> <p>(i) the Sponsor agrees to retain all its obligations under the Financing Documents notwithstanding any transfer to such proposed new shareholder; or</p> <p>(ii) the Sponsor requests the financiers of the Senior Loan Facilities to transfer the pro rata proportion of its obligations under the Financing Documents to such proposed new shareholder and the financiers of the Senior Loan Facilities are satisfied with the creditworthiness of such proposed new shareholder. Such new shareholder to whom the pro rata proportion of the obligations of the Sponsor under the Financing Documents are to be transferred is referred to as the <b>"Additional Sponsor"</b>.</p> <p>Project Company to hold one hundred per centum (100%) interest in the Issuer at all times.</p> <p><b><u>Positive Covenants</u></b></p> <p>To include, with appropriate thresholds, exclusions and carve outs for each of such positive covenants to be negotiated and agreed in the Financing Documents, inter alia, the following:</p> <p>Applicable to both the Issuer and the Project Company – together ("<b>Companies</b>")</p> <p>(a) The Issuer and the Project Company shall maintain or cause to be maintained in full force and effect and shall obtain and promptly renew from time to time and shall comply with all relevant authorisations, consents, rights, licenses, approvals and permits (in each case, governmental or otherwise) and environmental laws and will promptly obtain and/ or renew any further authorisations, consents, rights, licenses,</p>
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	<p>approvals and permits (in each case, governmental and otherwise) which is or may become necessary:</p> <ul style="list-style-type: none"><li>(i) to enable them to own their assets;</li><li>(ii) to carry on their business, where the absence of such authorisations, consents, rights, licences, approvals and permits will have a Material Adverse Effect; and</li><li>(iii) for the entry or performance of their obligations under the Transaction Documents to which each of them is a party or to ensure the legality, validity, enforceability, admissibility in evidence of the obligations of the Companies or of the priority or rights of the Sukukholders, the financiers of the Senior Loan Facilities and the senior hedging banks under the Transaction Documents provided that this shall not require the Issuer or the Project Company to obtain any authorizations, consents, rights, licenses, approvals and permits (governmental or otherwise) that are required to be personally obtained by the Sukukholders, the financiers of the Senior Loan Facilities, the senior hedging banks or any other party under the Transaction Documents (other than the Companies and the Sponsor);</li></ul> <p>(b) The Companies shall at all times upon request by the Trustee or the agent as may be approved execute or cause to be executed all such further documents and do all such further acts, as are reasonably necessary to give further effect to the terms and conditions of (i) the Financing Documents and (ii) the Project Documents where failure by the Companies to execute such documents or do such acts would have a Material Adverse Effect;</p> <p>(c) The Companies shall exercise reasonable diligence in carrying out their business and affairs in a proper and efficient manner and in accordance with sound financial and commercial standards and practices of the power industry and in accordance with its Memorandum and Articles of Association;</p> <p>(d) The Companies shall duly perform and observe all their respective covenants, conditions, provisions and obligations</p>
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	<p>contained in the Transaction Documents to which they are a party provided that in relation to the Project Documents, no breach of this clause will arise from the failure of the Companies to perform any obligation thereunder if the non-performance thereof would not have a Material Adverse Effect;</p> <p>(e) The Companies shall procure that the Project is constructed, operated and maintained in accordance with the Project Documents, good industry practice and all applicable laws;</p> <p>(f) The Companies shall:-</p> <ul style="list-style-type: none"><li>(i) maintain Takaful/insurance in accordance with an insurance plan to be mutually agreed between the Companies, the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities before signing (or, as the case may be, the Trustee, the Facility Agent, facility agents of the Senior Loan Facilities or the agent as may be approved after signing) as long as there are monies outstanding under the Senior Facilities;</li><li>(ii) not do to the Project, or any part thereof, or bring or keep anything therein or thereon, or permit any other act, matter or thing to happen, whereby any Takaful/ insurances required to be maintained may be rendered void, voidable or incapable of being effected or maintained or render any sum paid out thereunder repayable in whole or in part, nor do or omit to do any other act nor permit any other act to be done or omitted to be done whereby any such Takaful/ insurances or any provision thereof may be suspended, impaired or defeated;</li><li>(iii) cause to be endorsed, the interest of the Security Agent (without liability for premiums) as co-insured and loss payee on the Takaful/ insurances required to be maintained;</li><li>(iv) if so requested by the Trustee or the agent as may be approved, deposit the original policy documents and the receipt for the current premiums with the Trustee or such agent PROVIDED that where required for the purposes</li></ul>
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	<p>of making any claim thereunder, the Trustee or such agent shall forthwith return such originals to the Companies;</p> <p>(g) The Companies shall appoint and maintain the Auditors (or in the event of any change thereof, appoint and maintain such firm of independent certified public accountants acceptable to the Trustee or the agent as may be approved);</p> <p>(h) The Companies shall ensure that the Issuer and/ or the Project Company, as the case may be, shall immediately notify the Trustee or the agent as may be approved in writing in the event that either of the Companies is unable to fulfil or comply with any of the provisions of the Transaction Documents (which in the case of the Project Documents, non-compliance thereof would have a Material Adverse Effect);</p> <p>(i) Each of the Companies shall keep proper books and accounts, maintain their records and prepare their financial statements on a basis consistently applied in accordance with approved accounting standards in Malaysia and those financial statements shall give a true and fair view of the results of the operations of each of the Companies 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 Issuer and the Project Company, as the case may be and shall provide the Trustee and any person appointed by it access to such books and accounts to the extent permitted by law;</p> <p>(j) The Issuer and/ or the Project Company shall as soon as practicable, deliver to the Trustee or the agent as may be approved a certified copy each of any Project Document entered into subsequent to the execution of the Financing Documents;</p> <p>(k) The Companies shall open and maintain the required Designated Accounts that are Shariah-compliant with a financial institution that is acceptable to the Trustee or the agent as may be approved; pay all relevant amounts into such accounts, make all payments from such accounts only as permitted under the Financing Documents, and comply with the terms and conditions of the Financing Documents in all matters concerning the Designated Accounts. Further, the Issuer and/ or the Project</p>
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	<p>Company shall forthwith notify the Trustee or such agent in writing of any change in the authorised signatories to any of the Designated Accounts;</p> <p>(l) Each of the Companies shall comply with all applicable laws and regulations provided that no breach of this clause will arise from the failure by any of the Companies to comply with any such law or regulation if the failure does not have a Material Adverse Effect;</p> <p>(m) Each of the Companies will promptly pay all taxes and other government charges when due and before any penalty or interests accrue to them save for those taxes and/ or, charges and/ or penalties and/ or interests accrued on such taxes/ charges being contested in good faith by the Issuer and/ or the Project Company, as the case may be, and by appropriate means and it is not required under the applicable law to pay such taxes pending determination of the matter and for which the Issuer and/ or the Project Company, as the case may be, has adequately set aside or reserved a sum of money therefore;</p> <p>(n) Each of the Companies will do all acts and take all steps necessary or expedient to safeguard and preserve their assets (whether in relation to the Project or otherwise) and each part thereof and the title and ownership thereto (other than any transfer of assets required under the PPA or any transfer permitted under the Financing Documents) and the Security Interest created pursuant to the Financing Documents;</p> <p>(o) Each of the Companies will remain resident, for the purposes of the taxation jurisdiction, in Malaysia;</p> <p>(p) Each of the Companies shall cause all advances, if any, made by its directors, shareholders and/ or its related company or associated company to be subordinated to the Senior Facilities and no repayment and/ or prepayment of such advance shall be made unless otherwise provided and permitted under the Financing Documents;</p> <p>(q) The Companies shall:</p> <p>(i) ensure that the environmental management plan stated, and the environmental mitigation and monitoring measures recommended, in the EIA are followed in the design,</p>
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	<p>construction, implementation, operation and maintenance of the Project;</p> <p>(ii) comply with all relevant material environmental laws, permits, guidelines and regulations; and</p> <p>(iii) take all necessary mitigation measures specified in the EIA to minimize the environmental impact of the Project;</p> <p>(r) The Companies shall ensure the Senior Facilities, subject to those preferred by law, at all times rank:</p> <p>(i) pari passu, without discrimination, preference, priority amongst themselves; and</p> <p>(ii) at least pari passu with all other present and future unsecured and unsubordinated obligations of the Companies.</p> <p>Applicable to the Issuer only</p> <p>(a) The Issuer shall ensure that the Senior Facilities constitute direct, unconditional and secured obligations of the Issuer;</p> <p>(b) The Issuer will comply with its obligations under the Central Securities Depository and Paying Agency Rules and, without prejudice to the generality of the foregoing, at all times maintain a Paying Agent with a specified office in Malaysia;</p> <p>(c) The Issuer will make available to the Trustee particulars of all ratings on the Sukuk Murabahah by the rating agency acceptable to the Trustee;</p> <p>(d) The Issuer will procure that the Paying Agent will notify the Trustee in writing in the event that the Paying Agent does not receive payment from the Issuer on the due dates as required under the Trust Deed and the terms and conditions of the Sukuk Murabahah;</p> <p>(e) The Issuer shall promptly comply with all applicable provisions of the CMSA and/ or the notes, circulars, conditions or guidelines issued by the SC, BNM and any other relevant regulatory authorities from time to time in relation to the Sukuk Murabahah; and</p> <p>(f) The Issuer will ensure that the terms in the</p>
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	<p>Financing Documents of the Sukuk Murabahah do not contain any matter which is inconsistent with the provisions of the IM unless it has obtained the approval of the Sukukholders by way of a special resolution or the written consent of the Trustee (which approval 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 stated in item (c) below (under the Negative Covenants that applicable to both the Issuer and the Project Company) and item (a) below (under the Negative Covenants that applicable to the Issuer only);</p> <p>Applicable to the Project Company only</p> <p>(a) The Project Company shall maintain or cause to be maintained in full force and effect and shall comply with the generation licence for the purposes of the Project; and</p> <p>Such other undertakings as may be advised by the legal counsel and mutually acceptable to the Companies and the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities with appropriate thresholds, exclusions and carve outs for each of such positive covenants to be negotiated and agreed in the Financing Documents.</p> <p><b><u>Negative Covenants</u></b></p> <p>To include, with appropriate thresholds, exclusions and carve outs for each of such negative covenants to be negotiated and agreed in the Financing Documents, inter alia, the following:</p> <p>Applicable to both the Issuer and the Project Company – together (“<b>Companies</b>”)</p> <p>Save and except with the written consent from the Trustee or the agent as may be approved:</p> <p>(a) the Companies shall not create or permit to exist any Security Interest on any of their present or future assets, other than (i) any liens arising in the ordinary course of business by operation of law and not by way of contract, (ii) any Security Interest which has been consented to in writing by the Trustee or the agent as may be approved, (iii) any Security Interest created over specific assets being financed by hire purchase or leasing facilities up to the aggregate of Ringgit Malaysia Ten Million (RM10,000,000.00), and (iv) those created pursuant to the Project Documents or those which are permitted under the Financing</p>
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	<p>Documents;</p> <p>(b) the Companies shall not sell, transfer or lease or otherwise dispose any assets, save and except (i) where the sale, transfer or lease is solely for the purposes of facilitating Shariah concepts used in Islamic financing facilities granted to the Issuer, (ii) any sale or disposal of any asset which is in the ordinary course of business and on ordinary commercial terms on the basis of arm's length transaction and which will not have a Material Adverse Effect, (iii) any sale or disposal of any assets due to obsolescence and/or deterioration and which will not have a Material Adverse Effect, (iv) any termination of the lease/ sub-lease over the Project Site if such lease/ sub-lease is substituted by legal and beneficial ownership as required under the Project Documents and permitted under the Financing Documents or (v) where required under the Project Documents or permitted under the Financing Documents;</p> <p>(c) the Companies shall not permit any amendment, supplement or variation to its Memorandum and Articles of Association in a manner which may be materially prejudicial to the interests of the Sukukholders which is inconsistent with the provisions of the Transaction Documents;</p> <p>(d) the Companies shall not reduce or in any way whatsoever alter except increase, its authorised or paid-up share capital whether by varying the amount, structure or value thereof or the rights attached thereto or by converting any of its share capital into stock, or by consolidating, dividing or sub-dividing all or any of its shares;</p> <p>(e) the Companies will not incur or permit to exist any financial indebtedness other than (i) the financial indebtedness under the Transaction Documents; and (ii) the Permitted Indebtedness (as defined in item 2(v) below);</p> <p>(f) the Companies shall not enter into any derivative transaction other than the permitted hedging transactions under the senior hedging policy or the junior hedging policy;</p> <p>(g) the Companies shall not enter into a transaction, whether directly or indirectly with interested persons (including a director, substantial shareholder or persons connected with them) unless (i) such</p>
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	<p>transaction shall be on terms that are no less favourable to the relevant Companies than those which could have been obtained in a comparable transaction from persons who are not interested persons; and (ii) with respect to transactions involving an aggregate payment or value equal to or greater than a threshold to be agreed, the relevant Company obtains certification from an independent adviser that the transaction is carried out on fair and reasonable terms, provided that the relevant Company certifies to the Trustee or the agent as may be approved that the transaction complies with paragraph (i), that the relevant Company has received the certification referred to in paragraph (ii) (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. This paragraph (g) shall not apply to the Turnkey Contract, the O&amp;M Agreement, the Shared Facilities Agreement and any other Project Documents which have been or are to be entered into between the Companies (or any of them) and any such interested persons. Any inter-company advances permitted under the Financing Documents shall be excluded from this provision;</p> <p>(h) save and except for any inter-company advances to be made between the Companies which are permitted under the Financing Documents, the Companies shall not obtain or permit to exist any financing/ loans or advances from its shareholders, unless these financing/ loans and advances are unsecured and subordinated to the Senior Facilities;</p> <p>(i) the Companies shall not make any prepayment of or make any payment of interest on any loans or indebtedness or advances from its directors or its related company or associated company unless otherwise provided and required under the Project Documents or as permitted under the Financing Documents;</p> <p>(j) except otherwise contemplated in the Transaction Documents, the Companies shall not enter into any agreement with its shareholders, subsidiaries or associated companies unless such agreement is entered into:</p> <p>(i) in the ordinary course of its business;</p>
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	<p>(ii) on an arms-length basis; and</p> <p>(iii) would not have a Material Adverse Effect on the Issuer and/ or the Project Company;</p> <p>(k) save and except for any inter-company advances to be made between the Companies which are permitted under the Financing Documents, the Issuer and the Project Company shall not lend any money to any party other than to their respective directors, officers or employees as part of their terms of employment and on ordinary commercial terms of employment or to their subsidiaries in the ordinary course of business and on ordinary commercial terms;</p> <p>(l) the Companies shall not (a) engage or carry on any other business other than the Project; (b) cancel, surrender, abandon or otherwise change in any manner the nature or scope of their existing business or the Project; or (c) suspend or threaten to suspend any part of their business;</p> <p>(m) save and except as required under the Project Documents or permitted under the Financing Documents, the Companies shall not provide or permit to exist any guarantee where either of the Companies is a guarantor or is liable to pay for the same thereunder;</p> <p>(n) the Companies shall not make any loan or investment other than loans or investments authorized and not prohibited under the Transaction Documents;</p> <p>(o) the Companies will not consolidate or amalgamate or merge with or into, or transfer all or substantially all their assets to or acquire all or substantially all the assets (including shares and/or stocks of any class, partnership or joint venture interest) of another entity; where, for the avoidance of doubt, either of the Companies will be deemed to have acquired substantially all of the ordinary shares of another entity if that entity becomes a subsidiary of either of the Companies as a result of the acquisition;</p> <p>(p) the Companies shall not have any subsidiaries (except, in the case of the Project Company, the Issuer);</p> <p>(q) the Companies will not enter into any voluntary winding up;</p> <p>(r) the Companies shall not open any bank</p>
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	<p>accounts other than Designated Accounts, the accounts to be opened in respect of the Junior Term Loan Facility, the Trustees' Reimbursement Account for Sukukholders' Actions ("<b>TRA</b>") and any other accounts as may be permitted under the Financing Documents. The following terms shall apply to the TRA:-</p> <ul style="list-style-type: none"><li>(i) the sum of Ringgit Malaysia Thirty Thousand (RM30,000.00) will be maintained at all times throughout the tenure of the Sukuk Murabahah;</li><li>(ii) the TRA will be maintained as long as any Sukuk Murabahah is outstanding; and</li><li>(iii) the moneys in the TRA will be used by the Trustee in carrying out its duties in relation to the occurrence of Event of Default or enforcement events provided for under the Financing Documents pertaining to the Sukuk Murabahah;</li></ul> <p>(s) the Companies shall not incur capital expenditure exceeding a threshold to be agreed, other than capital expenditure which has already been planned and included in the budget provided (and approved as the case may be) for the relevant year, without the written consent of the Trustee or the agent as may be approved;</p> <p>(t) the Companies shall not make material amendments and/ or modifications to the EMP agreed with the Environmental Consultant without the consent of the Environmental Consultant;</p> <p>(u) the Companies shall not do or omit to do any act, or execute or omit to execute any document which may render any of the Project Documents to be illegal, void, voidable or unenforceable;</p> <p>(v) the Companies shall not, and shall not agree to, amend, vary, terminate (except due to lapse of time), replace or supplement any Project Documents which amendments, variations, termination, replacement or supplement would have a Material Adverse Effect. Subject to the above, the Issuer and/ or the Project Company shall give prior written notice of not less than three (3) days to the Trustee or the agent as may be approved of any proposed amendments, variations, terminations, replacements or</p>
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	<p>supplements of any of the Project Documents and provide reasonable details;</p> <p>(w) the Companies shall not, and shall not agree to, waive any breach or proposed breach by their respective counterparties in any Project Documents which would have a Material Adverse Effect;</p> <p>(x) the Companies shall not agree to any variations to work under the EPC Contract (as defined in item 2(v) below) that could result in:</p> <p>(i) a delay in the Initial Operation Date (as defined in the PPA) beyond 30 April 2015; and/ or</p> <p>(ii) a delay in the COD beyond three (3) months from the Scheduled COD; and/ or</p> <p>(iii) a cumulative or single increase in the construction cost of more than a threshold to be agreed without the consent of the ITA or the Trustee or the agent as may be approved, as the case may be, and upon such agreed terms in relation to the granting of such consent.</p> <p>With respect to paragraph (iii) above, the Issuer must satisfy the ITA and the Trustee or the agent as may be approved that it has additional funds to pay for such variation;</p> <p>(y) the Companies shall maintain their respective rights under each of the Project Documents, and shall, subject to paragraphs (z) and (aa) below, take all reasonable steps to enforce their respective material rights under the Project Documents;</p> <p>(z) in the case of each of the decisions, discretions or actions under the following Project Documents, the Companies shall not make such decision, exercise such discretion or take such action without the prior written consent of the ITA:</p> <p>(i) under the PPA: purchasing of coal from third parties where the price to be paid to such third party is not within the threshold to be agreed;</p> <p>(ii) under the EPC Contract:</p> <p>(1) granting an extension of time to the EPC contractor where</p>
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	<p>there is not a corresponding extension of the Scheduled COD under the PPA;</p> <p>(2) granting an increase in the Contract Price (as defined in the EPC Contract) greater than an agreed threshold; or</p> <p>(3) granting a variation that would increase the Contract Price greater than an agreed threshold or cause the COD to occur after three (3) months after the Scheduled COD;</p> <p>(iii) under the O&amp;M Agreement:</p> <p>(1) approving a remedial plan following a Persistent Performance Shortfall (as defined in the O&amp;M Agreement) by the operator; or</p> <p>(2) granting a variation to the operator that would increase the Monthly Operating Fee (as defined in the O&amp;M Agreement) by more than twenty five per centum (25%); or</p> <p>(iv) under the Turnkey Contract: granting a variation other than to reflect an approved variation under the EPC Contract;</p> <p>(aa) in the case of each of the decisions, discretions or actions under the following Project Documents, the Companies shall not make such decision, exercise such discretion or take such action without the prior written consent of the Trustee or the agent as may be approved:</p> <p>(i) under the PPA: electing whether to require TNB to acquire the Power Facility on the termination of the PPA by the Project Company;</p> <p>(ii) under the EPC Contract:</p> <p>(1) issuing a Provisional Acceptance Certificate (as defined in the EPC Contract) to the EPC contractor that Substantial Completion (as</p>
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	<p>defined in the EPC Contract) has occurred, where the EPC contractor has not attained all of the Key Minimum Performance Levels (as defined in the EPC Contract) and not met all of the other requirements for Substantial Completion;</p> <p>(2) suspending the EPC contractor's performance of the Works (as defined in the EPC Contract); or</p> <p>(3) approving any replacement to any party comprising the EPC contractor on any proposed novation of the EPC Contract or on insolvency of any party comprising the EPC contractor.</p> <p>Applicable to the Issuer only</p> <p>(a) The Issuer shall not use the proceeds of the Sukuk Murabahah except for the purposes set out in the IM or the relevant Transaction Documents.</p> <p>Applicable to the Project Company only</p> <p>(a) The Project Company shall not declare, pay or make any Restricted Payment unless:</p> <p>(i) the FSCR for the most recent calculation date was equal to or greater than 1.20x;</p> <p>(ii) the Senior DE Ratio will not be breached and no Event of Default or Potential Event of Default (i) has occurred, and is continuing, or (ii) would occur as a result of such Restricted Payment;</p> <p>(iii) COD has occurred and first principal repayment of the Senior Facilities has been made;</p> <p>(iv) The Junior Term Loan Facility have been fully repaid;</p> <p>(v) The first repayment instalment under the Senior Loan Facilities has been paid;</p> <p>(vi) all payments due and payable under each of the Senior Facilities and</p>
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	<p>hedging arrangements have been paid;</p> <p>(vii) FSRA (as defined in item 2(k) above) and MRA (as defined in item 2(k) above) are fully funded or equivalent security (provided that such security is non-recourse to the Issuer or the Project Company) provided in favour of the Security Agent, in accordance with the provisions herein; and</p> <p>(viii) The Refinancing SBLC (as defined in item 2(v) below) (provided that such Refinancing SBLC are non-recourse to the Issuer or the Project Company) has been provided in favour of the Security Agent and remains in full force and effect.</p> <p>Such other undertakings as may be advised by the legal counsel and mutually acceptable to the Companies and the Joint Lead Arrangers and the mandated lead arrangers of the Senior Loan Facilities with appropriate thresholds, exclusions and carve outs for each of such negative covenants to be negotiated and agreed in the Financing Documents.</p>
(u) Provisions on buy-back and early redemption of sukuk	Not applicable.
(v) Other principal terms and conditions for the issue:	
Guarantee	The Guarantor shall irrevocably and unconditionally guarantee the performance and obligation of the Issuer including all its payment obligations under the Sukuk Murabahah, the Senior Loan Facilities and the senior hedging policy.
Redemption	<p>Unless redeemed earlier by the Issuer, the Issuer shall redeem the Sukuk Murabahah at face value on its respective maturity date.</p> <p>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 purchased by the Issuer or by its subsidiaries or by agent of the Issuer who is acting for the purchase will be cancelled and could not be resold.</p> <p>Subject to the foregoing, the related corporation(s) of the Issuer may at any time purchase the Sukuk Murabahah at any price in the open market or by private treaty and such Sukuk Murabahah purchased need not be cancelled but shall not be counted for the purposes of voting in a meeting of the Sukukholders.</p>

Senior Facilities Mandatory Prepayment	Customary mandatory prepayment provisions for non- / limited- recourse financing of this nature, including prepayment upon receipt by the Project Company and/or the Issuer of termination payments pursuant to the PPA, insurance proceeds (subject to threshold amounts to be agreed), performance liquidated damages (subject to threshold amounts to be agreed) and other compensation proceeds (subject to threshold amounts to be agreed).
Form of Denomination	<p><b><u>Form</u></b></p> <p>The Sukuk Murabahah shall be issued in accordance with MyClear Rules and Procedures as applicable from time to time. The Sukuk Murabahah shall be represented by a global certificate to be deposited with BNM and may be exchanged for definitive bearer form only in certain limited circumstances.</p> <p><b><u>Denomination</u></b></p> <p>The denomination of the Sukuk Murabahah shall be Ringgit Malaysia One Thousand (RM1,000.00) or in multiples of Ringgit Malaysia One Thousand (RM1,000.00) thereof or such other denominations as may be allowed by MyClear/ BNM at the time of issuance.</p>
Minimum Level of Subscription	The minimum level of subscription for the Sukuk Murabahah that is not issued on a bought deal basis (which shall be fully subscribed) shall be one hundred per centum (100%) of the size of issue.
Project	The financing, design, engineering, procurement, construction, installation, testing, commissioning, ownership, operation and maintenance of the Power Facility, the Fuel Facilities (as defined in the PPA), the Site (as defined in the PPA), the Interconnection Facilities (as defined in the PPA) and associated facilities at Tanjung Bin, Johor, Malaysia and any Modification (as defined in the PPA) thereto.
Power Facility	The electricity generating facility located at the Project Site comprising a coal fired boiler and a steam turbine generator with a net capacity of 1,000 MW and ancillary equipment and facilities as more particularly defined in Appendix A of the PPA.
Senior USD Loan	A USD-denominated senior term loan facility.
Senior RM Loan	A RM-denominated senior term loan facility.
Senior Loan Facilities	<p>Collectively:</p> <p>(a) the Senior USD Loan; and</p> <p>(b) the Senior RM Loan.</p>

Senior Facilities	<p>Collectively:</p> <ul style="list-style-type: none"> <li>(a) the Sukuk Murabahah; and</li> <li>(b) the Senior Loan Facilities.</li> </ul>
Junior Term Loan Facility	<p>A RM-denominated subordinated equity bridge loan facility.</p>
Senior DE Ratio	<p>The Senior DE Ratio shall be the ratio of A / B, where:</p> <ul style="list-style-type: none"> <li>(a) A = consolidated Senior Indebtedness of the Issuer and Project Company;</li> <li>(b) B = consolidated Shareholders' Equity Contribution of the Issuer and Project Company.</li> </ul> <p>“Senior Indebtedness” means:</p> <ul style="list-style-type: none"> <li>(a) the outstanding principal obligations in relation to the Senior Facilities;</li> <li>(b) the outstanding principal obligations for all other indebtedness of the Issuer and the Project Company (whether Islamic or conventional) for borrowed monies (be it actual or contingent), hire purchase obligations, finance lease obligations, and obligations/ contingent liabilities under guarantees/ call or put options of the Issuer and the Project Company;</li> <li>(c) excluding any intercompany advances between the Issuer and the Project Company;</li> <li>(d) excluding the Junior Term Loan Facility drawn down and outstanding;</li> <li>(e) excluding the hedging transactions under the senior hedging policy and the junior hedging policy;</li> <li>(f) excluding the performance bonds required to be issued to TNB in respect of the Project Company's obligations under the PPA, provided that such performance bonds are issued on an unsecured and subordinated basis; and</li> <li>(g) excluding the Working Capital Facility (as defined below) provided to the Issuer on an unsecured and subordinated basis.</li> </ul> <p>For the avoidance of doubt:</p> <ul style="list-style-type: none"> <li>(a) any double counting shall be disregarded; and</li> </ul>

	<p>(b) outstanding obligations under the Sukuk Murabahah shall be deemed equivalent to the aggregate amounts disbursed from the EA (as defined in item 2(k) above) into the IDA.</p>
<p>Finance Service Cover Ratio  <b>("FSCR")</b></p>	<p>On any given date the FSCR shall be the ratio of A / B, where:</p> <p>(a) A = Cash Flow Available for Finance Service (as defined below) for the previous 6 months, and</p> <p>(b) B = Senior Finance Service for the previous six (6) months, excluding the final repayment amounts under each of the Senior Facilities.</p> <p>The FSCR shall be calculated starting from COD.</p>
<p>Project Documents</p>	<p><b><u>Pre-Financial Close</u></b></p> <p>(a) The Power Purchase Agreement and any side letter entered into pursuant thereto ("<b>PPA</b>");</p> <p>(b) The Coal Supply and Transportation Agreement ("<b>CSTA</b>")</p> <p>(c) The Turnkey Contract;</p> <p>(d) The Engineering, Procurement and Construction Contract ("<b>EPC Contract</b>") and associated bonds and guarantees from or on behalf of the EPC Contractor;</p> <p>(e) The Operation &amp; Maintenance Agreement ("<b>O&amp;M Agreement</b>");</p> <p>(f) The sub-lease agreement and in the case of the lease agreement, pending the creation of the Lease Charge, the tripartite lease agreement ("<b>Tripartite Lease Agreement</b>") entered or to be entered between the land owners of the land which the Project is situated on, the Project Company and the Security Agent;</p> <p>(g) The Shared Facilities Agreement;</p> <p>(h) The Project Management Agreement;</p> <p>(i) The Takaful/ insurances relating to the Project which are issued in favour of or for the benefit of the Issuer and/or the Project Company;</p> <p>(j) The permits and licences relating to the Project which are issued in favour of or for</p>

	<p>the benefit of the Issuer and/or the Project Company; and</p> <p>(k) Any other agreement, document and/or side letter that is material to the Project as may be reasonably determined by the Joint Lead Arrangers, the mandated lead arrangers of the Senior Loan Facilities and the mandated lead arrangers of the Junior Term Loan Facility and agreed with the Issuer.</p> <p><b><u>Post-Financial Close</u></b></p> <p>(a) The lease agreement; and</p> <p>(b) Any agreement or document that is material to the Project as may be reasonably determined by the Joint Lead Arrangers, the mandated lead arrangers of the Senior Loan Facilities and the mandated lead arrangers of the Junior Term Loan Facility and agreed with the Issuer.</p>
Project Costs	<p>Up to RM6.8 billion</p> <p>The total cost and expenses relating to the Project incurred by the Project Company and the Issuer prior to the Project Completion including to:</p> <p>(a) finance all costs associated with the Project Site, development, design, engineering, procurement, construction, installation, testing, commissioning, ownership, operation and maintenance in respect of the Project;</p> <p>(b) pay all financing costs in relation to the Project;</p> <p>(c) finance any other Project related costs, including consultancy fees, Takaful contributions and contingencies; and</p> <p>(d) meet the working capital requirements of the Project Company in relation to the Project.</p>
Senior Facilities Maintenance Fees	All agency and trustee fees associated with the Senior Facilities.
Equity	<p>(a) Ordinary paid-up shares of the Project Company issued to its shareholders;</p> <p>(b) Ordinary paid-up shares of the Issuer issued to the Project Company; and</p> <p>(c) Subordinated shareholders' advances/ loans.</p>
Shareholders' Equity Contribution	The Shareholders' Equity Contribution shall comprise of:

	<p>(a) ordinary paid-up shares in the Project Company issued to its shareholder(s) in an amount no less than Ringgit Malaysia Five Million (RM5,000,000.00), issued at Financial Close;</p> <p>(b) ordinary paid-up shares in the Issuer issued to the Project Company of no less than Ringgit Malaysia One Hundred Thousand (RM100,000.00);</p> <p>(c) subordinated shareholders' advances/ loans in an amount no less than 2.4% of Project Costs ("<b>Subordinated Shareholders Loans</b>"); and</p> <p>(d) Contributions/drawings under the Junior Term Loan Facility,</p> <p>subject to the satisfaction of the Senior DE Ratio.</p> <p>All forms of Shareholders' Equity Contribution shall be contributed by:</p> <p>(a) the shareholders to the Project Company; and</p> <p>(b) the Project Company to the Issuer.</p>
<p>Permitted Indebtedness</p>	<p>Such indebtedness relating to:-</p> <p>(a) any indebtedness in respect of the performance bond amounting up to Ringgit Malaysia One Hundred and Eight Million (RM108,000,000.00) given or to be given or procured for the benefit of TNB in accordance with the terms of the PPA;</p> <p>(b) any indebtedness in respect of any unsecured bank guarantee or standby letter of credit facility incurred in respect of operational purposes and any indebtedness in respect of any bank guarantee or standby letter of credit facility incurred in connection with the import of any equipment required for the Project;</p> <p>(c) the Working Capital Facility;</p> <p>(d) any indebtedness arising out of any arrangements between the Issuer and its shareholders in relation to shareholders' advances and any indebtedness of the Issuer to its shareholders, provided that such advances and indebtedness are made for the purpose of or in connection with the Project and are subordinated to the Senior Facilities to the extent provided in the Financing Documents;</p>

	<p>(e) any indebtedness arising out of any arrangement entered into by the Issuer to hedge exposure of the Issuer in relation to the Project incurred in foreign currencies in accordance with the senior hedging policy and the junior hedging policy;</p> <p>(f) any other indebtedness (including short term indebtedness and indebtedness in respect of any hire purchase or leasing of any equipment or goods or vehicles) incurred or assumed by the Issuer for the purpose of the Project in respect of which the aggregate principal amount granted by the lenders, does not at any time exceed Ringgit Malaysia Fifty Million (RM50,000,000.00) (or its equivalent in other currencies); and</p> <p>(g) any inter-company advances made between the Companies which is permitted pursuant to the Financing Documents.</p>
<p>Permitted Investments</p>	<p>The Issuer and the Project Company shall be permitted from time to time to utilise funds held in the Designated Accounts to make Permitted Investments, provided that:</p> <p>(a) Such funds utilised for Permitted Investments shall be remitted to the relevant Designated Accounts in a timely manner to meet any payment obligations of the Issuer when due and payable;</p> <p>(b) Such Permitted Investments are to be held and not traded. However, in the event that such Permitted Investments subsequently fails to meet any of the criteria for Permitted Investments, that Permitted Investment may be disposed of; and</p> <p>(c) Such Permitted Investments are to be denominated in RM, USD and/ or EUR.</p> <p>Permitted Investments shall comprise investment products approved by the Shariah Advisory Council of the SC, BNM's Shariah Council and/ or other recognised Shariah authorities. Permitted Investments are as follows:</p> <p>(a) Mudharabah, wadiah and other deposits with licensed financial institutions; or</p> <p>(b) Bankers acceptances, bill, other money market instruments issued by licensed financial institutions with a short term rating of P1 and a minimum long term rating of AA3 by RAM or their local or foreign equivalents; or</p>

	<p>(c) Money market funds which are principal protected and are approved by the SC; or</p> <p>(d) Principal protected structured investments approved by BNM and issued by licensed financial institutions with a short term rating of P1 and a minimum long term rating of AA3 by RAM or their local or foreign equivalents;</p> <p>(e) USD deposits at banks rated BBB and above by S&amp;P/ Moody's or its local or foreign equivalents; or</p> <p>(f) Treasury bills, money market instruments, and other debt instruments issued by BNM or the Government of Malaysia.</p>
Subordinated O&M Margin	The incentive fee payable to the operator.
Commercial Operation Date ("COD")	Means, with respect to the Power Facility, the date on which all the conditions precedent as set forth in Clause 3.3 of the PPA shall have been satisfied or waived in writing.
Scheduled Commercial Operation Date ("Scheduled COD")	1 <sup>st</sup> March 2016
Working Capital Facility	The working capital facility to be provided to the Issuer on an unsecured and subordinated basis of up to Ringgit Malaysia Fifty Million (RM50,000,000.00).
Turnkey Contract	The Turnkey Contract between the Project Company and the Issuer whereby the Issuer will procure the execution of the Project on a turnkey basis and administer and manage the development of the Project on behalf of the Project Company.
Restricted Payment	Means any payment by Project Company of interest, principal or any other sum in relation to any dividend or other distribution or any other payment by way of return on capital to its shareholders.
Cash Flow Available for Finance Service ("CFAFS")	<p>CFAFS means, in any semi-annual period, the sum of:</p> <p>(a) All income received by the Project Company under the PPA or any other agreements;</p> <p>(b) Interest earned on all cash accounts (including any FSRA (as defined in item 2(k) above), MRA (as defined in item 2(k) above) and other reserve accounts);</p> <p>(c) Any loss of revenue Takaful/ insurance proceeds received, to the extent that such proceeds received are in excess of any amounts utilised, or to be utilised, for any costs of reinstatement or repairing the damaged property in question; and</p>

	<p>(d) All delay liquidated damages received by the Issuer or the Project Company under the Project Documents, to the extent that such amounts compensate for loss of income of the Issuer or the Project Company, as the case may be;</p> <p>Less:</p> <p>(a) The total amount paid by the Issuer or the Project Company in relation to Takaful/ insurance, operations (except the Subordinated O&amp;M Margin), maintenance, administration, management and overheads and fees;</p> <p>(b) Taxation, duties and working capital requirements of the Issuer and/ or the Project Company;</p> <p>(c) Capital expenditure incurred (unless funded by Shareholders' Equity Contribution or proceeds from the Senior Facilities); and</p> <p>(d) Other associated Senior Facilities costs (such as Trustee, rating agency, ongoing technical/ environmental monitoring fees).</p>
Senior Finance Service	<p>The sum of interest, profit paid and principal repayments in respect of the Senior Facilities, and net hedging settlements to senior hedging banks but excluding any other associated Senior Facilities costs to the extent these are captured in the CFAFS definition.</p> <p>For the avoidance of doubt:</p> <p>(a) Interest means the interest obligations of the Issuer as hedged pursuant to the senior hedging policy (if applicable); and</p> <p>(b) Principal repayments means the principal repayment obligations of the Issuer as hedged against foreign currency risk pursuant to the senior hedging policy (if applicable).</p>
Financing Documents	<p>The Financing Agreements, the hedging documents in relation to the Senior Facilities and the Junior Term Loan Facility, the intercreditor and/or subordination agreement, the security documents, any direct agreements in relation to the Project Documents executed in favour of the Sukukholders, the lenders of the Senior Loan Facilities, the senior hedging banks, the lenders of the Junior Term Loan Facility and the junior hedging banks, the equity call option and other relevant documentation as may be advised by the legal counsel and acceptable to the Issuer.</p>

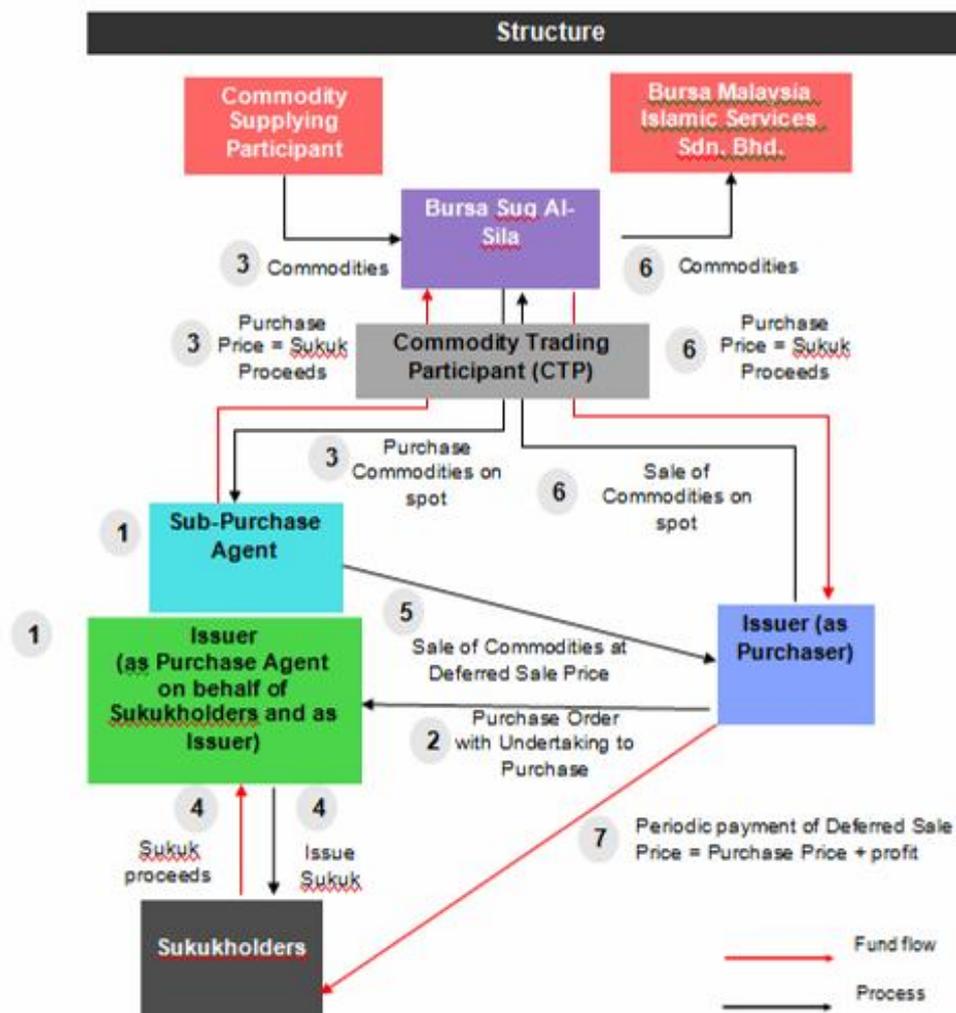
Transaction Documents	The Financing Documents and the Project Documents.
Material Adverse Effect	<p>In respect of the Senior Facilities, means in relation to any event or circumstances the occurrence or effect of which has resulted in, or would reasonably result in a material adverse effect on:</p> <ul style="list-style-type: none"> <li>(a) the financial condition, business or operations of the Issuer and/or the Project Company or prior to the later of (i) the full repayment of the Junior Term Loan Facility and (ii) COD, the Sponsor;</li> <li>(b) the Issuer's and/or the Project Company's ability to perform its obligations under any provisions of the Financing Documents or the Project Documents to which it is a party;</li> <li>(c) (prior to the later of (i) the full repayment of the Junior Term Loan Facility and (ii) COD), the Sponsor's ability to perform its material obligations under any provisions of the Financing Documents to which it is a party; or</li> <li>(d) the validity or enforceability of, or the effectiveness or ranking of any security granted or purporting to be granted for the Senior Facilities pursuant to any of, the Financing Documents.</li> </ul>
Project Site	Means the parcel of land upon which the Project is to be constructed and located, as more specifically described in Appendix L of the PPA.
Financial Close	The date on which the Trust Deed, the facility agreement of the Sukuk Murabahah, the facility agreements of the Senior Loan Facilities, the facility agreement of the Junior Term Loan Facility (collectively, " <b>Financing Agreements</b> ") have been executed.
Project Completion	<p>The date on which the following conditions have been satisfied:</p> <ul style="list-style-type: none"> <li>(a) no Event of Default or Potential Event of Default or event of default or potential event of default under the Junior Term Loan Facility has occurred and is continuing;</li> <li>(b) the Completion Certificate under the EPC Contract has been issued and accepted by the ITA; and</li> <li>(c) COD of the Power Facility has occurred.</li> </ul>
Potential Event of Default	Any event which (with the expiry of a grace period, the giving of notice, the making of any determination

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	<p>under the Financing Documents relating to the Senior Facilities or any combination of the foregoing) would constitute an Event of Default.</p>
Qualified SBLC	<p>One or more unconditional, irrevocable and on-demand standby letter of credit issued by a licensed Islamic financial institution with a minimum long term rating of at least AA1 by RAM or AA+ by MARC or A- by Standard &amp; Poors or A3 by Moody's or their respective equivalent and in each case acceptable to the Trustee or the agent as may be approved and issued in favour of either such agent or the Security Agent.</p>
Refinancing SBLC	<p>A Qualified SBLC to be maintained by the Issuer and/or the Project Company upon such terms as may be agreed and for an amount to be agreed.</p>
Compensation (Ta'widh)	<p>In the event of any overdue payments or default where there are amounts due under any series of the Sukuk Murabahah, the Issuer shall pay the compensation on such overdue amounts or defaulted amounts at the rate and manner prescribed by the SC's Shariah Advisory Council from time to time in accordance with Shariah principle.</p>
Taxation	<p>All payments by the Issuer shall be made free and clear of all levies, withholdings or deductions of whatever nature and of any tax, whether it be of a withholding nature or otherwise. In the event any such amounts are required to be deducted from any payment, such payment shall be grossed-up. Any stamp duty, levy or other form of charges applied by Malaysia or any of its agencies shall be for the account of the Issuer.</p>
Governing Laws	<p>Laws of Malaysia</p>
Jurisdiction	<p>The Issuer shall unconditionally and irrevocably submit to the non-exclusive jurisdictions of the courts of Malaysia.</p>
Other Conditions	<p>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, MyClear and/or any other authority in Malaysia having jurisdiction over matters pertaining to the Sukuk Murabahah.</p>

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Annexure 1 of the PTC of the Sukuk Murabahah.



1. The holders of the Sukuk Murabahah ("**Sukukholders**") and the Issuer shall enter into an agreement ("**Service Agency Agreement**"), pursuant to which the Issuer (in such capacity, the "**Purchase Agent**") is appointed as the agent of the Sukukholders for the purchase and sale of Shariah compliant commodities ("**Commodities**"). The Purchase Agent will then appoint a sub-agent (in such capacity, the "**Sub-Purchase Agent**") for the purchase and sale of Commodities.
2. Pursuant to an agreement ("**Commodity Murabahah Master Agreement**"), prior to the date on which the relevant series of Sukuk Murabahah is issued, the Issuer (acting as purchaser for itself) issues a purchase order ("**Purchase Order**") in relation to the said series to the Purchase Agent and the Sub-Purchase Agent (acting as the sub-agent of the Purchase Agent). In the Purchase Order, the Issuer (acting as purchaser for itself) will request the Purchase Agent and the Sub-Purchase Agent to purchase the Commodities and will irrevocably undertake to purchase the Commodities from the Sukukholders via the Sub-Purchase Agent.
3. Based on the Purchase Order, the Sub-Purchase Agent (pursuant to an agreement ("**CTP Purchase Agreement**") entered into between the Sub-Purchase Agent and the Commodity Trading Participant ("**CTP**")), will purchase on a spot basis the Commodities from commodity vendor(s) in the Bursa Suq Al-Sila' commodity market (through a CTP) at a purchase price ("**Purchase Price**") which shall be an amount equivalent to the Sukuk Murabahah proceeds. The Purchase Price of the

Commodities shall be in line with the asset pricing requirement stipulated under the Sukuk Guidelines issued by Securities Commission.

4. The Issuer (acting as the Issuer) shall then issue Sukuk Murabahah whereby the proceeds thereof shall be used to pay for the Purchase Price of the Commodities. The Sukuk Murabahah shall evidence, amongst others, the Sukukholders' ownership of the Commodities and subsequently once the Commodities are sold to the Issuer (as the Purchaser for itself) the entitlement to receive the deferred sale price ("**Deferred Sale Price**") which shall be the Purchase Price plus the profit margin.
5. Thereafter, pursuant to an agreement ("**Sale and Purchase Agreement**"), the Sub-Purchase Agent (acting on behalf of the Purchase Agent) shall sell the Commodities to the Issuer (acting as Purchaser for itself) at the Deferred Sale Price.
6. Upon completion of such purchase, the Issuer (pursuant to an agreement ("**CTP Sale Agreement**") entered into between the Issuer (acting as Purchaser for itself) and the CTP) shall sell the Commodities to Bursa Malaysia Islamic Services Sdn. Bhd. (through the CTP) on a spot basis for an amount equal to the Purchase Price. The CTP Sale Agreement will provide for the CTP to directly sell the Commodities into Bursa Malaysia Islamic Services Sdn. Bhd. upon notice by the Sub-Purchase Agent that the Sale and Purchase Agreement has been completed and executed.
7. During the tenure of the Sukuk Murabahah, the Issuer shall make profit payments to the Sukukholders. On the date of maturity of the Sukuk Murabahah, mandatory prepayment or upon declaration of an EOD (as the case may be), the Issuer shall pay all amounts then outstanding on the Deferred Sale Price (subject to the Rebate (Ibra') as set out below, where applicable) whereupon the redeemed Sukuk Murabahah shall be cancelled.

As the Deferred Sale Price is calculated based on the Purchase Price and profit margin up to the date of maturity of the Sukuk Murabahah, the Rebate may be granted at the absolute discretion of the Sukukholders. The Sukukholders in subscribing or purchasing the Sukuk Murabahah irrevocably consent to grant such Rebate, if the Sukuk Murabahah is redeemed before the date of maturity of the Sukuk Murabahah pursuant to the mandatory prepayment or upon the declaration of an EOD.

The Rebate (Ibra') shall be the unearned profit due to the Sukukholders from the date of redemption of the Sukuk Murabahah upon declaration of an EOD or mandatory prepayment up to the date of maturity of the Sukuk Murabahah.

The redemption amount payable ("**Redemption Amount**") by the Issuer on the mandatory prepayment date or the declaration of an EOD is an amount as determined by the Facility Agent, which shall be calculated in accordance with the formula below:

Redemption Amount is the amount equivalent to the Deferred Sale Price determined at the Issue Date less the aggregate of profit payments paid (if any) less the Rebate.

Note:

The Securities Commission Malaysia has given its approval under Section 212(5) of the CMSA in its letter dated 28 February 2012 to the Issuer for the proposed issue of up to RM4,500,000,000.00 in nominal value of the Sukuk Murabahah. However, the Issuer is only issuing RM3,290,000,000.00 of the Sukuk Murabahah and any unutilised portion of the Sukuk Murabahah will be automatically cancelled on the issuance date.

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# Section 6

## Investment Considerations

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*The purchase or subscription of the Sukuk Murabahah may involve substantial risk and is suitable only for investors who have the knowledge and experience in financial and business matters necessary to enable them to evaluate the risks and the merits of an investment in the Sukuk Murabahah.*

*The Issuer believes that the factors described below represent the principal risks inherent in investing in the Sukuk Murabahah, but the inability of the Issuer to pay any amounts on or in connection with any Sukuk Murabahah may occur for other reasons and the Issuer does not represent that the statements below regarding the risks of holding any Sukuk Murabahah are exhaustive.*

*Prospective investors of the Sukuk Murabahah should consider carefully all information set out in this Information Memorandum and, in particular, the following risks involved. The Sukuk Murabahah is subject to certain risks that could adversely affect the business of the Issuer or the Project Company. The following section does not purport to be complete or exhaustive. Prospective investors should undertake their own investigations and analysis on the Issuer and the Project Company, its business and risks associated with the Sukuk Murabahah.*

### **6.1 Considerations Relating to the Sukuk Murabahah**

#### **6.1.1 Rating of the Sukuk Murabahah**

The Rating Agency has assigned an indicative rating of AA3 for the Proposal. A rating is not a recommendation to purchase, hold or sell the Sukuk Murabahah. There is no assurance that a rating will remain in effect for any given period of time or that a rating will not be downgraded, suspended or withdrawn entirely by the Rating Agency in the future, if, in its judgment, circumstances in the future so warrant. Further, such a rating is not a guarantee of repayment or that there will be no default by the Issuer under the Sukuk Murabahah. In the event that the rating initially assigned to the Sukuk Murabahah is subsequently downgraded, suspended or withdrawn for any reason, no person or entity will be obliged to provide any additional credit enhancement with respect to the Sukuk Murabahah. Any downgrading, suspension or withdrawal of a rating may have an adverse effect on the liquidity and market price of the Sukuk Murabahah. Any downgrading, suspension or withdrawal of a rating will not constitute an EOD with respect to the Sukuk Murabahah or an event by itself that warrants the Sukuk Murabahah to be immediately due and payable.

#### **6.1.2 No prior market in the Sukuk Murabahah**

The Sukuk Murabahah comprises a new issue of securities for which there is currently no secondary market. There can be no assurance that such secondary market will develop or, if it does develop, that it will provide the Sukukholders with the liquidity of investments or will continue for the tenor of the Sukuk Murabahah. If a market develops, the market value of the Sukuk Murabahah may fluctuate. Any sale of the Sukuk Murabahah by the Sukukholders in any secondary market which may develop may be at a discount from the original issue price of the Sukuk Murabahah, depending on many factors, including the prevailing interest rates and the market for similar securities.

Trading prices of the Sukuk Murabahah may also be influenced by numerous factors, including the operating results and/or financial condition of the Issuer, political, economic, financial and any other factors that can affect the capital markets, the industry or the Issuer. Adverse economic developments could have a material adverse effect on the market value of the Sukuk Murabahah.

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### 6.1.3 Suitability of investments

Each potential investor in the Sukuk Murabahah must determine the suitability of its investment in light of its own circumstances. In particular, each potential investor should:

- (i) have sufficient knowledge and experience to make a meaningful evaluation of the Sukuk Murabahah, the merits and risks of investing in the Sukuk Murabahah and the information contained in this Information Memorandum;
- (ii) have access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation, an investment in the Sukuk Murabahah and the impact the Sukuk Murabahah will have on its overall investment portfolio;
- (iii) have sufficient financial resources and liquidity to bear all of the risks of an investment in the Sukuk Murabahah;
- (iv) understand thoroughly the terms of the Sukuk Murabahah and be familiar with the behaviour of any relevant indices and financial markets; and
- (v) be able to evaluate (either alone or with the help of a financial adviser) possible scenarios for economic and other factors that may affect its investment and its ability to bear the applicable risks.

### 6.1.4 Shariah compliance

Notwithstanding the approvals of Maybank Islamic Berhad and HSBC Amanah, case law in Malaysia indicates that the courts in Malaysia may still examine the issue of whether there has been compliance with Shariah and if held to be non-Shariah compliant, the recoverability of the profit element under the Sukuk Murabahah may be affected. No assurance is given that the approvals of Maybank Islamic Berhad and HSBC Amanah will not be subject to challenge on grounds that the Sukuk is not Shariah compliant.

The transaction structure relating to the Sukuk Murabahah has been approved by Maybank Islamic Berhad and HSBC Amanah. Prospective holders of the Sukuk Murabahah should not rely on such approval in deciding whether to make an investment in the Sukuk Murabahah, nor as the basis for deciding whether each of the structure, the issue and the trading of the Sukuk Murabahah is in compliance with Shariah principles. In particular, any reference in this Information Memorandum to secondary trading of the Sukuk Murabahah is not to be taken as advice or confirmation that such trading is Shariah compliant. Prospective holders of the Sukuk Murabahah should obtain their own independent Shariah advice as to compliance with Shariah principles. No representation, warranty or undertaking, express or implied, is given by the Issuer as to the status of the Sukuk Murabahah's compliance with Shariah principles and the Issuer, the Project Company, the Sponsor, HSBC Amanah and Maybank Islamic Berhad shall not be liable for any consequences of such reliance and/or assumption of any such compliance.

### 6.1.5 Risk of Mandatory Prepayment

The provision for mandatory prepayment to the Sukukholders earlier than the fixed maturity date may result in the Sukukholders incurring capital loss as this will impact the Sukukholders who have bought into the Sukuk Murabahah above par.

## 6.2 Risks Relating to the Issuer

### 6.2.1 Issuer's ability to meet its obligations under the Sukuk Murabahah

The ability of the Issuer to meet its obligations to the Sukukholders in terms of payment of amounts due in respect of the Sukuk Murabahah will depend on the Issuer's income and

revenue and in particular the strength of the Project Company's operation to generate sufficient and positive cashflows. Payments of all amounts due and payable in respect of the Sukuk Murabahah will be the Issuer and Project Company's obligation alone. In particular, the Sukuk Murabahah will not be obligations or responsibilities of, or guaranteed by, any of the Issuer's related corporations, the Joint Lead Arrangers/ Joint Lead Managers, the advisers of the Issuer, the Trustee or any subsidiary or affiliate thereof, and any other person involved or interested in the transaction. None of such persons will accept any liability whatsoever to the Sukukholders in respect of any failure of the Issuer to pay any amount due in respect of the Sukuk Murabahah.

## 6.3 Project Risks

### 6.3.1 Renewal of Licence/Permit Risks

The Project Company and the Issuer will require various approvals, licences, permits and certificates to operate their business and the Power Facility and will be required to renew these approvals, licences, permits and certificates or to obtain new approvals, licences, permits and certificates. Whilst the Project Company and the Issuer may not have experienced any significant difficulty in renewing and maintaining the approvals, licences, permits and certificates granted, there will not be any assurance that in the future the relevant authorities will issue or renew any required approvals, licences, permits or certificates in a timely manner or at all. Failure to renew, maintain or obtain the required approvals, licences, permits and certificates may interrupt the operations or delay or prevent the implementation of any capacity expansion or other new projects and may have a material adverse effect on the Project Company and the Issuer's business, financial condition and results of operations.

### 6.3.2 Risk of CRF Adjustment

The tariff adjustment set out in section 4.4.3(a) contains a detailed mechanism giving TNB and the Energy Commission rights to adjust the CRF, which is the key component of ACP. This risk is mitigated to a degree by:

- (i) the presence of protections in the PPA to ensure that the adjustment to the CRF shall not result in the FSCR (referred to as the "**debt service cover ratio**" under the PPA) under the Financing Documents not being met;
- (ii) the Project Company and the Issuer are required to provide the Input Data used as a basis to adjust the CRF to the Financing Parties' Technical Advisor for certification prior to submission to TNB;
- (iii) if the final recomputed CRF as agreed with TNB or determined by TNB or the Energy Commission results in the Base Case FSCR of less than 1.25 times, it would be an EOD under the Financing Documents for the Senior Facilities.

In the event of a failure by the Project Company to deliver the Input Data or provide TNB and the Energy Commission access to appropriate supporting documentation in accordance with the PPA, TNB may revise the CRF to 75% of the then prevailing CRF. As such, the Project Company is penalised for failing to fulfil its obligations under the PPA with respect to disclosure and transparency of the Input Data and supporting information.

### 6.3.3 Construction Risks

#### (a) Construction Delay

The PPA specifies the scheduled COD to be 1 March 2016. Failure to achieve COD on or before the scheduled COD due to default of Project Company or its contractors will result in the PPA Delay LDs being payable by the Project Company to TNB in an amount of

RM600,000.00 per day of delay. Failure to achieve COD within six (6) months of the scheduled COD is a Project Company's EOD.

However, the following factors are to be considered as mitigating factors to the risks:-

- (i) the Financing Parties' Technical Advisor confirming the construction schedule is representative of the current market for coal-fired power stations worldwide and they consider the construction schedule to be achievable by the EPC Consortium;
- (ii) the Financing Parties' Technical Advisor confirming the EPC Consortium have the experience and capability to execute the Project in a proficient and timely manner;
- (iii) the members of the EPC Consortium are experienced contractors in the power sector who have a track record in undertaking similar projects. The Sponsor is an experienced developer of greenfield and brownfield power projects in Malaysia, all in a project financing context. All of the Sponsor's development projects in Malaysia have been delivered on or before schedule.
- (iv) pursuant to the EPC Contract, the EPC Consortium is liable for Delay LDs of RM2,000,000.00 per day of delay between the scheduled COD and the date COD is actually achieved. The Delay LDs are required to compensate the Project Company/ Issuer for:
  - (a) PPA Delay LDs payable to TNB;
  - (b) unavoidable fixed costs of the Project Company and Issuer (comprising manpower costs, fixed operating costs, land lease payments and other general fixed costs); and
  - (c) debt service obligations of the Project Company and Issuer (comprising of interest/ profit payment on Senior Facilities, and interest on Junior Term Loan Facility).

Delay LDs are capped at 15% of the EPC Contract Price. The Financing Parties' Technical Advisor has opined that the Delay LDs will cover a period of approximately 360 days and are adequate, as the period would cover the longstop date under the EPC Contract, which falls 180 days after the scheduled COD.

Under the CSTA, failure by the Project Company to achieve the scheduled COD as defined in the PPA will result in the Project Company being required to compensate for unavoidable fixed costs and expenses incurred by TFS as a result of such delay. In practice, such costs may arise in situations where TFS has already despatched a shipment from loading port and the Project Company is unable to accept such shipment. This risk may be considered limited due to:

- (i) first coal shipments occur prior to COD for testing and commissioning and fulfilment of the coal stockpile at site;
- (ii) the Power Facility will utilise TBP's coal shipment acceptance facilities, as such the Project Company will in most cases have the ability to accept coal shipments, even if COD has not been achieved;
- (iii) coal shipment timing can be managed where it is clear that COD will be delayed; and
- (iv) working capital and contingencies are likely to be available to manage any cashflow mismatch between revenue receipts from TNB and payments to TFS.

Testing and commissioning commence at IOD, which is ten (10) months prior to the scheduled COD and takes place over a period of almost a year, with all tests and commissioning, except the performance tests, completed by month forty seventh (47) (out of

forty eighth (48)) of construction. Timely performance of the testing and commissioning and verification of results will be subject to monitoring by the Sponsor and the Financing Parties' Technical Advisor. By virtue of being the largest independent power producer in Malaysia, the Sponsor has extensive prior experience working with TNB, including the testing and commissioning of power projects. As such, such potential delays can be identified at an early stage and the actual delay is expected to be managed by the Sponsor at the working level with TNB.

**(b) Output Shortfall Risks**

Under the PPA, the Power Facility is required to achieve Nominal Capacity of 1,000 MW upon completion. Failure to achieve the Nominal Capacity will result in the PPA Performance LDs payable to TNB in an amount of RM5,000.00 per kW of shortfall. ACP is made on the basis of the most recent tested annual available capacity. Therefore it is important EPC Consortium is able to deliver a plant of Nominal Capacity of no less than 1,000 MW.

The output performance risk is primarily mitigated by the proven nature of selected technology and the track record and experience of Alstom Power, the technology supplier. On top of that, the EPC Contract will contain, amongst others, an output guarantee equal to 1,000 MW, a minimum performance level of ninety five per cent (95%) of the guaranteed capacity, as well as performance and reliability tests, which must be successfully completed prior to Issuer taking over the Power Facility.

The EPC Consortium is liable for the Capacity Performance LDs if it fails to achieve the performance guarantees under the EPC Contract:

- (i) the Interim Performance LDs equal to RM5,000.00 per kW that the actual tested capacity of the Power Facility is less than the Capacity Performance Guarantee of 1,000 MW; and
- (ii) Final Performance LDs equal to RM5,500.00 per kW that the actual tested capacity of the Power Facility is less than the Capacity Performance Guarantee of 1,000 MW.

Interim Performance LDs are equal to the PPA Performance LDs payable to TNB for capacity shortfall. Interim Performance LDs must be paid at substantial completion of the Power Facility.

The EPC Consortium may elect to pay Final Performance LDs at substantial completion. Alternatively, the EPC Consortium may choose to carry out further work on the Power Facility during scheduled shutdowns of the Power Facility during the operational period, in an attempt to improve the performance of the Power Facility. In this case, the EPC Consortium must pay the Final Performance LDs, within ten days of the Dropdead Completion Date, which is the earlier of 11 months after substantial completion or 1 February 2017. The Dropdead Completion Date is at least 1 month before the scheduled first principal repayment under the Senior Facilities.

Therefore, the Final Performance LDs may be paid at the latest 5 months after substantial completion of the Power Facility if the EPC Consortium elects to return to the Power Facility to attempt to improve performance during scheduled outages. Therefore, there is a risk that the Project Company would not recover lost revenues due to reduced capacity during the 5 months cure period. The non-compensated reduced revenue period is however limited to 5 months only and the impact is relatively minor compared to the magnitude of revenues during the PPA term. Therefore the fact that Final Performance LDs may be paid at the latest 5 months after substantial completion of the Power Facility can be considered a minor risk with limited impact.

Performance LDs are capped at 15% of the EPC Contract Price. The Financing Parties' Technical Advisor has confirmed that the limit on the combined Interim Performance LDs and

Final Performance LDs is consistent with the current market conditions and is considered acceptable.

The Capacity Performance LDs will, together with Heat Rate Performance LDs, be supported by performance bond representing ten per cent (10%) of the EPC Contract Price. This is not sufficient to cover all of the EPC Consortium's potential liabilities for liquidated damages under the EPC Contract (capped at twenty percent (20%) of the EPC Contract Price), which may mean that the Issuer is not able to satisfy its claims for liquidated damages through on-demand bond only. Should the EPC Consortium not pay, the Issuer would need to bring actions under the EPC Contract and the parent company guarantees for the difference. The Project Company may claim against the EPC Consortium under the collateral warranty. Nevertheless, Financing Parties' Technical Advisor has confirmed the provision of the performance bond is considered adequate to incentivise the EPC Consortium to complete and warrant the Power Facility.

The EPC Contract also contains extendable warranty and latent defects periods, during which the EPC Consortium will be under the obligation to remedy and make good defects in the EPC Works. The obligations of the EPC Consortium will be supported by the warranty bond in an amount of five per cent (5%) of the EPC Contract Price. Financing Parties' Technical Advisor has confirmed the provision of the warranty bond is considered adequate to incentivise the EPC Consortium to remedy, make good and complete any defects to the EPC Works.

**(c) Failure to Achieve the Contracted Heat Rate Under the PPA**

Under the PPA, the Fuel Payment component of the tariff paid to the Project Company is calculated based on the Applicable Heat Rate. The Applicable Heat Rate is the lower of:

- (i) the contracted heat rate, as set out in the PPA; and
- (ii) the tested heat rate, as determined during the testing and commissioning phase prior to COD;

and adjusted for the 1% coal loss allowance and contracted degradation factors.

Therefore, if the EPC Consortium fails to achieve the heat rate performance target equal to, or better than, the contracted heat rate as set out in the PPA, and/ or if the heat rate achieved by the EPC Consortium degrades at a higher rate than the contracted degradation curve as set out in the PPA (two per cent (2%) over the life of the PPA), the Project Company is at risk of receiving fuel payments which do not fully compensate the Project Company for the coal costs incurred.

The heat rate performance risk is primarily mitigated by the proven nature of selected technology and the track record and experience of Alstom Power, the technology supplier. On top of that, the EPC Contract will contain a weighted average Heat Rate Performance Guarantee which is equivalent to the weighted average of the contracted heat rate under the PPA, a minimum performance level of one hundred and five per cent (105%) of the guaranteed heat rate as well as performance and reliability tests, which must be successfully completed prior to Issuer taking over the plant.

The EPC Consortium is liable for performance liquidated damages for heat rate ("**Heat Rate Performance LDs**") if it fails to achieve the Heat Rate Performance Guarantee under the EPC Contract equal to RM920,000.00 per kJ/ kWh that the actual tested heat rate of the Power Facility is higher than the Heat Rate Performance Guarantee.

In addition, the Financing Parties' Technical Advisor has concluded that a 1% heat rate margin is afforded by the plant design, and that the heat rate guarantee is therefore considered achievable.

The EPC Consortium may elect to pay Heat Rate Performance LDs at substantial completion. Alternatively, the EPC Consortium may choose to carry out further work on the Power Facility during scheduled shutdowns of the Power Facility during the operational period, in an attempt to improve the performance of the Power Facility. In this case, the EPC Consortium must pay the Heat Rate Performance LDs, within ten days of the Dropdead Completion Date, which is the earlier of 11 months after substantial completion or 1 February 2017. The Dropdead Completion Date is 1 month before the scheduled first principal repayment under the Senior Facilities.

Therefore, the Heat Rate Performance LDs may be paid at the latest 5 months after substantial completion of the Power Facility if the EPC Consortium elects to return to the plant to attempt to improve performance during scheduled outages. Therefore, there is a risk that the Project Company would not recover additional fuel costs due to a higher heat rate during the 5 months cure period. The non-compensated additional fuel costs period is however limited to 5 months only and the impact is relatively minor compared to the magnitude of revenues during the PPA term. Therefore the fact that Heat Rate Performance LDs may be paid at the latest 5 months after substantial completion of the Power Facility can be considered a minor risk with limited impact.

Performance LDs are capped at 15% of the EPC Contract Price. The Financing Parties' Technical Advisor has confirmed that the limit on the combined Interim Performance LDs and Final Performance LDs is consistent with the current market conditions and are considered acceptable.

The Performance LDs will, be supported by performance bond representing ten per cent (10%) of the EPC Contract Price. This is not sufficient to cover all of the EPC Consortium's potential liabilities for liquidated damages under the EPC Contract (capped at twenty percent (20%) of the EPC Contract Price), which may mean that the Issuer is not able to satisfy its claims for liquidated damages through on-demand bond only, should the EPC Consortium not pay, the Project Company would need to bring actions under the EPC Contract and the PCG for the difference. Nevertheless, the Financing Parties' Technical Advisor has confirmed the provision of the performance security is considered adequate to incentivise the EPC Consortium to complete and warrant the Power Facility.

The EPC Contract will also contain extendable warranty and latent defects periods, during which the EPC Consortium will be under the obligation to remedy any equipment failure. The obligations of the EPC Consortium will be supported by a warranty bond in an amount of five per cent (5%) of the EPC Contract Price. The Financing Parties' Technical Advisor has confirmed the provision of the warranty bond is considered adequate to incentivise the EPC Consortium remedy, make good and complete any defects to the EPC Works.

#### **(d) Cost Overruns and Cost Variations**

The EPC Contract is on a fixed-price basis, such that cost overruns may arise from variation orders that are not compensated via the PPA change in law provisions and there is limited scope for other price increases under the EPC Contract.

The Issuer retains risk in some aspects of the project which are not necessarily within the Issuer's control. The key risks include, inter alia, additional costs and delays resulting from:

- (i) discovery of any unforeseeable physical conditions or any fossils, coins, articles of value or antiquities on site;
- (ii) error or inaccuracy in the 'Relied Upon Information';
- (iii) any changes in law or in the applicable codes and standards after 15 April 2011;
- (iv) the Issuer's risks.

The risk of unforeseeable physical conditions and presence of artefacts on the Site is substantially mitigated by the extensive knowledge of the Site gained by the Sponsor from the construction and operation of the existing TBP power plant next to the proposed site. The

Financing Parties' Technical Advisor has confirmed that the risk of the Issuer being liable for increased costs or having to grant extensions of time relating to the discovery of unforeseeable adverse physical conditions or fossils is low.

The 'Relied Upon Information' consists of the plant design criteria extracted from the Issuer's requirements, a list of documents relating to the existing studies and data relating to the proposed site and the existing power plant.

To mitigate the risk of additional time and costs payable to the EPC Consortium by the Issuer in the event of an error in the 'Relied Upon Information', confirmation has been received from the Sponsor and the Issuer's technical team that sufficient investigations have been carried out so as to be satisfied with the adequacy of the information therein.

The Issuer's risks are events outside the control of the Issuer<sup>24</sup>, but if these risks occur, generally, the Issuer will not receive any compensation from TNB or any insurance proceeds with which to reinstate such damage or loss, or to cover any lost revenue during any resultant delays (save for where an Emergency Condition which relates to the Grid System where TNB will have to compensate the Project Company pursuant to clause 21 of the PPA). The Issuer's risks events outside the control of the Issuer relates to "political force majeure" events occurring in Malaysia and uninsured force majeure events. The risk of "political force majeure" events occurring in Malaysia would need to be assessed by the Financing Parties. The insurance package proposed to be put in place limits substantially the range of uninsured force majeure events which can have an impact on the Power Facility. The Financing Parties' Technical Advisor has indicated that the risk of damage to the Power Facility due to any Grid System malfunction, failure or breakdown is low.

There is also the risk in respect of extension of time or increased costs arising from any delay resulting from the EPC Contract where extension of time has been granted to the EPC Consortium and where payment of costs is awarded by the Issuer.

This risk is mitigated through the 180 day longstop date under the PPA and the financing plan including contingency equivalent to two point five per cent (2.5%) of the EPC Contract Price and one point eight per cent (1.8%) of total capital expenditures. The level of contingency included in the financing plan is consistent with the contingency level recommended by the Financing Parties' Technical Advisor. Due diligence by the Financing Parties Technical Advisor has confirmed that the EPC Consortium's technical proposal is considered suitable for the Project requirement. The Base Case financing plan assumes contingencies are fully utilised.

Another mitigating point to be considered is the Sponsor's experience as a developer of greenfield and brownfield power projects locally and internationally and the ability of the Sponsor to manage cost overrun and delay risk.

**(e) Other Construction Risks**

**(i) Risk of Liquidated Damages Amounts Being Challenged**

It is possible under Malaysian law for the EPC Consortium to challenge the level of the liquidated damages payable under the EPC Consortium and have a tribunal determine the reasonable level of compensation for the relevant losses, with the liquidated damages level acting as a ceiling to the compensation available. While this will be a risk for the Financing Parties, the contractual arrangements in place and the method of calculation of the liquidated damages provide for reasonable compensation in the event the level of the liquidated damages are challenged by the EPC Consortium.

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<sup>24</sup> Other than the Issuer's occupation of the Site, which is within the Issuer's control.

The provisions under the Turnkey Contract are not fully back-to-back with the provisions of the EPC Contract and are not intended to be so. In light of this, there is some risk that the EPC Consortium may seek to defeat a claim by the Turnkey Contractor under the EPC Contract on the basis that the Turnkey Contractor has suffered no liability. Depending upon the applicable circumstances, the EPC Consortium may endeavour to either exclude all liability claimed by the Turnkey Contractor or just the element that represents a pass-down of Project Company's loss. This is mitigated by virtue of the fact that all of the central obligations of the EPC Consortium have been reflected in the Turnkey Contract on back-to-back terms.

(ii) TNB Delay

Under the PPA, there are no remedies available to the Project Company in cases where TNB causes delay to COD through breaches or acts of prevention other than TNB's failure to inspect and approve the interconnection protective devices/ energise the Interconnection Facilities/provide the required load/complete the Interbus Transformer and Transmission Line. The mechanisms provided in the PPA for extension of time and deemed commissioning are limited and do not provide the Project Company with relief in certain circumstances where the Project Company is delayed by TNB's actions. These mechanisms are not reflected in the EPC Contract, which means that there is a potential mismatch which could leave the Project Company or the Issuer bearing uncompensated costs and/or delays.

A delay caused by TNB may result in the EPC Consortium seeking to recover time and costs. The Financing Parties' Technical Advisor anticipates the cost implications for the EPC Consortium in the eventuality of the a delay in IOD leading to a delay of COD to be associated with maintaining site staff, (or re-mobilising staff), however it would not include additional equipment or scope change and should therefore not be significant in comparison to the overall project cost. The Financing Parties' Technical Advisor also noted that the requirement to meet IOD has been detailed in the minute of meeting between TNB and the Project Company going back to the 3 August 2011 and consider there to be sufficient time for TNB to procure, erect and commission the Interbus Transformer.

There are a number of mismatches between the risks allocation and rights of the Project Company under the PPA and the risks allocation and the rights of the EPC Consortium under the EPC Contract, which leave the Issuer bearing a number of risks. This is particularly the case on issues relating to unforeseeable ground conditions, rights to suggest design changes, rights to delay testing or provision of services during testing and commissioning, and changes in law. These mismatches could, individually or when combined, give rise to cost increases or delays that could have a significant impact on the Project. Nevertheless, the Financing Parties' Technical Advisor has confirmed it is satisfied that TNB should not be able to hinder progress by requesting design changes. This is because although TNB has the right to review and approve the design, the approval is limited to achievement of the technical information contained within appendices to the PPA.

(iii) EPC Contractor Performance and Termination

If the Issuer chooses to terminate the EPC Consortium's engagement under the EPC Contract, it will only be entitled to receive compensation for its direct losses connected with completing the works and will not be entitled to receive any compensation for its lost revenues. This could cause potential cashflow issues for the Issuer if the Issuer is forced to terminate the EPC Consortium's engagement. Prospective investors should evaluate and consider the track record and experience of the EPC Contractor in successful delivery of thermal power plants and the risk of an event arising which leads to termination of the EPC Contract by the Issuer.

### 6.3.4 Technology and OMA Risk

#### (a) Technology Risk

The proposed boiler will be supplied by the EPC Consortium and is a sliding pressure supercritical once-through boiler. Alstom Power and Alstom Services, part of Alstom Group of companies (collectively referred to as “**Alstom**”) is a leading supplier of the technology having directly supplied more than 80 GW of supercritical units whilst its licensees have installed a further 72GW. Alstom’s experience list shows existing units with similar operating temperatures and pressures to the proposed Plant, though it should be noted that these represent the highest operating conditions on the company’s experience list. High operating conditions makes reference to the parameters of the steam in terms of temperature and pressure.

The technology risk is mitigated by the EPC Consortium having experience of engineering, procuring and constructing plants with similar operating parameters and also by the provision of a latent defect period of five years where the contractor is required to make good any defects identified during the term of the warrantee.

The steam turbine will be designed and manufactured by Alstom Beizhong Power (“**ABP**”), a joint venture of Alstom with Beijing Heavy Electric Machinery Works. The 1,000 MW steamturbine for the Project will be the largest unit to be manufactured at the proposed factory.

The potential risks associated with the manufacturing are mitigated by the experience of the EPC Consortium. Alstom has a long history manufacturing steam turbines and are expected to apply its experience from other factories (where 1,000 MW units have been manufactured) to the ABP facilities. The Financing Parties’ Technical Advisor noted that the factory utilises advanced equipment and manufacturing facilities and the arrangements appear acceptable assuming that sufficient inspection and supervision is carried out by Alstom and the Issuer’s inspection team during manufacturing and erection at site. This intention was confirmed by the Sponsor.

#### (b) Reliability Risk

Pursuant to the PPA, the Project Company is granted an unplanned outage allowances of six per cent (6%) and eight per cent (8%) over the maximum availability over an annual period. If the Project Company breaches the six per cent (6%) allowance, a reduced ACP is payable. If the Project Company breaches the eight per cent (8%) allowance, a further reduction to ACP applies.

In addition, the ACP is made on the basis of the most recent tested annual available capacity. Therefore, it is critical that the Power Facility is able to achieve tested annual available capacity equal to the Nominal Capacity over the long-term as well as daily actual available capacity being at least equal to the daily planned available capacity on an ongoing basis.

The following factors are to be considered to mitigate the aforesaid risks:

- (i) The Power Facility will utilise proven conventional technology.
- (ii) The EPC Contract will provide for tests on completion including a reliability run of no less than fourteen (14) consecutive days, with failure to pass such tests resulting in the right of the Issuer to reject/ demand replacement of parts.
- (iii) Under the OMA, the Operator guarantees that the unplanned outage rate in any three hundred and sixty-five (365) day period will be no higher than six percent (6%) and that the Power Facility will meet the Guaranteed Capacity<sup>25</sup>.

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<sup>25</sup> “**Guaranteed Capacity**” is defined as the lower of (i) Contractual Available Capacity and (ii) 1,000 MW. Contractual Available Capacity is the capacity achieved by the EPC Contractor.

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- (iv) The OMA provides for an incentive and payment mechanism on the Operator which is formulated to align with the performance targets of the Project Company under the PPA. These include penalties on the Operator where, inter alia:
- (1) the incentive fee is reduced if the Power Facility suffers unplanned outages at a rate exceeding six per cent (6%);
  - (2) the incentive fee is reduced at a higher rate if the Power Facility suffers unplanned outages at a rate exceeding six per cent (8%);
  - (3) the incentive fee is reduced if the Tested Annual Available Capacity is lower than the Guaranteed Capacity<sup>25</sup>;
  - (4) the incentive fee is reduced if the Power Facility fails to fulfil a Despatch Instruction.
- (v) Whilst the payment and incentive mechanism under the OMA is not designed to achieve a direct pass-through of the revenue loss suffered by the Project Company, the Financing Parties' Technical Advisor has confirmed that the performance guarantees under the OMA and the performance targets under the PPA are aligned from a technical perspective. Therefore, the Operator is incentivised to ensure ongoing compliance of the Power Facility with the performance targets under the PPA.
- (vi) The Operator is the largest operation and maintenance service provider to the power generation sector in Malaysia and is highly experienced in operating and maintaining power plants, including with coal-fired technology. The Operator is currently acting as the operation and maintenance contractor for the TBP plant and other plants in the Sponsor's portfolio.
- (vii) Where the availability, capacity and despatch components of the Incentive Fee equal zero for three out of five Contract Years, the Operator must prepare and present a CSTA remedial plan for approval by the Project Company. Failure to present or prepare a CSTA remedial plan grants the Project Company the right to terminate the Operator's engagement.

**(c) Heat Rate Performance**

Under the PPA, the fuel payment component of the tariff paid to the Project Company is calculated based on the Applicable Heat Rate. The Applicable Heat Rate is the lower of:

- (i) the contracted heat rate, as set out in the PPA; and
- (ii) the tested heat rate, as determined during the testing and commissioning phase prior to COD;

and adjusted for the 1% coal loss allowance and contracted degradation factors.

The Project Company therefore needs to ensure it is able to maintain in the long term a heat rate at the Power Facility that is at least equal to the contracted heat rate, otherwise the fuel payment component of the tariff may not fully compensate the Project Company for the actual cost of fuel incurred.

The following factors are to be considered to mitigate the said risks:-

- (i) Under the OMA, the Operator guarantees the Power Facility will meet the tested heat rate established before the COD, reduced in accordance with the contracted degradation factor in the PPA. Failure to meet the guaranteed heat rate will result in deductions to the Incentive Fee payable to the Operator. The reduction will be equal to fifty per cent (50%) of the increased costs of fuel payable by the Project Company, subject to the Incentive Fee not being less than zero.
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- (ii) Whilst the payment and incentive mechanism under the OMA is not designed to achieve a full pass-through of the increased costs suffered by the Project Company as a result of Operator failure to meet the heat rate guarantee, the Financing Parties' Technical Advisor has confirmed that the performance guarantees under the OMA and the performance targets under the PPA are aligned from a technical perspective. Therefore, the Operator is incentivised to ensure ongoing compliance of the Power Facility with the heat rate performance target under the PPA.
- (iii) Where the heat rate component of the Incentive Fee is more than three per cent (3%) of the fuel cost for three (3) out of five (5) Contract Years, the Operator must prepare and present a remedial plan for approval by the Project Company. Failure to present or prepare a remedial plan grants the Project Company the right to terminate the Operator's engagement.
- (iv) The heat rate degradation allowance including the coal loss factor found in the PPA result in an average lifetime heat rate degradation of 3% compared with the weighted average heat rate of 9,429 kJ/kWh. This was noted as reasonable by the Financing Parties' Technical Advisor for a plant of the type proposed, subject to good operation and maintenance practices.

**(d) Operation and Maintenance Costs**

O&M Costs will be fully covered by the fixed operating rate ("FOR") and variable operating rate ("VOR") components of the tariff. FOR and VOR are pre-agreed fixed values in Ringgit Malaysia and indexed at four per cent (4%) every four (4) years. The FOR and VOR have been sized such that on a nominal basis over the PPA term, the tariff revenues cover the inflated fixed and variable operation and maintenance costs;

The Project Company will engage the Operator as the operation and maintenance contractor for the Project.

The Operator does not provide any security for the performance of its obligations under the OMA. This is due to the quasi-owner-operator approach of the project structure. In addition, the performance incentive and payment mechanism under the OMA is structured in the form of deductions to the Incentive Fee, rather than amounts to be paid back from the Operator. As such, the amounts to be deducted for any underperformance are substantially within the control of the Project Company, reducing the need for financial security to back up these obligations. Further, the Operator is an experienced provider of operation and maintenance services to power plants and is the largest of such provider in Malaysia. The Operator is currently acting as the operation and maintenance contractor for four (4) of the Sponsor's power plants, including the coal-fired TBP plant adjacent to the Power Facility.

The Project Company's cash flows may be negatively affected by operating expenses of the Project Company being higher than initially budgeted.

The OMA provides for the budgeting of O&M Costs incurred by the Contractor and paid by the Project Company. These amounts are reconciled every five years, with the Operator bearing a portion of the cost overruns, depending on the level of the cost-overrun. The Financing Parties' Technical Advisor has confirmed the appropriateness of the operation and maintenance arrangements, including the track record and experience of the Operator and the sufficiency of the operating expenses budgeted.

**6.3.5 Offtake and/or Despatch Risks**

Under the PPA, the Project Company does not take despatch risk as ACP component of the tariff is paid regardless of actual despatch level of the Power Facility, provided that the Power Facility does not exceed unplanned outage limits and meets the PPA availability targets. ACP is set at a level intended to be sufficient to cover fixed costs, finance service, taxes and to

provide sufficient return to the Sponsor. Furthermore, the Power Facility is expected to be despatched as a base load power plant.

TNB has successfully weathered two periods of significant macroeconomic stress during the 1998 Asian crisis and the 2008 global financial crisis. TNB is rated BBB+ by Standard & Poor's, one notch down from Malaysia's sovereign rating of A-. Based on TNB's annual report for 2011, the thirty (30) largest shareholders of TNB holds up to 84.31%, equivalent to 4,551,901,984 shares. The Government of Malaysia indirectly holds seventy four point seventy five per cent (74.75%) (via Khazanah Nasional Berhad (being the largest shareholder holding 35.55% of shares), Employees Provident Fund Board, Amanahraya Trustees Berhad, Lembaga Tabung Haji, Kumpulan Wang Persaraan (Diperbadankan), Permodalan Nasional Berhad, Pertubuhan Keselamatan Sosial, Valuecap Sdn Bhd and etc.) in TNB in addition to veto rights with respect to all major corporate decisions. This, together with TNB's systemic importance to the stability of the Malaysian economy ensures a high likelihood that the Malaysian government will provide timely support to TNB should the latter experience financial difficulties.

### 6.3.6 Coal Supply Risks

#### (a) Security of Supply

The nominated fuel supplier for the Project is TFS, a wholly-owned subsidiary of TNB, whose core business is the supply of fuel (including coal) to TNB generation plants and IPPs with long-term power purchase agreements with TNB in Peninsular Malaysia.

TFS sources coal on a portfolio basis from, inter alia, Indonesia, South Africa and Australia. The approximate sailing time from Australia and Indonesia is fifteen (15) days, whilst the approximate sailing time from Indonesia is two (2) to five (5) days. Diversification of suppliers, countries and loading ports allows TFS to reduce risk of supply disruption due to force majeure or any other factors affecting one supplier, region or load port.

Pursuant to the terms of the PPA, the Project Company is required to maintain a coal stockpile on site of at least 312,000 metric tonnes, which is equivalent to approximately maintain thirty (30) days of coal usage requirement, ensuring temporary supply disruptions do not have a material impact on the operations of the Power Facility.

In case of failure by the TFS to supply coal for the Project, the Project Company has the right to source coal from alternative suppliers.

In addition, the Fuel payment component of the tariff includes a one per cent (1%) coal loss factor applied to the contracted heat rate/ tested heat rate to cover coal losses during transit/unloading.

The CSTA includes a right for either TFS or the Project Company to terminate the CSTA should TNB cease to control TFS. Should this occur, the Project would not have a secure supply of coal. This risk should be viewed in the context of TNB's long-term ownership of TFS and TFS's role in supplying coal to TNB generation plants and IPPs with long-term power purchase agreements with TNB in Peninsular Malaysia.

Also, the PPA does not include mechanisms for the determination of the Applicable Coal Price where the CSTA is terminated due to a TFS change of control or a prolonged event of force majeure. The Sponsor has indicated that it considers the risk of these events occurring low due to the coal supply chain and coal sourcing mitigants described above and TNB's long-term ownership of TFS.

#### (b) Price

The Fuel Payment component of the tariff and the price payable to TFS for coal deliveries is based on the Applicable Coal Price (as defined under the CSTA). The Applicable Coal Price

is set by TNB and TFS, and the Project Company shall be notified when it is set. As such, where coal is purchased from TFS, the coal price is pass-through to TNB under the tariff mechanism.

In a situation where TFS defaults under the CSTA and the Project Company procures coal from third parties for a price greater than the Applicable Coal Price, subject to the approval of a committee established pursuant to the CSTA (“**Fuel Committee**”), TFS will compensate the Project Company for such higher price.

In a situation where the Project Company defaults under the CSTA and the Project Company procures coal from third parties for a price greater than the Applicable Coal Price, the Project Company bears the additional cost arising from the price differential.

In a situation where TFS is unable to supply coal due to a force majeure event under the CSTA or any failure by TFS to supply Shortfall Coal<sup>26</sup> and the Project Company procures coal from third parties, the Project Company bears the risk of the third party coal price being higher than the Applicable Coal Price. Therefore, the Project Company cannot seek pass-through of the additional costs under the PPA or receive any compensation under the CSTA. Nevertheless, the Financing Parties’ Technical Advisor has confirmed that due to the coal procurement strategy used by TFS the likelihood of conditions arising leading to these situations is low. TFS secures coal supplies from a portfolio of coal suppliers and has access to coal from a diversified pool of sources in Indonesia, Australia and South Africa. Based on TFS’s existing coal supply arrangements with TNB’s plants and other IPPs’ Plants in Malaysia, the Financing Parties’ Technical Advisor considers the arrangement to be workable and providing an acceptable security of supply.

### (c) Quality

Pursuant to the CSTA, TFS undertakes to supply coal of a certain quality. The price paid to TFS is adjustable for variations in gross calorific value, moisture, ash content and other quality parameters. Rejection limits with respect to quality parameters apply and TFS is obliged to provide a remedial plan to the Project Company’s satisfaction within three (3) business days.

### 6.3.7 Force Majeure

Force majeure provisions are found in the PPA, the EPC Contract, the CSTA, the OMA, the Sub-Lease Agreement and the SFA (“**the Agreements**”).

A force majeure event is an event, condition, or circumstance, which is beyond the reasonable control of the parties and occurs without fault or negligence on the part of the party claiming it. Such an event would result in delay or disruption in the performance of obligation under the affected Agreements despite all reasonable efforts of the party claiming it to prevent it or mitigate its effects.

There is a risk that the Project Company and the Issuer may be adversely affected by a force majeure event either directly or indirectly if the other project counterparties to the affected Agreements are relieved of their contractual obligations thereunder.

### 6.3.8 PPA Termination Payment

There is a risk that the Financing Parties may not receive all of their outstanding debt and related costs on the termination of the PPA due to an EOD of the Project Company, where

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<sup>26</sup> “**Shortfall Coal**” is the additional coal quantity requested by the Project Company where the requirement for the additional coal results from the Project Company’s stockpiles of coal to drop below the required 312,000 metric tonnes by the end of the month caused solely and directly as a result of TNB or the Grid System Operator despatching the Facility at a level higher than TNB’s estimated despatch level.

TNB elects to acquire the Power Facility. If the PPA is terminated by TNB due to the Project Company's EOD, TNB has the option, but not the obligation, to purchase the Project for a purchase price equal to:

- (a) all of the Outstanding Indebtedness if the Sponsor's gross equity contribution amounts to twenty percent (20%) or more of the Total Project Costs, and ninety-five percent (95%) of the Outstanding Indebtedness if the Sponsor's gross equity contribution is less than twenty percent (20%) of the Total Project Costs; plus
- (b) RM10.00; plus
- (c) reasonable costs and expenses of Project Company which are incurred or suffered as a result of purchase of the Project by TNB; minus
- (d) cash balances at bank and in hand and liquid securities held by the Project Company.

The Financing Parties are at risk in the event TNB elects not to purchase the Project upon termination of the Project Company's EOD and as such, TNB would be under no obligation to pay any termination sums. The Financing Parties must evaluate the performance risk of the Project Company with respect to its obligations under the PPA and the ability of the Project Company to carry out those obligations in accordance with the requirements under the PPA and the resulting risk of the Project Company's EOD leading to termination.

If TNB elects to purchase the Project upon termination of the Project Company's EOD, the purchase price may comprise of ninety-five per cent (95%) of the Outstanding Indebtedness only, in the case where the Sponsor's gross equity contribution is less than twenty percent of the Total Project Costs. This applies in particular during the period prior to the maturity of the Junior Term Loan Facility. Provisions under the Subordination Agreement grant the Senior Lenders and Sukukholders various rights, where in certain circumstances, the Senior Lenders and Sukukholders can direct the Junior Lenders to exercise the Put Option, thereby ensuring that the Sponsor's gross equity contribution remains at a minimum of 20% of the Total Project Costs prior to termination of the PPA. Nevertheless, the risk remains that in certain circumstances, at the time of determination of the termination sum payable by TNB, the Sponsor's gross equity contribution is less than twenty percent (20%) of the Total Project Costs. The Financing Parties must evaluate the performance risk of the Project Company with respect to its obligations under the PPA and the ability of the Project Company to carry out those obligations in accordance with the requirements under the PPA and the resulting risk of the Project Company's EOD leading to termination.

TNB has a number of rights to set-off amounts owing to it from the Project Company, including all liquidated damages payable by the Project Company. This creates a risk to the Financing Parties that TNB may set-off amounts owing to it at termination and reduce the termination payments that may be payable. This risk is mitigated to a point by the strength of the Sponsor's operational experience and the likelihood of any operational failure leading to termination.

## **6.4 Financial Considerations**

### **6.4.1 Equity Contribution Risks**

The Sponsor will contribute at least two point five per cent (2.5%) of Project Costs in the form of equity and shareholder loans prior to COD. The balance amount to bring the Senior DE Ratio to seventy eight point two per cent (78.2%) will be contributed in the form of Junior Term Loan Facility. The equity contribution risk is mitigated by the financial strength of the Sponsor.

The Sponsor has been able to consistently obtain AA3 ratings for its senior corporate debt facilities and non-recourse debt facilities at subsidiary project level from Rating Agency.

The Junior Term Loan Facility will be repaid twelve (12) months after COD via injections of shareholder loans by the Sponsor after which the Sponsor's contribution in the Project will virtually increase from at least 2.5% to at least 20% of the Project Costs.

#### **6.4.2 Exposure to Foreign Currency Fluctuations**

The interest and principal repayments of the Senior USD Loan are denominated in USD. To mitigate the Issuer's exposure to exchange rate fluctuations, the Issuer will enter into cross-currency swaps for 100% of the Senior USD Loan, for a tenor matching the tenor of the Senior USD Loan.

The construction costs of the Project are denominated in RM, USD and EUR. To mitigate the Project Company's exposure to exchange rate fluctuations, the Project Company will enter into forex forward contracts to convert the funds into the requisite construction costs denominated in USD and EUR respectively.

Exposure to foreign currency fluctuations is minimal during the operations phase, as the revenue of the Project Company will be paid by TNB in RM, while majority of operating costs will be denominated in RM.

#### **6.4.3 Adequacy of Insurance**

The Issuer and the Project Company maintain insurance policies to mitigate certain risks in accordance with the provisions of the PPA. The conditions precedent for the issuance of Sukuk Murabahah include:

- a) that the Joint Lead Arrangers shall have received a written report from an independent insurance consultant satisfactory to them in respect of the Takaful/insurance coverage obtained by the Issuer and the Project Company in relation to the Project;
- b) that evidence has been received that all construction period insurances have been effected and are in full force and effect.

The Financing Parties' Insurance Advisor has opined that the overall approach to risk management and the insurance procurement methodology in respect of this Project is acceptable.

However, there can be no assurance that there will be sufficient coverage to fully protect against interruption to business, generation of revenue, increased expenditure or any other liabilities associated with the business of the Issuer and the Project Company. In addition, the creditworthiness of the reinsurers (the ultimate parties who bear the insurance risk) may impact the ability of the Issuer and/ or the Project Company to receive amounts payable as a result of insured events in full.

Some of the local insurers and reinsurers do not have a credit rating, hence their creditworthiness cannot be ascertained with reference to objective criteria. To mitigate this risk, the Issuer is required within two (2) months of Financial Close or such other later date as may be agreed by the Senior Intercreditor Agent (which consent shall not be unreasonably withheld) to provide evidence that all reinsurances have been placed with acceptable reinsurers within two (2) months of Financial Close and if the identity of such reinsurer is not acceptable to the Senior Intercreditor Agent (in consultation with the Takaful/Insurance Consultant), to replace such reinsurer with a reinsurer whose identity is acceptable to the Senior Intercreditor Agent (in consultation with the Takaful/Insurance Consultant) or procure the provision by such reinsurer of a parent support guarantee or other form of credit support..

#### 6.4.4 Inflation

The Project Company enjoys some protection against Malaysian inflation risk as the fixed operating rate and variable operating rate components of the tariff are escalated at a rate of four per cent (4%) every four years.

#### 6.4.5 Interest Rate

The Issuer is not exposed to interest rate risk for the Sukuk Murabahah and Senior USD Loan, as the profit rates for the Sukuk Murabahah are fixed over the term of the Sukuk Murabahah and the Issuer is required to hedge no less than 100% of the interest rate exposure of the Senior USD Loan.

The Issuer is required to hedge no less than 75% of the interest rate exposure in relation to the Senior RM Loan and Junior Term Loan Facility. Consequently, the Issuer's interest rate is limited to the unhedged portion of the Senior RM Loan and Junior Term Loan Facility.

#### 6.4.6 Refinancing Risk

The Issuer may be exposed to refinancing risk given the existence of the balloon repayments of the Senior Loan Facilities and Sukuk Murabahah which are expected to be refinanced upon maturity. The balloon repayments expose the Issuer to the prevailing market conditions of loan and capital markets in the future. There is no assurance that the Issuer will obtain sufficient funding to refinance the balloon repayments when such repayments fall due.

However, the following are to be considered as mitigating factors to the refinancing risk:-

- (i) In relation to the Senior RM Loan balloon, procurement of a standby letter of credit ("**SBLC**") 12 months prior to the maturity date of the balloon repayment, of an amount required for the projected post-distribution FSCR (inclusive of cash balances) to remain at 1.50 times at the balloon repayment date ("**Required Amount**"), ensuring there is sufficient reserves in place to replace the balloon;
  - (ii) In relation to the Senior USD Loan and the Sukuk Murabahah balloons, procurement of a SBLC 24 months prior to the maturity date of the balloon repayment in an amount equal to 50% of the Required Amount and 12 months prior to the maturity date of the balloon repayment in an amount equal to 100% of the Required Amount, ensuring there is sufficient reserves in place to repay the balloon;
  - (iii) In the event the Issuer fails to procure the SBLC, distributions to the Sponsor will be prohibited, hence additional cash will be retained within the Project Company. The cash retentions are expected to be sufficient to ensure the balloons can be repaid in full.
  - (iv) The balloon repayments are due eight (8), eleven (11) and sixteen (16) years after the scheduled COD for each of the Senior RM Loan, Senior USD Loan and Sukuk Murabahah balloons respectively. Hence, the Project has ample lead time to establish operating and financial track record prior to each of the balloon repayments. In addition, the long lead time ensures the Issuer has an extended time period to select a favourable point in the business cycle to execute the refinancing.
  - (v) There is ample remaining tail on the PPA at the point of each of the balloons amounts are due – seventeen (17), fourteen (14) and nine (9) years for each of the Senior RM Loan, Senior USD Loan and Sukuk Murabahah balloons respectively. This ensures that the Project is expected to generate sufficient cashflows over the remaining life to support the replacement financing raised to refinance each of the balloons.
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## **6.5 Regulatory and Environmental Risks**

### **6.5.1 Change in Law**

A change in law resulting in the Project Company being required to make capital improvements in excess of RM10,000,000.00 will result in TNB and Project Company renegotiating the CRF component of the tariff. If the parties cannot agree the dispute resolution process applies.

Pursuant to the PPA, if an industry restructuring event occurs (defined as the revamping of the electricity industry with a view to set up a power pool or other market system), the Project Company and TNB will negotiate amendments to the PPA. If agreement is not reached within six (6) months, TNB may terminate the PPA and pay to the Project Company a termination sum covering outstanding financing amounts and a portion of the Sponsor's return.

### **6.5.2 Political, Economic and Regulatory Risks**

Like all businesses, adverse developments in political, economic and regulatory conditions in the country could materially affect the financial and operational condition as well as the overall profitability of the Issuer and the Project Company. Other political and economic uncertainties include the risk of war, expropriation, nationalisation, renegotiation or nullification of existing contracts, changes in rates of interest and methods of taxation

### **6.5.3 Generation Licence**

The Generation Licence granted by the Energy Commission may be revoked by the Energy Commission where any of the conditions imposed in the Generation Licence is breached by the Project Company; or where the PPA is terminated by TNB; or where payment or work in relation to the installation of the Power Facility is ceased by the Project Company.

In the event of the suspension of the Generation Licence due to non-compliance or breach of any breach of the conditions of Generation Licence, the period granted by the Energy Commission to the Project Company to remedy such breach is 90 days upon the service of the notice of breach. Under the PPA, the time frame for the Project Company to remedy an obligation out of non-compliance or non-conformity (other than a payment obligation) under the PPA is also 90 days, however, an extension of up to 180 days is further extended to the Project Company, being additional rights granted under the PPA.

As a result of the inconsistency of time frame given to the Project Company under the PPA and the Generation Licence to remedy such breach or non-compliance arising thereunder, such a mismatch could result in a situation whereby the Project Company may operate without a valid Generation Licence during the tenure of the PPA. Such an occurrence could result in an operating loss to the Project Company for its inability to operate the Power Facility at any time during the suspension of the Generation Licence.

### **6.5.4 Leased Lands**

The Project Company will occupy the leased lands for purposes of the construction of the Power Facility, the coal yard and the Interconnection Facilities and a charge over the leased lands cannot be created at Financial Close.

The Tripartite Lease Agreement grants the Financing Parties rights over the land in the same respect as an assignment of such lease. Upon the registration of the charge over the leased lands, the Tripartite Lease Agreements will be terminated. The risk lies in that the State Authorities may not approve the registration of the lease and charge to be entered in respect of the leased lands or that the Energy Commission will not grant its consent to the creation of a charge over the leased lands.

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In addition, the current express condition under the land titles provides that the approval from the relevant land authorities is required to be obtained for the change in the category of land use. The relevant parties are required to obtain the approval from the relevant land authorities for the change in the category of land use as a condition subsequent.

In respect of the Sub-Lease Agreement, pending the creation of a charge over the Sub-Leased land, the Financing Parties rights over the land can be protected upon the entry of a private caveat which in essence restricts any dealing of the land by any party without the knowledge of the Financing Parties.

Prospective investors are required to evaluate the risk of the relevant authorities delaying or not completing the relevant administrative procedures.

#### **6.5.5 Environmental and Social Risks**

The Project is located within an existing industrial site and as such, impact on the surrounding environment is expected to be limited.

In addition, there are no major settlements in the immediate vicinity of the Site and no requirement for resettlement of local residents is expected.

The Pulai River estuary is home to wetlands which have been included in the Ramsar List of Wetlands of International Importance. The Project Site is located within the vicinity of the Sungai Pulai and Tanjung Piai Ramsar sites.

The Project Company is required to carry out an environmental impact assessment (“EIA”) and obtain approval for the EIA from the DOE, under the Environmental Quality Act 1974. The EIA report has been prepared by Worley Parsons Environmental Sdn Bhd and approved by the DOE on 14 October 2011. The Environmental Management Plan (“EMP”) is expected to be ready in due course.

The Project, as with all other IPPs, is subject to environmental legislations, policies and regulations. These include meeting air, water and noise emission standards. There can be no assurance that the standards imposed by the environmental legislations and regulations will not change or otherwise result in the increase in costs or losses of or reductions in revenue to the Project Company and the Issuer. Non-compliance could also result in the suspension or revocation of the Generation Licence and/or the imposition of fines.

#### **6.6 Forward Looking Statement**

Certain statements in this Information Memorandum are based on historical data, which may not be reflective of future results, and others are forward-looking in nature, which are subject to uncertainties and contingencies. All forward-looking statements are based on estimates and assumptions made by the Issuer and the Project Company. Although the Board of Directors of the Issuer and the Project Company believe that these forward-looking statements are reasonable, the statements are nevertheless subject to known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements to differ materially from the future results, performance or achievements expressed or implied in such forward-looking statements. In light of these and other uncertainties, the inclusion of forward-looking statements in this Information Memorandum should not be regarded as a representation or warranty by the Issuer or the Project Company or its advisers or the Joint Lead Arrangers/ Joint Lead Managers that the plans and objectives of the Issuer will be achieved.

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# Section 7

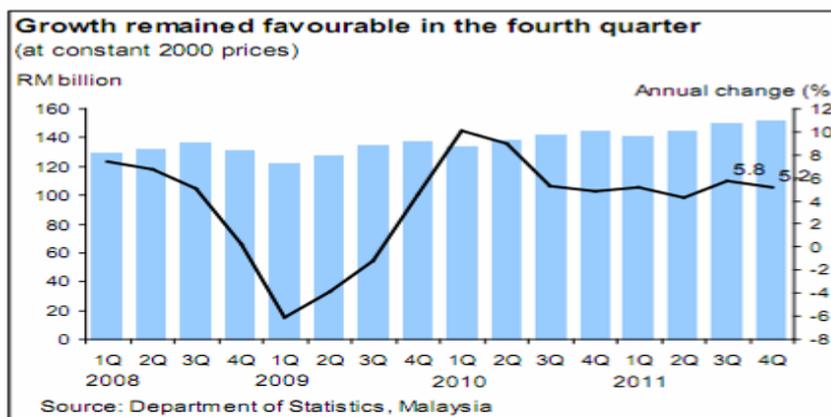
## Industry Overview

### 7.1 Outlook on the Malaysian Economy

#### 7.1.1 Growth of the Malaysian economy remained favourable in the fourth quarter

The global economic and financial conditions continued to experience stress in the fourth quarter following heightened concerns over the resolution of the European sovereign debt crisis. Continuing uncertainties in financial markets, unfavourable fiscal issues in labour and housing markets in the advanced economies continued to pose risks to growth in Asia, including Malaysia. Despite the challenging external environment, the Malaysian economy expanded by 5.2% (3Q 11: 5.8%), with growth being underpinned by domestic demand. The favourable domestic demand conditions were supported by both private and public sector spending. On the supply side, most services sectors recorded slower growth, while the manufacturing sector grew at a similar pace to the previous quarter, reflecting the weaker external environment amid sustained growth in domestic activity. Other sectors, however, recorded improvement during the quarter, while the agriculture sector continued to record strong growth. For the whole year, the Malaysian economy expanded by 5.1%.

Domestic demand expanded by 10.5% during the quarter (3Q 11: 9.0%), driven by the continued expansion in household and business, and public sector expenditure. Private consumption increased by 7.1% (3Q 11: 7.3%), supported by favourable income growth while public consumption expanded by 23.6% (3Q 11: 21.7%) following higher expenditure on emoluments and supplies and services. Gross fixed capital formation increased by 8.5% (3Q 11: 6.1%), supported by continued expansion in capital spending by the private sector and the non-financial public enterprises. The Federal Government development expenditure during the quarter was mostly channelled into the transportation, and trade and industry sectors.



On the supply side, activity in services sectors moderated in the fourth quarter, while the manufacturing sector expanded at a similar pace to the previous quarter. This trend reflected the weaker external environment amid strong performance domestic-oriented activity. The agriculture sector continued to expand on account of strong production of crude palm oil, while mining output recorded a slower growth contraction. The construction sector registered higher growth, supported by the implementation of major infrastructure projects.

The headline inflation rate, as measured by the annual change in the Consumer Price Index (CPI), declined to 3.2% in the fourth quarter (3Q 11: 3.4%). Inflation in the transport category was lower at 3.2% (3Q 11: 4.3%) as the impact of the one-off adjustment on the price of RON95 petrol, diesel and LPG in December 2010 wore off. Inflation in the food and non-

alcoholic beverages category, however, rose to 5.3% during the quarter (3Q 11: 4.8%), mainly due to higher prices in the fish and seafood category.

In the external sector, the current surplus narrowed in the fourth quarter, but remained large at RM22,000,000,000.00, equivalent to 10.1% of GNI. The lower surplus reflected the lower goods surplus, higher trade deficits and larger income outflows. The goods surplus was slightly lower at RM36,900,000,000.00 as gross exports expanded at a more moderate pace (9.8%; 3Q 11: 11.4%), while import growth was sustained (7.6%; 3Q 11: 7.4%).

The financial account turned around from a net outflow position to record a small net inflow of RM200,000,000.00 in the fourth quarter (3Q 11: -RM23,300,000,000.00), due to significantly smaller net outflow of portfolio funds and higher net inflow of other investments. During the quarter, foreign direct investment recorded a higher net inflow of RM6,500,000,000.00 (3Q 11: +RM5,200,000,000.00), supported by higher retained earnings by the multinational companies (MNCs) in Malaysia and higher inflow of equity capital. Direct investments abroad by Malaysian companies increased further to RM14,400,000,000.00 (3Q 11: -RM12,900,000,000.00), reflecting higher outflow of equity capital and larger earnings retained abroad for reinvestment purposes. The overall balance of payments continued to remain strong, recording a surplus of RM6,300,000,000.00 in the fourth quarter (3Q 11: RM10,900,000,000.00), as the current account surplus remained high and the financial account registered a net inflow position.

The international reserves of Bank Negara Malaysia amounted to RM423,400,000,000.00 (equivalent to USD133,600,000,000.00) as at 31 December 2011. The reserves level as at 31 December 2011 has taken into account the quarterly adjustment of the foreign exchange revaluation loss, following the strengthening of the ringgit against some major currencies during the quarter. As at 31 January 2012, the reserves position had amounted to RM424,800,000,000.00, equivalent to USD134,100,000,000.00, sufficient to finance 9.6 months of retained imports and is 4.1 times the short-term external debt.

*(Source: Economic and Financial Developments in Malaysia in the Fourth Quarter of 2011, Press Release dated 15 February 2012, Bank Negara Malaysia)*

### **7.1.2 Monetary policy remained supportive of economic activity**

The Overnight Policy Rate (OPR) was left unchanged at 3.00% in the fourth quarter of 2011 given the higher downside risks to growth and lower upside risks to inflation. At the prevailing level, the OPR remains supportive of economic activity.

Reflecting the unchanged OPR, the average overnight interbank rate and interbank rates of other maturities were relatively stable. In terms of retail interest rates, the average quoted fixed deposit (FD) rates of commercial banks were stable during the quarter. The average base lending rate (BLR) of commercial banks decreased slightly to 6.53% as at end-December due to the inclusion of a new foreign bank with a lower BLR in December. The weighted average lending rate (ALR) on loans outstanding moderated slightly to 5.66% as at end-December 2011 (end-September 5.70%). The cost of borrowing for businesses and households is still below pre-crises levels and remains supportive of the economy.

In the fourth quarter, total gross financing raised by the private sector through the banking system and the capital market increased to RM240,600,000,000.00 (3Q 11: RM223,900,000,000.00). The higher financing reflected increased loan disbursements during the quarter. On a net basis, banking system loans and PDS outstanding expanded at annual growth rate of 12.5% as at end-December (3Q 11: 13.4%). The major loan indicators posted strong performances in the fourth quarter.

Net funds raised in the capital market amounted to RM19,400,000,000.00 during the quarter (3Q 11: RM12,700,000,000.00). Of this amount, RM15,900,000,000.00 was raised by the public sector. There was a significantly lower amount of redemptions by the public sector during the third quarter. In the private sector, fund raising activity remained healthy. After

adjusting for redemptions, net funds raised by the private sector amounted to RM3,500,000,000.00.

The monetary aggregates grew at a stronger pace during the fourth quarter. M3, or broad money, expanded at a faster annual growth rate of 14.4% as at end-December (end-September 2011: 12.5%).

The global foreign exchange markets remained volatile in the final quarter of the year as uncertainty surrounding European sovereign debt crises continued to dampen investors sentiments towards emerging market assets. In general, exchange rate performance was largely news-driven, as markets reacted to developments in Europe. Overall, in line with the regional trend, the ringgit depreciated by 0.4% against the US dollar in the fourth quarter. Against other major currencies, the ringgit appreciated against the euro (5.0%), Japanese yen (1.7%) and the pound sterling (1.6%). Against regional currencies, the ringgit strengthened against the Indonesian rupiah (4.5%), Thai baht (2.3%), Singapore dollar (0.4%) and the Philippine peso (0.4%), but depreciated against the Chinese renminbi (-0.9%) and Korean won (-1.5%). During the period between 1 January and 13 February 2012, the ringgit appreciated against the US dollar (0.8%), Japanese yen (1.4%) and euro (1.3%) but depreciated against the Japanese yen (5.1%), US Dollar (5.0%), euro (2.6%) and the pound sterling (2.5%). The ringgit broadly strengthened against regional currencies, appreciating in the range of 1.3% and 4.9%.

*(Source: Economic and Financial Developments in Malaysia in the Fourth Quarter of 2011, Press Release dated 15 February 2012, Bank Negara Malaysia)*

### **7.1.3 Risks to financial stability remained manageable**

Financial stability remained intact throughout the fourth quarter despite the persistent uncertainties and challenging external environment. Well-capitalised financial institutions and orderly functioning of the financial markets continued to provide support for financial intermediation activities in the domestic economy.

The banking system exhibited strong performance during the quarter. Sustained profitability continued to support the capital strength of banks. Liquidity in the banking system remained ample and sufficient to meet the demand for financing and other liquidity obligations. The core capital ratio and risk-weighted capital ratio of the banking system were at 12.9% and 14.9% respectively. Similarly, the insurance sector remained resilient with a strong capital adequacy ratio of 222.5%.

The Financial Sector Blueprint 2011 – 2020 was launched during the quarter, charting the future direction and initiatives to develop the financial sector to best serve the economy and to facilitate the economic growth and transformation over the next ten years. These include initiatives to promote inclusive access to financial services; encourage further development of financial institutions, products and markets that facilitate and drive the development of new domestic sources of growth; and accelerate Malaysia's regional and international connectivity.

*(Source: Economic and Financial Developments in Malaysia in the Fourth Quarter of 2011, Press Release dated 15 February 2012, Bank Negara Malaysia)*

### **7.1.4 Growth may moderate amidst more challenging external environment**

The global economic recovery continued in the fourth quarter, albeit at a more modest pace. Growth prospects, however, have become increasingly uncertain with the emergence of greater downside risks. In particular, policy uncertainty on the resolution of the ongoing sovereign debt crises in Europe amid fiscal consolidation in the advanced economies could add further strains to the international financial system, thus affecting the prospects for continued global growth.

For the Malaysian economy, the favourable growth in the fourth quarter was underpinned by sustained domestic demand amid weaker external demand. Going forward, the more

challenging external environment could present greater downside risks to Malaysia's growth prospects. Nevertheless, growth in domestic demand is expected to continue to be the key driver of growth, supported primarily by the continued expansion of private sector activity. Public sector expenditure is also expected to lend strong support to the overall growth performance.

*(Source: Economic and Financial Developments in Malaysia in the Fourth Quarter of 2011, Press Release dated 15 February 2012, Bank Negara Malaysia)*

## **7.2 Overview of the Utilities Sector**

The 2012 Budget is anchored on the national transformation agenda, comprising four pillars to drive change. The New Economic Model (NEM) to be achieved through the Economic Transformation Programme (ETP) constitutes a key pillar which will propel Malaysia to a developed and high-income economy that is both inclusive and sustainable. The ETP comprises two parts, namely the Strategic Reform Initiatives (SRIs) and National Key Economic Areas (NKEAs). The two other pillars are the 1Malaysia, People First, Performance Now concept and the Government Transformation Programme (GTP). The 1Malaysia, People First Performance Now concept permeates all public sector programmes and aims to unite all Malaysians to face the challenges ahead as a nation. Meanwhile, the GTP was formulated to strengthen public services as well as facilitate and enable the outcomes defined under the National Key Result Areas (NKRAs) and NKEAs. The Tenth Malaysia Plan (10MP), the fourth pillar, provides the policy support for various programmes from 2011 to 2015.

The utilities sub-sector is expected to expand by 3.1% in 2011 (2010: 8.2%) mainly due to higher electricity consumption in the industrial and commercial segments. During the first seven months of 2011, electricity generation and sales rose 2.6% and 2.7% (January – July 2010: 10.7%; 13.6%), respectively. The industrial segment accounted for 43.9% of total electricity consumption, followed by the commercial (33.8%) and household (20.8%) segments. Maximum demand for electricity peaked at 15,476 megawatts (MW) in May 2011 (January – July 2010: 15,072 MW in May). Meanwhile, water supply to consumers increased 4.2% to 14,648 million litres per day (mld) (January – July 2010: 4.2%; 14,060mld). As of September 2011, five states have participated in the water asset restructuring programme aimed at ensuring sustainability and efficiency of water supply. Meanwhile, negotiations with Kelantan and Perak are expected to be concluded by end-2011.

*(Source: Economic Report 2011/2012, Ministry of Finance Malaysia)*

## **7.3 Overview of the Malaysia Power Market**

### **7.3.1 Overview of the Industry**

The Malaysian power sector is divided into three geographical areas: Peninsular Malaysia, Sabah and Sarawak. A vertically integrated utility operates in each area of which TNB is the responsible entity in Peninsular Malaysia, Sabah Electricity Sdn Bhd in Sabah and Syarikat (SESCO) Bhd in Sarawak. These companies both generate and act as single buyers for the IPPs that operate within their area. They are also responsible for the transmission, the distribution and supply of electricity to the end users. The power sector is regulated by an independent body, the Energy Commission of Malaysia, which was created under the Energy Commission Act 2001.

*(Source: The Mott MacDonald report, February 2012)*

The electricity demand outlook in Peninsular Malaysia is anticipated to grow in line with the growth rate of the economy. The PPA is on an availability basis where TNB is the sole power offtaker, and the Power Facility will receive capacity payment for so long as it meets its availability target. The capacity payments are intended to cover for the fixed operating cost of the Power Facility and also the Project obligations under the financing agreement. The Power

Facility is therefore not considered to be at risk of a lower than expected power demand forecast.

### 7.3.2 Electricity Generation

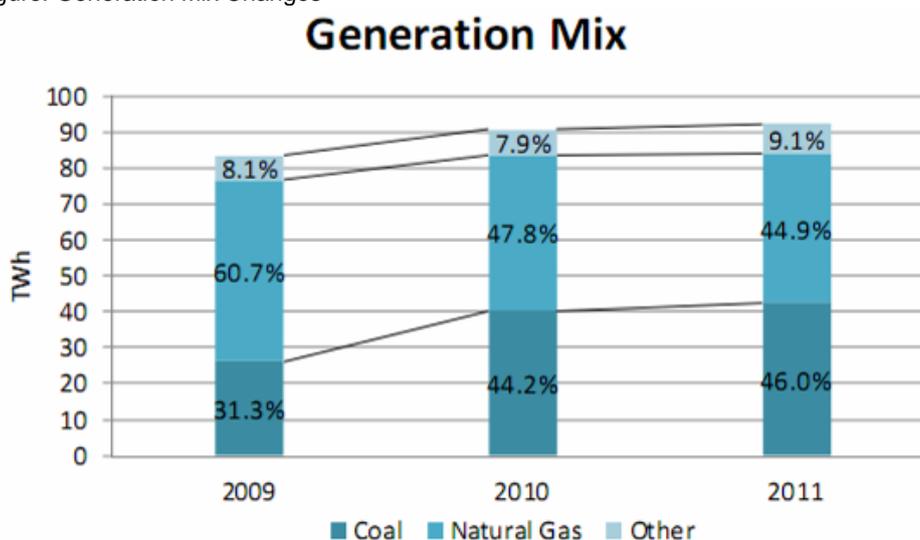
Currently, the installed capacity in Peninsular Malaysia totals 21.8GW, 14.8GW of which are IPPs and the remaining belong to TNB. The installed capacity consists of 53% natural gas fired plants, 34% coal plants, 9% hydro-plants and 4% oil-fired plants.

The only firm projects identified in the latest Annual Report (2011) are the Hulu Terengganu (250MW) and Ulu Jelai (372 MW) hydro electric schemes and the Manjung (1,000 MW) coal-fired power station. The Hulu Terengganu (250MW) and the Manjung (1,000 MW) projects have SCOD 2015, while the Ulu Jelai project is expected to become operational in 2016. TNB in their 2010 annual report confirm that the only coal IPPs under development is the Malakoff project.

Future plans for capacity in Peninsular Malaysia include nuclear and IGCC plants as well as a link to Sarawak's hydro plants.

Although more than half of the installed capacity is gas fuelled the share of gas generation during the last years has fallen significantly. The drivers for gas consumption reduction is the stated wish of the government to move away from subsidising the use of gas for power generation in combination with the fact that despite the reducing subsidies, the market price is still significantly higher (international market price RM40 per mmBTU while the subsidised price was RM13.70 per mmBTU in 2011). This price discrepancy destabilised the gas supply for power generation in 2011 and this meant that generation from coal surpassed gas for the first time in Malaysia. Coal consumption rose from 17.8 metric tonne in 2010 to 20 metric tonne in 2011. In future, the gas price is expected to be liberalised and this coupled with the fact that LNG imports will be required to cover demand will force Malaysian gas prices nearer to international market prices. Although with the LNG imports the gas supply will be able to cover demand for power generation, the price increase will mean that coal generation will become more attractive, assuming that the balance between the international gas and coal prices will remain largely unchanged.

Figure: Generation Mix Changes



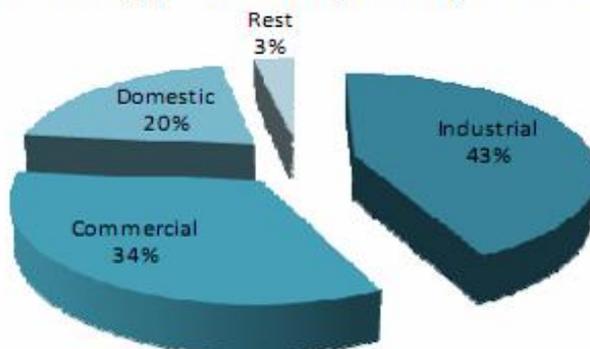
Source: TNB Annual Reports, Energy Commission Annual Reports, Mott MacDonald Calculations

### 7.3.3 Electricity Demand

Electricity demand in Peninsular Malaysia is predominantly driven by industrial and commercial loads. The consumption from various customer groups has remained stable over the past years indicating that the Malaysian economy grows proportionally.

Figure: Customer Basis

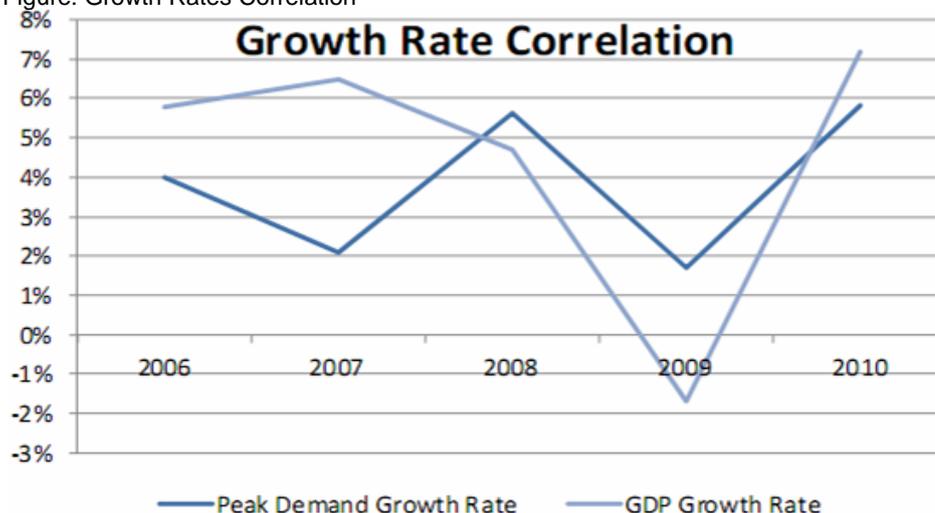
#### 2011 Energy Consumption (92.3 TWh)



(Source: TNB 2011 Annual Report)

As expected in a growing economy, the GDP growth rate is closely correlated to the electricity demand growth rate. Despite the economic slowdown in the OECD, the Malaysian economy is projected to grow at 5-6% until 2016 (according to World Bank projections and the Malaysian Institute of Economic Research). The future economic growth is assumed to be supported by enhanced internal demand and the growth of neighbouring Asian economies.

Figure: Growth Rates Correlation



(Source: World Bank, TNB Annual Reports, Mott MacDonald Calculations)

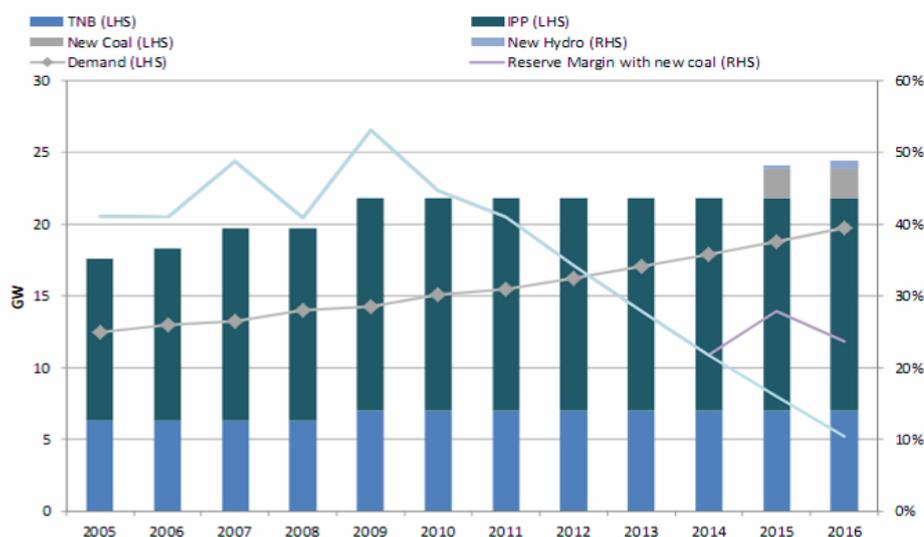
It is therefore reasonable to assume that the electricity demand between 2012 and 2016 will keep growing at approximately 5% on an annual basis.

(Source: The Mott MacDonald report, February 2012)

### 7.3.4 Demand Supply Balance

The reserve margin in Peninsular Malaysia has been relatively high (over 40%) in the last years, which gave the signal to the utility, the government and the regulator that new capacity was not urgently required. However, the rapidly growing demand in combination with the pressing developments regarding the security of supply of gas means that the system may struggle in the next few years without any additions. In the case that the identified firm projects are delayed or cancelled, the system will face a tight 10.5% reserve margin in 2016. The addition of the two proposed 1GW coal fuelled power plants will be necessary to improve the security of the system and to serve the strong base-load demand (43% of the demand comprises industrial loads).

Figure: Installed Generation, Peak Demand and Reserve Margin



(Source: Energy Commission Annual Reports, TNB Annual Reports, Mott Macdonald calculations)

The installation of the coal plants will increase the system margin to more than 20% which provides improved system security and flexibility regarding the plant outages in the future assuming that the gas supply will not generate extra challenges.

(Source: The Mott MacDonald report, February 2012)

### 7.3.5 Conclusions

Currently the installed capacity in Peninsular Malaysia total 21.8GW, and the proposed Power Facility will therefore add significant reserve margin to the National Grid. The electricity demand outlook in Peninsular Malaysia is anticipated to grow in line with the growth rate of the economy. The PPA is on an availability basis where TNB is the sole power offtaker possible, and the Power Facility will receive capacity payment for as long as it meets its availability target. The capacity payments are intended to cover for the fixed operating cost of the Power Facility and also for the Project obligations under the financing agreement. The Power Facility is therefore not at risk of a lower than expected power demand forecast, for as long as the Power Facility fixed operating costs, and financing obligations are adequately covered by the PPA capacity payments.

(Source: The Mott MacDonald report, February 2012)

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# Section 8

## Other Information – The Issuer

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### 8.1 Borrowings

The Issuer as a newly incorporated SPV company to undertake the issuance of the Sukuk Murabahah does not have any existing borrowings.

### 8.2 Contingent Liabilities

There are no contingent liabilities as at 2 March 2012.

### 8.3 Litigation

The Issuer as a newly incorporated SPV company is not involved in any litigation and arbitration proceedings as at 2 March 2012. The Issuer is not aware of any legal proceedings, pending or threatened, or of any fact likely to give rise to any legal proceedings which may have a material adverse effect on the business or financial position of the Issuer.

### 8.4 The Relationship Between the Parties

The following transactions describe the relationship between the contracting parties:-

#### 8.4.1 Turnkey Contract

The Issuer who is a contracting party under the Turnkey Contract is the wholly-owned subsidiary of the Project Company.

#### 8.4.2 Project Management Agreement

The Issuer and Malakoff Engineering Sdn Bhd who are contracting parties under the Project Management Agreement are both wholly-owned subsidiaries of MCB.

### 8.5 Potential Conflict of Interest Situations

As at the date of this Information Memorandum, the Issuer is not aware of any circumstances, which may potentially give rise to a conflict of interest situation in relation to the Sukuk Murabahah.

#### 8.5.1 HSBC Amanah and Maybank IB

HSBC Amanah and Maybank IB are the Joint Principal Advisers and the Joint Lead Arrangers/Joint Lead Managers for the Proposal.

After making enquiries as were reasonable in the circumstances, the Joint Principal Advisers, the Joint Lead Arrangers/Joint Lead Managers both confirm that, to the best of their knowledge, there is no existing or potential conflict of interest situation in their respective capacity as Joint Principal Advisers, Joint Lead Arrangers/ Joint Lead Managers for the Proposal.

#### 8.5.2 Messrs Albar & Partners

Messrs Albar & Partners is the solicitors undertaking the legal due diligence on the Issuer and legal documentation solicitors for the Proposal.

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Messrs Albar & Partners has confirmed that there is no existing or potential conflict of interest situation in their capacity as the due diligence and legal documentation solicitors for the Proposal.

**8.5.4 HSBC (Malaysia) Trustee Berhad**

HSBC (Malaysia) Trustee Berhad is the Trustee for the Proposal.

HSBC (Malaysia) Trustee Berhad confirms that they are not aware of any existing or potential conflict of interest situation in their capacity as the Trustee for the Proposal.

**8.5.5 HSBC Bank Malaysia Berhad**

HSBC is the Facility Agent for the Proposal.

HSBC confirms that they are not aware of any existing or potential conflict of interest situation in their capacity as the Facility Agent for the Proposal.

**8.6 Other Material Information**

Neither the Issuer nor 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, since the date of incorporation of the Issuer prior to the date of Information Memorandum or any document relating to the Sukuk Murabahah.

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# Section 9

## Other Information – The Project Company

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### 9.1 Borrowings

The Project Company confirmed that there are no bank borrowings undertaken by the Project Company nor have the Project Company procured any banking facilities from any financial institutions.

### 9.2 Contingent Liabilities

There are no contingent liabilities as at 2 March 2012.

### 9.3 Litigation

The Project Company is not involved in any litigation and arbitration proceedings as at 2 March 2012. The Project Company is not aware of any legal proceedings, pending or threatened, or of any fact likely to give rise to any legal proceedings which may have a material adverse effect on the business or financial position of the Project Company.

### 9.4 The Relationship Between the Parties

The following transactions describe the relationship between the contracting parties:-

#### 9.4.1 OMA

The Project Company and the Operator who are the contracting parties under the OMA are both wholly-owned subsidiaries of MCB.

#### 9.4.2 Tripartite Lease Agreement – with Seaport and the Security Agent

The Project Company and Seaport who are contracting parties under the Tripartite Lease Agreement are related companies as the Project Company's ultimate holding company is MMC whilst Seaport is a substantial shareholder of MMC with a 51.76% equity interest in MMC via Indra Cita Sdn Bhd.

#### 9.4.3 Tripartite Lease Agreement – with SWW and the Security Agent

The Project Company and SWW who are contracting parties under the Tripartite Lease Agreement are related companies as the contracting parties ultimate holding company is MMC.

#### 9.4.4 Sub-Lease Agreement

The Project Company and TBP who are contracting parties under the Sub-Lease Agreement are both subsidiaries of MCB.

#### 9.4.5 Shared Facilities Agreement

The Project Company and TBP who are contracting parties under the Shared Facilities Agreement are both subsidiaries of MCB.

### 9.5 Other Material Information

Neither the Project Company nor 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

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court of law, since the date of incorporation of the Project Company prior to the date of Information Memorandum or any document relating to the Sukuk Murabahah.

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# Appendix I

## Base Case Financial Projections

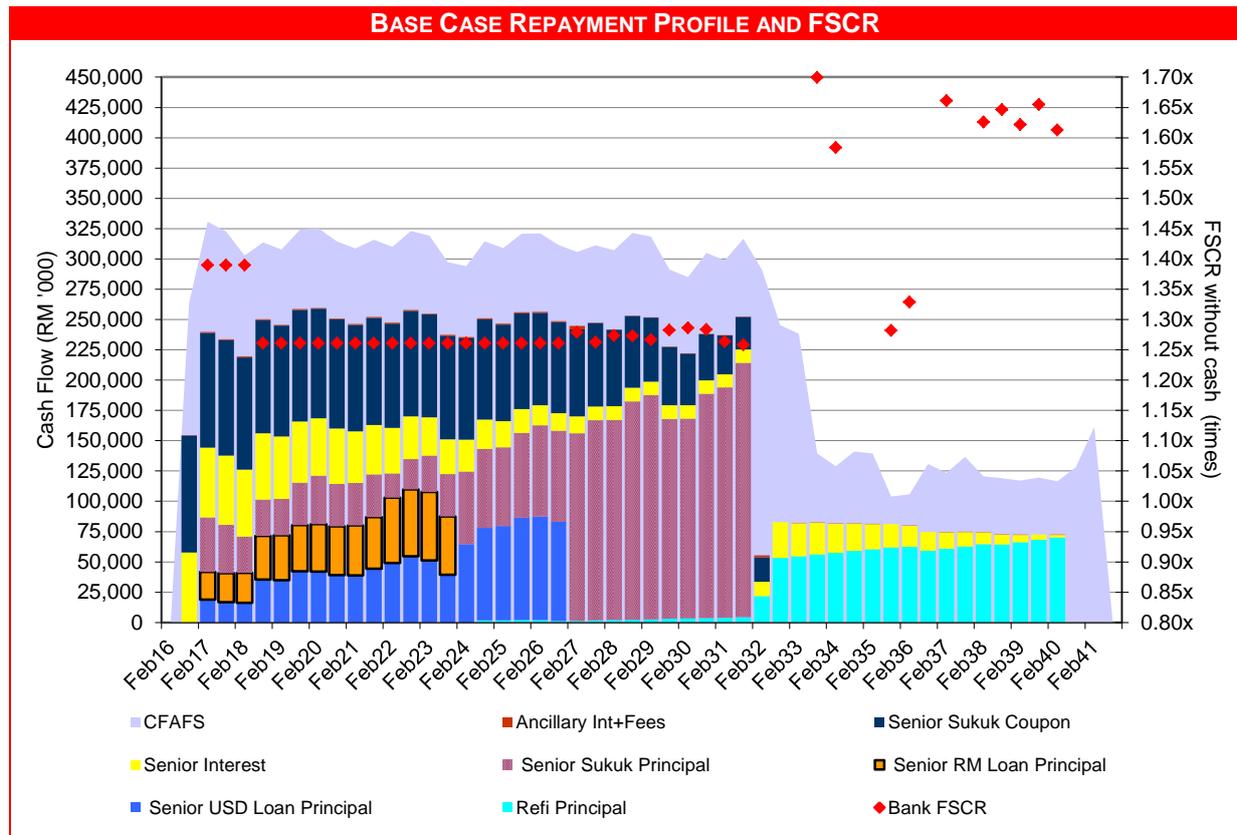
### Part 1

Base Case Sources & Uses of Funds (RM '000)					
	RM ('000)	%		RM ('000)	%
<b>Hard Costs</b>	<b>4,954,275</b>	<b>74.1%</b>	<b>Equity</b>	<b>1,457,323</b>	<b>21.8%</b>
EPC Contract Price	4,835,551	72.3%	Ordinary Share Capital	5,000	0.1%
Contingency	118,724	1.8%	Shareholder Loan	162,183	2.4%
			Junior Equity Bridge Loan	1,290,139	19.3%
<b>Soft Costs</b>	<b>656,662</b>	<b>9.8%</b>	<b>Senior Facilities</b>	<b>5,230,000</b>	<b>78.2%</b>
Development and Contract Management	120,490	1.8%	Senior USD Loan	1,240,000	18.5%
Owners' Consultants	4,662	0.1%	Senior RM Loan	700,000	10.5%
Construction Period Insurances	42,467	0.6%	Senior Sukuk	3,290,000	49.2%
First Contract Year Operation Insurance	19,463	0.3%			
Lenders' Costs and Fees	14,783	0.2%			
O&M Mobilisation Fees	22,363	0.3%			
Testing and Commissioning	99,729	1.5%			
Tax (incl. Tax Advisor Fees)	237,194	3.5%			
Initial Inventory	90,106	1.3%			
PPA Bank Guarantee	5,404	0.1%			
<b>Financing Costs &amp; FSRA</b>	<b>1,076,385</b>	<b>16.1%</b>			
Financing Costs	1,076,385	16.1%			
<b>Total Uses of Funds</b>	<b>6,687,323*</b>	<b>100.0%</b>	<b>Total Sources of Funds</b>	<b>6,687,323*</b>	<b>100.0%</b>

\* Based on exchange rate and interest rate assumptions in the Base Case Financial Projection  
Source: Base Case Financial Model



**Part 3**



Source: Base Case Financial Model

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# Appendix II

## Key Assumptions of Base Case Financial Projections

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Tanjung Bin Energy Issuer Berhad (“TBI” or “the Company”)

Tanjung Bin Energy Sdn Bhd (formerly known as Transpool Sdn Bhd) (“TBE” or “Project Company”)

The principal bases and assumptions upon which the cash flow projections have been made by the Board of Directors of TBI and TBE are as follows:

### **GENERAL ASSUMPTIONS**

1. There will be no significant changes in the terms and conditions of the Power Purchase Agreement (“PPA”) entered into between Tenaga Nasional Berhad (“TNB”) and TBE in relation to the new 1,000 MW coal fired super-critical power plant in Tanjung Bin, Malaysia (“Project”).
  2. There will be no significant changes in the present legislation and Government regulations, rates and duties, tariffs, levies and taxes, which will adversely affect the operations of TBI and the market in which it operates.
  3. TBI will operate as planned and there are no factors which would significantly affect its operations.
  4. There will be no expropriation or events leading to the termination of the PPA prior to the end of the agreement period.
  5. There will be no significant changes to the prevailing economic and political conditions and unforeseen weather, natural disaster or civil unrest in Malaysia and elsewhere that will have direct or indirect effects on TBI.
  6. There will be no material litigation against TBI during the cash flow projection period.
  7. There will be no significant changes in costs of spares and the major operating costs.
  8. The construction of the Project is expected to be completed within forty-eight (48) months from 1 March 2012.
  9. The Scheduled Commercial Operation Date (“SCOD”) for the Project is expected to commence upon the completion of the construction of the Project on 29 February 2016. Based on the approval from the Energy Commission (“EC”), the EC has set the SCOD of the Project to be expected on 1 March 2016.
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**PROJECT COSTS ASSUMPTIONS**

1. The capital expenditure for the new plant comprises the following costs:

Construction costs		Payment schedule			
RM'million	Total	12M Period ending 28 February 2013 Projected	12M Period ending 28 February 2014 Projected	12M Period ending 28 February 2015 Projected	12M Period ending 29 February 2016 Projected
EPC* costs	4,836**	1,901	1,925	708	302
Initial inventory	90	-	-	-	90
Development cost #	225	35	30	41	119
O&M Mobilisation fees	22	-	-	-	22
Insurance costs	63	11	11	11	30
Contingency costs	118	47	47	17	7
Tax fees ##	237	91	97	36	13
Financing Fees and Expenses	1,096	215	226	302	353
<b>Total</b>	<b>6,687</b>	<b>2,300</b>	<b>2,336</b>	<b>1,115</b>	<b>936</b>

Notes:

\* EPC denotes Engineering, Procurement and Construction Contract

\*\* Foreign currency components of EPC Cost are converted using rates of USD 1.00 = RM3.10 and EURO 1.00 = RM4.12.

# Inclusive of environmental impact assessment study, development, contract management and consultant fees.

## Inclusive of import duties, sales tax, service tax and turnkey structure tax.

2. The sources of fund for the above costs are as follows:

	RM' million
<b>Senior Facilities</b>	
Sukuk Murabahah	3,290
Senior USD term loan	1,240
Senior RM term loan	700
<b>Equity</b>	
Share capital	5
Shareholder loan	162
Equity bridge loan	1,290
<b>Total</b>	<b>6,687</b>

The total Project cost is to be financed from earnings from Sukuk Murabahah, Senior term loans and shareholders' equity contribution in the ratio of 49.2%, 29.0% and 21.8% respectively.

Shareholder's equity contribution is expected to be in the form of ordinary shares, shareholder's advances and equity bridge loans.

**PROJECT COSTS ASSUMPTIONS (continued)**

3. Included in the construction costs are contingency amounts which are based on an assumption rate of 2.5% of the total EPC costs.
4. Consumables and export energy payments used in the testing and commissioning of the project are estimated to be as follows:

<b>Consumables</b>	<b>Unit</b>	<b>'000</b>
Electricity	kWh	41,556
HFO / LFO / Distillates	ton	31
Water	litres	585,561
Coal	ton	1,294
Export energy	kWh	2,975,952

**FINANCING ASSUMPTIONS**

1. The debt facilities of the Company comprise the issuance of Sukuk Murabahah amounting to RM3.29 billion at a targeted rating of AA3 with profit rates ranging from 4.70% to 6.20% per annum.
2. It is expected that the Islamic Securities will consist of thirty-one (31) tranches, with tenures ranging from five (5) years to twenty (20) years.
3. The profit payments are expected to commence six months from the date of issuance of the Sukuk Murabahah whereas the payment of principal obligations is expected to commence in the period ending 28 February 2017.
4. All payments in respect of the Islamic Securities will be made on a timely manner.
5. All the financial and debt covenants will be met:-
  - a. A Debt to Equity Ratio of not more than 80:20 times; and
  - b. A Finance Service Cover Ratio (FSCR) of minimum 1.05 times.

**OPERATING ASSUMPTIONS**

1. The Project Company will achieve the following operational performance targets (per annum):

Plant Net Capacity	1,000 MW
Plant Heat Rate (kJ/kWh HHV)	9,429
Plant Availability factor	100%
Plant Dispatch factor	85%

2. There will be adequate coal supply which meets the required quality specifications throughout the projection period.
3. The Power Plant tariff will remain unchanged in accordance with the PPA.
4. The Power Plant operator will be able to fulfill all its obligations and the plant will perform at planned production levels.
5. Coal prices will remain constant at RM303.62 prior to 1 March 2016 and will escalate at a rate of 2% per annum thereafter. The following table illustrates the coal price movement throughout the projection period:

Period Start	Coal Price (RM per tonne)
Contract Year 1	303.62
Contract Year 2	309.69
Contract Year 3	315.89
Contract Year 4	322.21
Contract Year 5	328.65
Contract Year 6	335.22
Contract Year 7	341.93
Contract Year 8	348.77
Contract Year 9	355.74
Contract Year 10	362.86
Contract Year 11	370.11
Contract Year 12	377.52
Contract Year 13	385.07

Period Start	Coal Price (RM per tonne)
Contract Year 14	392.77
Contract Year 15	400.62
Contract Year 16	408.64
Contract Year 17	416.81
Contract Year 18	425.14
Contract Year 19	433.65
Contract Year 20	442.32
Contract Year 21	451.17
Contract Year 22	460.19
Contract Year 23	469.39
Contract Year 24	478.78
Contract Year 25	488.36

### **OPERATING EXPENSES ASSUMPTIONS**

1. The operating expenses are assumed to comprise of fuel expenses, variable operator expenses, fixed operator expenses, CESS fund contribution and other miscellaneous operating expenses. Fuel expenses and variable operator expenses vary directly with the net electrical output produced by the Power Plant.
2. Fuel expenses are calculated as coal price multiplied by the amount of coal consumed for the generation of the net electrical output. Fuel expenses are assumed to be a pass-through cost to TNB.
3. Variable operator expenses are costs that vary directly with the amount of energy generated, e.g. spare parts, non-fuel costs such as water and consumable for the generation of electrical energy, etc. It is calculated at a set rate per unit (in RM/kWh) based on the projected electricity output.
4. Variable operator expenses are costs that vary directly with the amount of energy generated, e.g. spare parts, non-fuel costs such as water and consumable for the generation of electrical energy, etc. It is calculated at a set rate per unit (in RM/kWh) based on the projected electricity output.
5. Fixed operating expenses include fixed operations and maintenance costs, insurance, general and administrative expenses, regulatory fees and license fees.
6. A CESS Contribution to the Malaysian Government is assumed to be equal to one percent (1%) of the gross revenue received excluding the fuel payment revenue.
7. The Project Company expects a maintenance reserve target balance of RM24 million, built over a three (3) year period commencing from the SCOD at a rate of RM8 million per annum.
8. Management presumes that unplanned outages will not exceed the anticipated rate of 6% of total output.

### **TAX, DIVIDEND, INFLATION & EXCHANGE RATES ASSUMPTIONS**

#### ***Corporate Tax Assumptions***

1. It is assumed that the figures for Year of Assessment (“YA”) 2011 and prior YAs are consistent with the tax returns submitted to the Malaysian Inland Revenue Board (“IRB”) and are not disputed by the IRB.
2. The corporate tax rate is assumed at the current Malaysian corporate income tax rate of 25% per annum throughout the projection period and is to be paid at the end of each financial year.
3. It is assumed that there will be no material disposals and write-offs of property, plant and equipment.
4. It is assumed that TBI is not granted any investment tax allowance.
5. Capital Allowances (“CA”) and Industrial Building Allowances (“IBA”) will be determined as follows:

	<b>Initial (%)</b>	<b>Annual (%)</b>
Plant and machinery	20	14
Industrial Building	10	3

It is assumed that all qualifying plant and machinery would fall within the category of “General plant and machinery” (i.e. not falling within the category of “Heavy plant and machinery”, “Motor vehicles” and “Others”).

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6. For the purposes of the computation of CA and IBA, 78.4% of the Project costs are assumed to qualify for CA while the remaining 19.6% will qualify for IBA.
  7. CA and IBA are claimed on the assets of the Project with effect from August 2016 onwards. It is assumed that the construction of the plant and machinery and industrial buildings for the Project are completed and brought into use in March 2016.
  8. CA and IBA are assumed to be permitted to be carried forward indefinitely to offset future taxable statutory income in accordance with current tax regulations in Malaysia.
  9. It is assumed that tax exempt dividends will be distributed under the single-tier system in accordance with current tax regulations in Malaysia.
  10. In respect of tax deductions, interest expenses for Senior Facilities and Junior Facility are treated as deductible expenses in the cash flow projections on the basis that the facilities are for the purpose of asset acquisition and the asset will be used in the business for the production of income.
  11. In respect of tax deductions, payments of interest expenses for shareholder loan will only commence after four (4) years or upon completion and are used for non-trade investments, the deduction of such interest expenses will be restricted and the interest restricted has been treated as non-deductible expenses in the cash flow projections in February 2017.

***Indirect Tax Assumptions***

12. Implication of possible future implementation of Goods and Services Tax (“**GST**”) in Malaysia is not considered in this cash flow projection.
13. It is assumed that goods purchased from local manufacturers under the EPC Contract are not subject to sales tax in accordance with current tax regulations in Malaysia.
14. It is assumed that the preferential import duty rate of 0% for purchased USD components.
15. It is assumed that a 5% average import duty rate is adopted.
16. It is assumed that a 10% sales tax rate is adopted.
17. It is assumed that a 6% service tax rate is adopted.

***Dividend Assumptions***

18. The distribution of dividend is at the absolute discretion of the Project Company after fulfilling all the obligations to the Senior and Junior Facilities.
  19. The maximum distributable dividend is expected to be the lower of net dividend declarable from retained earnings and cash available to pay dividends.
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**TAX, DIVIDEND, INFLATION & EXCHANGE RATES ASSUMPTION (continued)**

***Inflation Assumptions***

20. It is assumed that inflation will increase constantly throughout the period as below:

<b>Malaysia - CPI</b>	<b>Year End</b>	<b>%</b>
	2012	3.30
	2013	3.60
	2014 – 2015	3.80
	2016	4.70
	2017 – 2019	4.50
	2020	4.40
	2021	4.20
	2022	4.10
	2023	4.00
	2024	3.80
	2025	3.60
	2026	3.50
	2027 – 2028	3.40
2029 – 2041	3.50	

<b>Malaysia - PPI</b>	<b>Year End</b>	<b>%</b>
	2012	5.70
	2013	5.40
	2014	5.20
	2015 – 2041	4.90

<b>Malaysia - Local wages and salaries</b>	<b>Year End</b>	<b>%</b>
	2012	3.00
	2013 - 2041	4.00

**TAX, DIVIDEND, INFLATION & EXCHANGE RATE ASSUMPTIONS (CONTINUED)**

***Inflation Assumptions (continued)***

<b>United States of America - CPI</b>	<b>Year End</b>	<b>%</b>
	2012	2.20
	2013	2.70
	2014	2.80
	2015	3.00
	2016	3.20
	2017 – 2018	3.30
	2019 – 2020	3.40
	2021 – 2023	3.30
	2024 – 2025	3.20
	2026 – 2027	3.10
	2028	3.20
	2029	3.40
2030 – 2041	3.60	

<b>United States of America - PPI</b>	<b>Year End</b>	<b>%</b>
	2012	3.30
	2013	2.30
	2014	2.50
	2015 - 2041	2.60

<b>Europe - CPI</b>	<b>Year End</b>	<b>%</b>
	2012 – 2013	1.60
	2014	1.70
	2015 – 2041	1.90

***Exchange Rate***

21. The exchange rates used in the cash flow projection are assumed to be as follows:

	<b>Flat rate</b>
MYR/USD exchange rate	3.10
MYR/Euro exchange rate	4.12

**The Issuer**

**TANJUNG BIN ENERGY ISSUER BERHAD  
(formerly known as Powerfield Sdn. Bhd.)**

**Registered Office Address**

Level 8 Kompleks Antarabangsa  
Jalan Sultan Ismail  
50250 Kuala Lumpur

**The Project Company**

**TANJUNG BIN ENERGY SDN. BHD.  
(formerly known as Transpool Sdn. Bhd.)**

**Registered Office Address**

Level 8 Kompleks Antarabangsa  
Jalan Sultan Ismail  
50250 Kuala Lumpur

**Joint Principal Advisers, Joint Lead Arrangers and Joint Lead Managers**

**HSBC Amanah Malaysia**

11<sup>th</sup> Floor, North Tower  
No. 2, Leboh Amapng  
50100 Kuala Lumpur

**Maybank Investment Bank Berhad**

33<sup>rd</sup> Floor, Menara Maybank  
100, Jalan Tun Perak  
50050 Kuala Lumpur

**Joint Lead Managers**

**Affin Investment Bank Berhad**

27<sup>th</sup> Floor, Menara Boustead  
69 Jalan Raja Chulan  
50200 Kuala Lumpur

**Bank Muamalat Malaysia Berhad**

25<sup>th</sup> Floor, Menara Bumiputra  
21, Jalan Melaka  
50100 Kuala Lumpur

**CIMB Investment Bank Berhad**

5<sup>th</sup> Floor, Bangunan CIMB  
Jalan Semantan  
Damansara Heights  
50490 Kuala Lumpur

**OCBC Bank (Malaysia) Berhad**

Level 13, Menara OCBC  
18 Jalan Tun Perak  
50050 Kuala Lumpur

**RHB Investment Bank Berhad**

Level 11, Tower Three  
RHB Centre, Jalan Tun Razak  
50400 Kuala Lumpur

**Facility Agent**

HSBC Bank Malaysia Berhad  
No. 2, Leboh Ampang  
50100 Kuala Lumpur

**Security Agent**

HSBC Bank Malaysia Berhad  
No. 2, Leboh Ampang  
50100 Kuala Lumpur

**Trustee**

HSBC (Malaysia) Trustee Berhad  
13<sup>th</sup> Floor, South Tower  
HSBC Building  
No. 2, Leboh Ampang  
50100 Kuala Lumpur

**Solicitors for Joint Principal Advisers/  
Joint Lead Arrangers/Joint Lead Managers**

Albar & Partners  
6<sup>th</sup> Floor, Faber Imperial Court  
Jalan Sultan Ismail  
50250 Kuala Lumpur

**Solicitors for Issuer**

Shearn Delamore & Co.  
7<sup>th</sup> Floor, Wisma Hamzah-Kwong Hing  
No. 1, Leboh Ampang  
50100 Kuala Lumpur

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