

KAPAR ENERGY VENTURES SDN BHD
SUKUK IJARAH FACILITY OF UP TO RM2.0 BILLION IN NOMINAL VALUE

Principal Terms and Conditions

1. BACKGROUND INFORMATION

(a) Issuer

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| (i) | Name | : Kapar Energy Ventures Sdn Bhd (“ KEV ” or the “ Issuer ”) |
| (ii) | Address | : <u>Registered Office</u>
Pejabat Setiausaha Syarikat
Tingkat 2, Ibu Pejabat Tenaga Nasional Berhad
No. 129 Jalan Bangsar
59200 Kuala Lumpur |
| (iii) | Business Registration No. | : 518564-T |
| (iv) | Date and Place of Incorporation | : 29 June 2000 / Kuala Lumpur |
| (v) | Date of Listing | : Not applicable |
| (vi) | Status | : Resident Controlled Company |
| (vii) | Principal activities | : The principal activities of the Issuer consist of undertaking the business of generation, supply and sale of electricity energy and generating capacity and to enter into any arrangement, contract or agreement in relation thereto. |
| (viii) | Board of directors | : The board of directors of the Issuer as at 8 November 2012:
1) Tan Sri Leo Moggie
2) Datuk Wira Ir. Azman Bin Mohd
3) Dato’ Ir. Mohd Nazri Bin Shahrudin
4) Datuk Muhamad Noor Bin Hamid
5) Zainal Abidin Bin Abd Jalil
6) Ruswati Binti Othman (Alternate director to Datuk Muhamad Noor Bin Hamid)
7) Habib Bin Husin (Alternate director to Zainal Abidin bin Abd Jalil) |

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| (ix) | Structure of shareholdings and names of shareholders | : The structure of shareholdings and names of shareholders of the Issuer as at 8 November 2012:
1) Tenaga Nasional Berhad – 60%
2) Malakoff Corporation Berhad – 40% |
| (x) | Authorised and paid-up capital | : The authorised and paid-up capital of the Issuer as at 8 November 2012:
1) Total authorised share capital – RM5,000,000 comprising 5,000,000 ordinary shares of RM1 each.
2) Total paid-up share capital – RM2,000,000 comprising 2,000,000 ordinary shares of RM1 each. |

2. PRINCIPAL TERMS AND CONDITIONS

(a) Names of parties involved in the proposed transaction

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|--------|--------------------------|---|
| (i) | Principal Adviser | : AmInvestment Bank Berhad (Company No. 23742-V) (“ AmInvestment Bank ”) |
| (ii) | Lead Arranger | AmInvestment Bank |
| (iii) | Co-Arranger | : Not applicable |
| (iv) | Solicitor | : <u>To the Lead Arranger:</u>
Messrs. Adnan Sundra & Low

<u>To the Issuer:</u>
Messrs. Kadir, Andri & Partners |
| (v) | Financial Adviser | : Not applicable |
| (vi) | Technical Adviser | : To be appointed by the Issuer (upon mutual agreement between the Issuer and the Security Agent) in the events as stipulated under item (iii) of Section 2(k) – Designated Accounts. |
| (vii) | Trustee | : AmTrustee Berhad (Company No. 163032-V) |
| (viii) | Guarantor | : Not applicable |
| (ix) | Valuer | : Not applicable |
| (x) | Facility Agent | : AmInvestment Bank |

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|---------|---|--|
| (xi) | Primary Subscriber (under a bought-deal arrangement) and amount subscribed | : The Sukuk will be fully subscribed by AmBank (M) Berhad (Company No. 8515-D) |
| (xii) | Underwriter and amount underwritten | : Not applicable |
| (xiii) | Shariah Adviser | : AmInvestment Bank (backed by AmIslamic Bank Shariah Committee) and Dr Mohd Daud Bakar |
| (xiv) | Central Depository | : Bank Negara Malaysia (“BNM”) |
| (xv) | Paying Agent | : BNM |
| (xvi) | Reporting Accountant | : Messrs. PricewaterhouseCoopers |
| (xvii) | Calculation Agent | : Not applicable |
| (xviii) | Others (please specify) | : <u>Lead Manager</u>
AmInvestment Bank

<u>Security Agent</u>
AmInvestment Bank

<u>Independent Insurance Adviser</u>
Malene Insurance Brokers Sdn Bhd |
- (b) **Facility Description (including the description of Islamic principle)** : Islamic securities (“**Sukuk**”) of up to RM2.0 billion in nominal value based on the Shariah principles of Ijarah (“**Sukuk Ijarah Facility**”).

Sukuk Ijarah Facility

The Issuer as the (“**Seller**”) shall enter into an asset purchase agreement (“**Asset Purchase Agreement**”) with the Trustee (acting on behalf of Sukukholders), as the Purchaser (“**Purchaser**”) for the sale of the beneficial ownership and interest of the Shariah-compliant leasable assets consisting of plant and machinery assets of the Kapar Power

Plant and/or such other Shariah-compliant leasable assets approved by the Shariah Adviser ("**Ijarah Assets**") at the asset purchase price ("**Asset Purchase Price**").

The value of the Ijarah Assets shall comply with the Securities Commission's ("**SC**") Shariah Advisory Council ("**SAC**") asset pricing requirements under the Islamic Securities Guidelines (Sukuk Guidelines), as may be replaced, substituted, amended or revised from time to time ("**SAC Pricing Guideline**").

As the Ijarah Assets are currently encumbered, the Issuer shall obtain the relevant consents from the Existing BaIDS (as defined) holders and relevant existing financiers, amongst others, for the use of the charged asset(s) as the underlying Ijarah Assets to facilitate the sale and lease-back transaction in accordance with the Shariah principles of Ijarah contemplated therein

The Issuer shall issue Sukuk to the Sukukholders and shall concurrently declare a trust ("**Declaration of Trust**") over the Ijarah Assets, the present and future rights and interest in the Ijarah Agreement, the Purchase Undertaking (as defined) and the proceeds of the foregoing ("**Trust Assets**") for the benefit of the Sukukholders. The Sukuk herein represents the Sukukholders' undivided and proportionate beneficial ownership in the said Trust Assets (including rights to receive the Rental).

Thereafter, the Trustee (on behalf of the Sukukholders), in its capacity as the lessor ("**Lessor**") shall, lease the Ijarah Assets to the Issuer as the lessee ("**Lessee**") for a pre-determined rental amount ("**Rental**") and tenure ("**Lease Term**") pursuant to the Ijarah agreement ("**Ijarah Agreement**"). During the tenure of the Ijarah Agreement, the Trustee, on behalf of the Sukukholders, will receive the Rental to be paid by the Lessee.

Such Rental paid by the Lessee will be distributed by the Issuer (via Trustee) as periodic distributions ("**Periodic Distributions**") under the Sukuk to the Sukukholders, proportionate to their sukukholdings.

Under the terms of the Servicing Agency Agreement (as defined below), KEV shall be appointed as the Servicing Agent by the Trustee as Lessor (on behalf of the Sukukholders) and will, amongst other things, be responsible, on behalf of the Lessor, for the performance and/or maintenance and/or physical repair of the Ijarah Assets and/or the related payment and/or ownership expenses (“**Ownership Expenses**”) in respect of the Ijarah Assets, which are to be reimbursed by the Trustee (on behalf of the Sukukholders) to KEV upon the expiry of the Ijarah Agreement. The Servicing Agent shall also ensure that the takaful/insurance is sufficient for a covered/insured amount at all times and shall be responsible for the related payment of the relevant takaful contribution or insurance premium.

Pursuant to a purchase undertaking (“**Purchase Undertaking**”), KEV (as “**Obligor**”), shall also undertake to acquire the relevant Ijarah Assets via a Purchase Undertaking granted up-front to the Trustee, acting on behalf of the Sukukholders, upon the respective maturity dates (“**Maturity Date**”) of the Sukuk or upon declaration of an Event of Default (as defined below), at an agreed formula (“**Exercise Price**”). The Exercise Price received from the Obligor will be used to pay all amounts due under the relevant Sukuk to the Sukukholders.

Under a substitution undertaking (“**Substitution Undertaking**”), KEV shall have the right to substitute by way of an exchange agreement all or part of the Ijarah Assets from time to time throughout the tenure of the Sukuk with qualified assets that are approved by the Shariah Adviser (“**Substitute Ijarah Assets**”). The Substitute Ijarah Assets shall form part of the Ijarah Assets.

Upon the occurrence of a Total Loss Event (and unless the lost Ijarah Assets are substituted with qualified assets as approved by the Shariah Adviser within a stipulated timeframe) the particular Ijarah Agreement will be terminated accordingly. Subsequently, the Trustee (on behalf of the Sukukholders) shall in accordance with the provisions of the Transaction Documents (as defined), and by written notice to the Issuer, declare

that an event of default has occurred without the need of any instruction from the Sukukholders (**"Mandatory Event of Default"**).

In such event, the Sukuk will be redeemed using the proceeds of takaful/insurance. If the takaful/insurance proceeds are insufficient to cover the nominal value or the accreted value accrued (in the case of Sukuk issued at a discount) to the date of declaration of the Mandatory Event of Default of the relevant outstanding Sukuk and all accrued and unpaid Periodic Distributions and Ownership Expenses thereon, the Servicing Agent shall irrevocably and unconditionally undertake to make good the difference, for not taking full takaful/insurance coverage on the Ijarah Assets pursuant to the terms of the Servicing Agency Agreement. Any excess from the takaful/insurance proceeds over the nominal value or the accreted value accrued (in the case of Sukuk issued at a discount) to the date of declaration of a Mandatory Event of Default of the relevant outstanding Sukuk and all accrued and unpaid Periodic Distributions and Ownership Expenses thereon, shall be paid to the Servicing Agent as an incentive fee. **"Total Loss Event"** is the total loss or destruction of, or damage to the whole (and not part only) of the Ijarah Assets of the Ijarah Agreement or any event or occurrence that renders the whole (and not part only) of the Ijarah Assets permanently unfit for any economic use and the repair or remedial work in respect thereof is wholly uneconomical.

Please refer to Annexure I for brief description of the Sukuk Ijarah Facility transaction structure.

- (c) **Issue Size** : Up to RM2.0 billion in nominal value
- (d) **Tenure of the Issue** : The Sukuk shall be issued in series and each series shall have a tenure of more than one (1) year and up to thirteen (13) years from the issue date.
- (e) **Availability Period of the Facility** : The Sukuk shall be issued no later than six (6) months from the date of the SC approval.
- (f) **Profit / Coupon / Rental Rate** : The profit rates for each series of the Sukuk will be determined prior to the issuance of the Sukuk.

- (g) **Profit / Coupon / Rental Payment Frequency** : Periodic Distributions for the Sukuk shall be on a semi-annual basis or such other period to be determined prior to the issuance of the Sukuk ("**Periodic Distributions Dates**").
- (h) **Profit / Coupon / Rental Payment Basis** : The Periodic Distributions shall be calculated based on the actual number of days elapsed and 365 days basis (actual / 365).
- (i) **Security / Collateral (if any)** : The Sukuk and items (a) and (d) under Permitted Indebtedness will rank pari passu and share the same security including:-
- (i) first fixed charges over the leases of the 3 parcels of land where the Issuer's power plant, Stesen Janaelektrik Sultan Salahuddin Abdul Aziz, its coal yard and jetty are located as described under: (i) the Lease Agreement dated 31 July 2000 between Tenaga Nasional Berhad ("**TNB**") and the Issuer (ii) the Lease Agreement for Coal Yard Land dated 30 April 2004 between TNB and the Issuer; and (iii) the Lease Agreement for Jetty Land dated 30 April 2004 between TNB and the Issuer ("**Kapar Power Plant**");
 - (ii) a first ranking debenture comprising fixed and floating charges over all present and future assets of the Issuer; and
 - (iii) assignment of all rights, titles, interests and benefits of:-
 - a. the Project Documents (as defined hereunder);
 - b. the applicable takaful/ insurances; and
 - c. the Designated Accounts (as defined hereunder).

Documentation for the purpose of (i), (ii) and (iii) above shall be referred to hereinafter as the "**Security Documents**".

Note:

- (a) The above security represents the ultimate pool of security for the Sukuk, and will be perfected after the redemption of the Existing BalDS, and subject always to:-

- (i) consent of the holders of the Existing BalDS, and relevant existing financiers in respect of creation of the above security; and
- (ii) issuance of the necessary letter(s) of undertaking and/or instruction from the Issuer and/or the Existing BalDS trustee/facility agent/security agent to the Security Agent prior to the release of the redemption sums wherein the Existing BalDS security agent/trustee undertakes to discharge their existing security interests under the Existing BalDS security documents.
- (b) The financiers of item (a) under Permitted Indebtedness are to be determined subsequently and item (d) under Permitted Indebtedness is financed by AmInvestment Bank Berhad, RHB Bank Berhad and *Hong Leong Bank Berhad with Bank Muamalat Malaysia Berhad as the security agent.

**note: The facility was granted by EON Bank Berhad which is now part of Hong Leong Bank Berhad*

(j) Details on Utilisation of Proceeds : The Sukuk proceeds shall be utilised for Shariah-compliant purposes which include refinancing the Issuer's outstanding Bai' Bithaman Ajil Islamic Debt Securities ("**Existing BalDS**"), pre-funding the FSRA (if required), to meet the general working capital purposes of the Issuer and to meet the fees and expenses in relation to this Sukuk Ijarah Facility.

(k) Designated Accounts (if any) : The Issuer shall open and maintain the following three (3) Shariah-compliant designated accounts ("**Designated Accounts**") with a financial institution to be appointed by the Issuer and which is acceptable to the Facility Agent:-

- (a) Project Bank Account ("**PBA**");
- (b) Finance Service Reserve Account ("**FSRA**"); and
- (c) Maintenance Reserve Account ("**MRA**").

The PBA shall be solely operated by the Issuer and

the FSRA and MRA shall be jointly operated by the Issuer and the Security Agent. Upon the occurrence of an Event of Default, the Security Agent shall be the sole signatory of all Designated Accounts.

(i) Project Bank Account : The Issuer shall open and maintain the PBA for the purposes of depositing the following:-

- (a) any balance in the project bank account of the Existing BalDS after redemption in full of the Existing BalDS and execution of the discharge documents in relation to the security created over the account in respect of the Existing BalDS; and
- (b) all project revenues received or receivable by the Issuer (subject to direct payment to identified parties as allowed under the Transaction Documents) including but not limited to proceeds from the Sukuk, equity contributions, all revenues, proceeds of takaful/insurance claims, profit/interest income, warranty proceeds and other cash receipts from other sources that are to be deposited into this account.

The Issuer shall give to TNB (as the power purchaser) irrevocable instructions to remit the revenues due under the Power Purchase Agreement into the PBA.

Sums in the PBA may be withdrawn by the Issuer in accordance with the Priority of Cash Flows (as defined hereunder).

(ii) Finance Service Reserve Account : The Issuer shall open and maintain the FSRA for the following purposes:-

- (a) to receive any balance from the finance service reserve account and the finance payment account of the Existing BalDS into the FSRA after redemption in full of the Existing BalDS and execution of the discharge documents in relation to the security created over the accounts in respect of the Existing BalDS.

In the event the monies received from the finance service reserve account and the

finance payment account of the Existing BalDS is not sufficient to meet the Minimum FSRA Balance (as defined hereunder), the Issuer shall immediately top up any shortfall into the FSRA by utilising the Sukuk proceeds; and

- (b) to meet the Issuer's scheduled payment obligations under the Sukuk to the extent that such payments are not met from the PBA. Subject to the Priority of Cash Flows (as defined herein) and available cash flow, the Issuer will maintain a balance in the FSRA at least equal to one (1) profit and principal payments under the Sukuk falling due on the next twelve (12) months (the balance is referred to hereafter as the "**Minimum FSRA Balance**").

Transfers to the FSRA will be made in accordance with the Priority of Cash Flows, subject to the availability of funds, in an amount (if any) to ensure the FSRA is fully funded to the Minimum FSRA Balance. The Issuer will be permitted to make withdrawals from the FSRA for each of the following purposes:-

- (a) in substitution by a standby letter of credit;
- (b) to meet payment obligations under the Sukuk to the extent funds are insufficient in the PBA; and
- (c) if, at any time, the credit balance in the FSRA is more than the applicable Minimum FSRA Balance, the Issuer may withdraw the excess amount and pay such amount to the PBA for retention in such account for application in accordance with the Priority of Cash Flows.

If a withdrawal is made under sub-paragraph (b) above, the amount withdrawn must be replenished by the Issuer within sixty (60) days to meet the Minimum FSRA Balance.

The Issuer may, at any time, withdraw amounts standing to the credit of the FSRA provided that withdrawal of such amounts is against the provision, by the Shareholders (and for their own account), of

an irrevocable, unconditional standby letter of credit provided by a bank with the same long term credit rating as the Sukuk (or, if an offshore bank, an equivalent long term credit rating) (subject to a minimum rating of AA- or its equivalent):

- (a) covering, on the issue date of such standby letter of credit, the amount withdrawn from the relevant FSRA in substitution for such standby letter of credit;
- (b) providing for no recourse to the Issuer for the provider of such standby letter of credit; and
- (c) providing that such standby letter of credit may be drawn if not renewed five (5) business days prior to its original expiry date and to any subsequent expiry date thereafter.

If, on any monthly transfer date for transfer of amounts into the FSRA, the aggregate amount of (i) the amount to be transferred and (ii) the amount covered by the relevant standby letter of credit is in excess of the Minimum FSRA Balance, the Issuer may (a) transfer an amount equal to the excess (the "**FSRA Excess Amount**") to the PBA for retention in such account for application in accordance with the Priority of Cash Flows or (b) reduce the amount covered by the relevant standby letter of credit by the FSRA Excess Amount where the standby letter of credit exceeds the then applicable Minimum FSRA Balance.

Without prejudice to the Issuer's obligation to fund the FSRA to their required balance, if there is a drawing under any standby letter of credit, there is no obligation on the part of either the Issuer or the Shareholders to provide a replacement standby letter of credit in respect of the amount drawn. For the avoidance of doubt, any election by the Shareholders not to provide a replacement standby letter of credit for any amounts drawn under the standby letter of credit shall not exempt or otherwise excuse the Issuer from meeting its obligations to replenish the FSRA to its required balance prior to the expiry of such standby letter of credit.

- (iii) **Maintenance Reserve Account** : The Issuer shall open and maintain the MRA for the following purposes:-
- (a) to receive any balance from the maintenance reserve account of the Existing BalDS into the MRA after redemption in full of the Existing BalDS and execution of the discharge documents in relation to the security created over the accounts in respect of the Existing BalDS; and
 - (b) to fulfil the Issuer's maintenance obligations under the Power Purchase Agreement and the Transaction Documents. Subject to the Priority of Cash Flows and the availability of funds, the Issuer shall transfer from the PBA into the MRA to meet the required balances as set out in a schedule to be provided by the Issuer (hereafter referred to as the "**Minimum MRA Balance**").

The Issuer will be permitted to make withdrawals from the MRA for each of the following purposes:

- (a) to meet maintenance costs arising in accordance with *Clause 8.1 of the Power Purchase Agreement and to meet maintenance costs as agreed by the Issuer and the Facility Agent;
- (b) to fund operating costs to the extent that funds are not available in the PBA for this purpose; and
- (c) to fund any shortfall in the PBA; and
- (d) in substitution for a standby letter of credit.

To the extent that funds are withdrawn from the MRA to meet any operating costs as per paragraph (b) or (c) above, then subject to the Priority of Cash Flows and the available cash flow, the Issuer shall replenish the MRA to an amount not less than that existing at the time of withdrawal but no more than the Minimum MRA Balance at the end of the semi-annual period by the earlier of (i) one (1) month after the date of withdrawal from the MRA or (ii) one (1) week before the end of the semi-annual period.

If, at any time, the Issuer believes that the Minimum MRA Balance as set out in a schedule to be provided by the Issuer is too high, the Issuer may propose an alternative target balance, and the Security Agent shall in consultation with a technical adviser to be appointed (provided that any technical adviser to be appointed shall be mutually agreed between the parties), consider the proposed alternative balance in good faith with a view to agreeing to a revised Minimum MRA Balance. If it is agreed that the target balance is too high a revised schedule shall be produced and shall replace the existing schedule and the Issuer may, at its discretion, withdraw such excess and pay it to the PBA to be applied to the Priority of Cash Flows.

If at any time, the Security Agent (upon consultation with a technical adviser to be appointed, provided that any technical adviser to be appointed shall be mutually agreed between the parties) believes that the Minimum MRA Balance is too low, the Security Agent may propose an alternative target balance and the Issuer shall consider the proposed alternative balance in good faith with a view to agreeing a revised Minimum MRA Balance. If it is agreed that the Minimum MRA Balance is too low, a revised schedule shall be produced and shall replace the existing schedule and the Issuer shall subject to the Priority of Cash Flows, make payments into the MRA to achieve the revised Minimum MRA Balance.

The Issuer may, at any time, withdraw amounts standing to the credit of the MRA provided that withdrawal of such amount is against the provision, by the Shareholders (and for their own account), of an irrevocable, unconditional standby letter of credit provided by a bank with the same long term credit rating as the Sukuk (or, if an offshore bank, an equivalent long term credit rating) (subject to a minimum rating of AA- or equivalent):

- (a) covering, on the issue date of such standby letter of credit, the amount withdrawn from the relevant MRA in substitution for such standby letter of credit;
- (b) providing for no recourse to the Issuer for the

provider of such standby letter of credit; and

- (c) providing that such standby letter of credit may be drawn if not renewed five (5) business days prior to its original expiry date and to any subsequent expiry date thereafter.

If, on any monthly transfer date for transfer of amounts into the MRA, the aggregate amount of (i) the amount to be transferred and (ii) the amount covered by the relevant standby letter of credit is in excess of the then Minimum MRA Balance, the Issuer may (a) transfer an amount equal to the excess (the "**MRA Excess Amount**") to the PBA for retention in such account for application in accordance with the Priority of Cash Flows or (b) reduce the amount covered by the relevant standby letter of credit by the MRA Excess Amount where the standby letter of credit exceeds the then applicable Minimum MRA Balance.

Without prejudice to the Issuer's obligation to fund the MRA to their required balance, if there is a drawing under any standby letter of credit, there is no obligation on the part of either the Issuer or the Shareholders to provide a replacement standby letter of credit in respect of the amount drawn. For the avoidance of doubt, any election by the Shareholders not to provide a replacement standby letter of credit for any amounts drawn under the standby letter of credit shall not exempt or otherwise excuse the Issuer from meeting its obligations to replenish the MRA to its required balance from ongoing cash flow.

*note: Clause 8.1 of the Power Purchase Agreement requires the Issuer to maintain a maintenance reserve account in the sum of not less than RM15,000,000 to fund the maintenance expenses (including any repair or replacement that is necessary or appropriate to ensure that the Kapar Power Plant will continue to operate in accordance with the Power Purchase Agreement) of the Kapar Power Plant which such obligations can be discharged by similar reserve required under any financing or refinancing obtained by the Issuer in relation to the Kapar Power Plant.

(l) Rating

- (i) Credit Rating(s) Assigned** : The Sukuk has been assigned an indicative rating of AA+_{IS}
- (ii) Name of Rating Agency** : Malaysian Rating Corporation Berhad ("**MARC**")

(m) Mode of Issue : The Sukuk shall be issued on a bought-deal basis made under the Rules on Scripless Securities under the Real Time Electronic Transfer of Funds and Securities ("**RENTAS**") System and reported on the Fully Automated System for Issuing/ Tendering ("**FAST**").

(n) Selling Restrictions, including tradability : Selling Restrictions at Issuance
The Sukuk may only be offered, sold, transferred or otherwise disposed directly or indirectly to persons falling within the relevant category of the persons specified in Section 4(6) of the Companies Act, 1965 as amended from time to time, and persons to whom an offer or invitation to subscribe the Sukuk may be made and to whom the Sukuk are issued would fall within Schedule 6 or Section 229(1)(b) and Schedule 7 or Section 230(1)(b) read together with Schedule 9 or Section 257(3) of the Capital Markets and Services Act 2007 ("**CMSA**"), as amended from time to time.

Selling Restrictions Thereafter

The Sukuk may only be offered, sold, transferred or otherwise disposed directly or indirectly to persons falling within the relevant category of the persons specified in Section 4(6) of the Companies Act, 1965 as amended from time to time, and persons to whom an offer or invitation to purchase the Sukuk would fall within Schedule 6 or Section 229(1)(b) read together with Schedule 9 or Section 257(3) of the CMSA as amended from time to time.

Tradability

The Sukuk are transferable (but subject to the Selling Restrictions described above) and tradable under the Rules on Scripless Securities under RENTAS operated by Malaysian Electronic Clearing Corporation Sdn Bhd ("**MyClear**").

- (o) **Listing Status and Types of Listing** : The Sukuk may be listed on Bursa Malaysia Securities Berhad under the Exempt Regime, if the Issuer so decides. The SC shall be notified accordingly in the event of such listing.
- (p) **Other regulatory approvals required in relation to the issue, offer or invitation and whether or not obtained (please specify)** : None.
- (q) **Conditions Precedent** : To include but not limited to the following:
- A. Main Documentation
- (a) Save for the Security Documents which can be perfected after the redemption of the Existing BalDS, the Transaction Documents have been signed and where applicable stamped or endorsed as being exempted from stamp duty and presented for registration with the relevant registries (where applicable); and
- (b) All relevant notices and acknowledgements (where applicable) shall have been made or received as the case may be.
- B. The Issuer
- (a) Certified true copies of the Certificate of Incorporation and the Memorandum and Articles of Association of the Issuer;
- (b) Certified true copies of the latest Forms 24 and 49 of the Issuer;
- (c) A certified true copy of a board resolution of the Issuer authorising, among others, the setting up of the Sukuk Ijarah Facility and the execution of the relevant Transaction Documents;
- (d) A list of the Issuer's authorised signatories and their respective specimen signatures;
- (e) A report of the relevant company search(es) on the Issuer; and

- (f) A report of the relevant winding up search or the relevant statutory declaration of the Issuer.

C. General

- (a) The approval from the SC and, where applicable, all other relevant regulatory authorities;
- (b) The Sukuk shall have received a long-term rating of AA+_{IS} or its equivalent;
- (c) The relevant letter(s) of undertaking and/or instruction from the Issuer and/or the Existing BalDS trustee/facility agent/security agent (where applicable) to the Security Agent to effect the following:-
 - (i) Discharge the existing security interests under the Existing BalDS' security documents;
 - (ii) Withdrawal of balances from the Existing BalDS' designated accounts to be deposited into the Designated Accounts; and
 - (iii) Any other actions necessary for the perfection of the Security Documents as may be advised by the Lead Arranger's legal counsel;

upon the receipt of the redemption sums by the Existing BalDS facility agent.

- (d) Satisfactory legal opinions from the Lead Arranger's solicitors confirming the legality, validity and enforceability of the Project Documents;
- (e) Satisfactory legal opinions from the Lead Arrangers' solicitors confirming the legality, validity and enforceability of the Transaction Documents save for the Security Documents which will be perfected after the redemption of the Existing BalDS and confirming that all

the conditions precedent herein have been fulfilled;

- (f) A written report from the independent insurance adviser that the takaful/insurance cover in relation to the Kapar Power Plant is adequate and in compliance with the relevant Project Documents;
- (g) Certified true copies of the Project Documents in connection with the Kapar Power Plant;
- (h) Certified true copy of the Generation Licence granted to the Issuer by the Energy Commission of Malaysia in connection with the Kapar Power Plant;
- (i) Evidence of the confirmation from the Shariah Adviser that the structure and mechanism together with the Transaction Documents of the Sukuk are in compliance with Shariah;
- (j) Evidence that all the Designated Accounts have been opened in accordance with the provisions of this Principal Term and Conditions;
- (k) Receipt of the requisite approval(s)/consents from the Existing BalDS holders and relevant existing financiers, amongst others, for the use of the charged asset(s) as the underlying Ijarah Assets to facilitate the sale and lease-back transaction in accordance with the Shariah principles of Ijarah contemplated therein;
- (l) All transaction fees, costs and expenses have been fully paid or documentary evidence that it will be paid from the issue proceeds;
- (m) Such other conditions precedent customary to project financing facilities as may be advised by the Lead Arranger's legal counsel and to be mutually agreed between the Lead Arranger and the Issuer.

- (r) Representations and Warranties** : The Issuer's representations and warranties are as follows:-
- (a) it 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 ownership of all its assets;
 - (b) its memorandum and articles of association 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 obtained and are in full force and effect which are required to authorise it to execute and deliver and perform the transactions and obligations contemplated in the Project Documents and Transaction Documents in accordance with their terms;
 - (c) the Sukuk and each of the other Transaction Documents, is or will be, when executed and/or issued, as the case may be, in full force and effect and constitute, or will when executed or issued, as the case may be, constitute, its valid and legally binding obligations enforceable in accordance with the terms of the Sukuk and each such Transaction Document;
 - (d) neither the execution and delivery of any of the Transaction Documents by the Issuer, nor the performance of any of the transactions contemplated by the Transaction Documents by the Issuer, did or does as at the date the representations and warranties are made or repeated (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 it or any of its assets are bound or which is applicable to it or any of its assets, (ii) cause the powers of its 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, or (iii) cause the creation or imposition of any security interest or restriction of any nature on any of its assets (other than the security as contemplated under this Principal Terms and Conditions);

- (e) save pursuant to the Security Documents and those created in relation to the Permitted Indebtedness, none of the assets of the Issuer is affected by any mortgage, charge, pledge, lien or security whatsoever created or arising;
- (f) no authorisation, approval, consent, licence, exemption, registration, recording, filing or notarisation and no payment of any duty or tax and no other action whatsoever which has not been duly and unconditionally obtained, made or taken is necessary to ensure the legality, validity, enforceability of its liabilities and obligations or the rights of the Sukukholders under the Transaction Documents or the Sukuk;
- (g) all consents, licences, approvals or authorisations of governmental authorities in Malaysia which are required for it to own its assets and carry on its business as it is being conducted in a reasonable manner, have been duly obtained and complied with and are in full force and effect;
- (h) except as disclosed to the Trustee in writing prior to the date of the Transaction Documents, no litigation, arbitration or administrative proceeding or claim that has a Material Adverse Effect is current, presently in progress or pending or, to the best of its knowledge, information and belief, threatened against it or any of its assets;
- (i) the information memorandum issued in connection with the Sukuk ("**Information Memorandum**") does not contain any statements or information which are false or misleading or from which there is a material omission which makes the statements therein, in the light of the circumstances under which they were made, misleading in any material

respects as at the date of the Information Memorandum and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful inquiry by the Issuer based on facts existing as at the date of the Information Memorandum;

- (j) its latest audited financial statements (including the cashflow statements, income statements and balance sheet) have been prepared in accordance with approved accounting standards in Malaysia (unless otherwise disclosed) and give a true and fair view of its financial position for that year and the state of its affairs at that date, as the case may be;
- (k) there has been no change in the financial condition of the Issuer since its last audited financial statements which would have a Material Adverse Effect;
- (l) no event has occurred which constitutes, or which with the giving of notice and/or the lapse of time would constitute an event of default under the Project Documents or Transaction Documents, and such event of default has a Material Adverse Effect;
- (m) any other representations and warranties customary to project financing facilities as may be as advised by the legal counsel of the Lead Arranger and to be mutually agreed between the Lead Arranger and the Issuer.

“Material Adverse Effect” means, in relation to any event or circumstance that has resulted in, or would reasonably result in, a material and adverse effect on (a) the Issuer’s ability to perform or comply with any of its material obligations under the Sukuk and/or any of the Transaction Documents or Project Documents to which it is a party; or (b) any of the Project Documents insofar as it will have a material adverse impact on Kapar Power Plant; or (c) the business, operation (which would in turn result in a material and adverse effect on the business) or financial condition of the Issuer.

- (s) Events of Default** : The events of default shall include the following:-
- (a) the Issuer, as the Lessee, fails to pay any Rental under the Ijarah Agreement or the Obligor fails to pay any Exercise Price under the Purchase Undertaking, as the case may be unless such failure to pay is caused by administrative or technical error and payment is made within five (5) business days of its due date;
 - (b) the Issuer fails to observe or perform any of its obligations under any of the Transaction Documents or any material and undisputed amount due under the Project Documents under any undertaking or arrangement entered into in connection therewith other than an obligation of the type referred to in paragraph (a) above on the due date or, if so payable, on demand and such failure to pay is not remedied within twenty-one (21) business days from the date that the Issuer is notified of its non-payment or within such longer period (if any) as permitted under the relevant Project Documents or Transaction Documents;
 - (c) the Issuer fails to observe or perform its material obligations under any of the Project Documents other than the obligations referred to in (b) above and such failure would have a Material Adverse Effect, and in the case of a failure which in the reasonable opinion of the Trustee is capable of remedy, the Issuer does not remedy the failure within a period of thirty (30) business days after the Issuer has been notified by the Trustee in writing to remedy the failure;
 - (d) the Issuer fails to observe or perform its material obligations under any of the Transaction Documents other than the obligations referred to in (a) and (b) above and in the case of a failure which in the reasonable opinion of the Trustee is capable of remedy, the Issuer does not remedy the failure within a period of thirty (30) business days after the Issuer has been notified by the Trustee in writing to remedy the failure;

- (e) any of the Project Documents is terminated or there has been a breach of any material obligation by the Issuer under the Project Documents and which termination or breach would have a Material Adverse Effect, and if capable of remedy, has not been remedied within thirty (30) business days after the Issuer became aware or having been notified by the Trustee in writing of such breach;
- (f) an encumbrancer takes possession of, or a trustee, receiver or similar officer is appointed in respect of the whole or a substantial part of the business or assets of the Issuer, or legal process, sequestration or any form of execution is levied or enforced against the Issuer, or any security interest which for the time being affects any of its assets, becomes enforceable and which would have a Material Adverse Effect and the Issuer has not taken any action in good faith to set aside such action within thirty (30) business days from the date of service of such action has been made against the Issuer;
- (g) the Issuer fails to satisfy any judgement passed against it by any court of competent jurisdiction which has a Material Adverse Effect and no appeal against such judgement has been made to any appropriate appellate court within the time prescribed by law or such appeal has been dismissed or set aside;
- (h) any step is taken for the winding up, dissolution or liquidation of the Issuer or resolution is passed for the winding up is presented against the Issuer and the Issuer has not taken any action in good faith to set aside such petition within thirty (30) business days from the date of service of such petition or winding up order has been made against the Issuer;
- (i) the Issuer convenes a meeting of its creditors or proposes or 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 rescheduling or deferral of

all or a material 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 material part of its indebtedness or any assignment for the benefit of its creditors (other than those previously approved by the Trustee) or where a scheme of arrangement under Section 176 of the Companies Act 1965 has been instituted against the Issuer;

- (j) if it is illegal or unlawful for the Issuer to perform any term of the Project Documents or the Transaction Documents which would have a Material Adverse Effect on the Issuer;
- (k) the Issuer repudiates any of the Project Documents or Transaction Documents or the Issuer does or causes to be done any act evidencing an intention to repudiate such documents, provided that in the case of an act evidencing the intention of the Issuer to repudiate, the Trustee makes such assessment in good faith and after consultation with the Issuer it is clearly and unequivocally shown that such act evidences repudiation;
- (l) any of the assets, undertakings, rights or revenue of the Issuer are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any governmental body which in the reasonable opinion of the Trustee would have a Material Adverse Effect on the Issuer;
- (m) at any time any of the provisions of the Project Documents or Transaction Documents is or becomes illegal, void or unenforceable and such illegality, voidness or unenforceability has a Material Adverse Effect;
- (n) to the extent that;
 - (i) the FSRA balance is below the Minimum FSRA Balance; and
 - (ii) the Issuer fails to replenish any shortfall in the FSRA within sixty (60) days of the FSRA balance falling below the stated

Minimum FSRA Balance;

- (o) to the extent that;
 - (i) the MRA balance is below the Minimum MRA Balance; and
 - (ii) the Issuer fails to replenish any shortfall in the MRA within sixty (60) days of the MRA balance falling below the stated Minimum MRA Balance;
- (p) there is any amendment to the terms of the shareholders' agreement between TNB, Malakoff and the Issuer dated 30 October 2003 ("**Shareholders' Agreement**") or Secondment Agreement between TNB and the Issuer dated 3 June 2004 ("**Secondment Agreement**") which would have a Material Adverse Effect;
- (q) there is any breach of any material obligation under the Secondment Agreement which would have a Material Adverse Effect, and which, if capable of remedy, has not been remedied within sixty (60) days or such other longer time period as may be agreed with the Trustee;
- (r) any breach of any Project Document by TNB which would have a Material Adverse Effect and which, if capable of remedy, has not been remedied within sixty (60) business days or such other longer time period as may be provided for in the Project Documents or such other longer period as may be agreed with the Trustee/Facility Agent; and
- (s) such other events customary to project financing facilities as may be advised by the Lead Arrangers' legal counsel and to be mutually agreed between the Lead Arranger and the Issuer.

Upon the occurrence of an Event of Default, the Trustee may, at its sole and absolute discretion and shall, if so directed by an extraordinary resolution of the Sukukholders (subject to its rights to be indemnified to its satisfaction against all reasonable costs and expenses thereby occasioned), declare

(by giving notice to the Issuer) that an Event of Default has occurred and the Trustee /Security Agent is entitled to enforce its rights under the Transaction Documents, including, requiring the Obligor as stipulated under the Purchase Undertaking to purchase the Ijarah Assets and pay the Exercise Price.

(t) Covenants

(i) Financial Covenants

: The Issuer covenants that so long as the Sukuk are outstanding:-

(a) the Issuer shall maintain a Finance Service Cover Ratio ("**FSCR**") of at least 1.3 : 1 for each twelve (12) month period, the ratio of the Net Available Cash (as defined hereunder) to the Forecast Total Finance Service (as defined hereunder) to be paid for such period, where:

(i) "**Net Available Cash**" is the cash balances and where a standby letter of credit is made available, the amount unconditionally available thereafter in the Designated Accounts (including PBA, FSRA and MRA) after the payment of any dividends, interest or principal in respect of the subordinated shareholder loans; and

(ii) "**Forecast Total Finance Service**" is the aggregate amount that is required to be paid in respect of all financing facilities of KEV including the Sukuk Ijarah Facility and Permitted Indebtedness due over the next twelve (12) months, but shall exclude all such nominal amounts of the Permitted Indebtedness which may be rolled over in the next twelve (12) months.

(iii) The FSCR shall be calculated by the Issuer one (1) day after the issue date and one (1) day after each profit payment date and confirmed to the Trustee within thirty (30) days from each calculation date.

(b) the Issuer shall maintain a Finance to Equity ratio of not more than 80:20 until the final maturity date of the Sukuk.

“Finance to Equity” ratio is defined as:-

- (i) **“Finance”** means (i) the principal amount outstanding under the Sukuk; (ii) all principal amount outstanding of facilities (excluding foreign exchange or interest rate hedging products) falling within the definition of the Permitted Indebtedness;
- (ii) **“Equity”** means the aggregate of (i) aggregate amount of equity to be contributed in the form of a combination of ordinary shares and subordinated shareholders’ loans which shall include any financial instrument and/or security which is perpetual in nature and with no fixed term repayment tenure (**“Perpetual Instrument”**); (ii) retained earnings; and (iii) such other adjustments as permitted under the Malaysian law provided that at financial close, for item (i) above, the aggregate amount of equity shall be an amount sufficient to ensure that the ratio of all amount of Finance to Equity shall not be more than 80:20.
- (iii) The Finance to Equity ratio shall be calculated by the Issuer one (1) day after the issue date and one (1) day after each profit payment date and confirmed to the Trustee within thirty (30) days from each calculation date.
- (iv) Should the Finance to Equity ratio exceed 80:20, the Issuer shall be allowed a period of forty-five (45) days to cure or rectify or obtain indulgence for such non-compliance failing which it shall be an Event of Default.

- (ii) **Positive Covenants** : The Issuer covenants that so long as the Sukuk are outstanding:-
 - (a) the Issuer shall maintain in full force and effect all relevant authorisations, licences, consents, rights, approvals and permits and will promptly obtain any further authorisations, licences, consents, rights, approvals and permits which

are or may become necessary to enable it to comply with all relevant laws and regulation in order to carry out its business, to own its assets or for the Issuer to enter into or perform its obligations under the Project Documents and Transaction Documents where failure to do so would have a Material Adverse Effect;

- (b) the Issuer shall, if requested by the Trustee, execute all such further documents and do all such further acts as are reasonably necessary to give further effect to the terms and conditions of the Project Documents and Transaction Documents;
- (c) the Issuer shall exercise reasonable diligence in carrying out its business and affairs and in accordance with the prudent practices of the power industry;
- (d) the Issuer shall perform and observe all its material obligations under all the Project Documents;
- (e) the Issuer shall maintain its records and prepare its financial statements on a basis consistently applied in accordance with applicable approved Malaysian accounting standards;
- (f) the Issuer shall comply with all applicable laws relating to the Sukuk (including the provisions of the Capital Markets and Services Act 2007 and all notes, circulars, conditions or guidelines issued by the SC from time to time) as may be applicable to it;
- (g) the Issuer shall maintain adequate insurance/takaful which a prudent company carrying on a similar business would normally have and as required under the Project Documents, provided that nothing shall oblige the Issuer to purchase any insurance/takaful that is not available at commercially reasonable terms in the insurance/takaful market;
- (h) the Issuer shall procure the endorsement of the Security Agent as loss payee in respect of all

applicable insurance/takaful policies;

- (i) the Issuer shall maintain and operate each of the required Designated Accounts in accordance with the provisions herein; and
- (j) such other covenants customary to project financing facilities as may be advised by the Lead Arranger's legal counsel and agreed by the Issuer.

(iii) Negative Covenants

: The Issuer covenants that so long as the Sukuk are outstanding:-

- (a) the Issuer shall not abandon or otherwise change in a material manner the nature or scope of its existing business which abandonment or change would have a Material Adverse Effect;
- (b) the Issuer shall not obtain or permit any borrowings other than:-
 - (i) the Sukuk;
 - (ii) the Permitted Indebtedness; and
 - (iii) all subordinated loans provided by the Shareholders;
- (c) the Issuer shall not create or permit to exist any encumbrance, mortgage, charge, pledge, lien, hypothecation, assignment by way of security, trust arrangement for the purpose of providing security or other security interest of any kind, including, without limitation, title transfer and/or retention arrangements having a similar effect, but excluding:-
 - (i) liens arising in the ordinary course of business;
 - (ii) those securities as contemplated under the Security Documents;
 - (iii) security arising from and under the Permitted Indebtedness; and

- (iv) any right of set-off.
- (d) the Issuer shall not sell, transfer, or lease or otherwise dispose of or in any case cease to exercise control over (whether by a single or number of transactions) the whole or part of the Issuer's undertaking, business or assets save for:-
 - (i) sale or disposal of the Issuer's undertaking, business or assets which is in the ordinary course of business and on ordinary terms on the basis of arm's length transaction and which will not have a Material Adverse Effect on the Issuer; or
 - (ii) disposal of any of the Issuer's undertaking, business or assets due to obsolescence and/or deterioration and which will not have a Material Adverse Effect on the Issuer.
- (e) the Issuer shall not obtain or permit to exist any loan or advances from its shareholders, subsidiaries or associated companies (if any) unless these loans and advances are subordinated to the Sukuk;
- (f) the Issuer shall not use the proceeds of the Sukuk except for the purpose set out herein;
- (g) the Issuer shall not lend any money to any party other than the Issuer's directors, management and employees as part of their terms of employment;
- (h) the Issuer shall not, and shall not agree to, amend, vary, terminate (except due to the lapse of time), replace or supplement the terms and conditions of the Project Documents, if such amendment, variation, termination, replacement or supplementation would have a Material Adverse Effect;
- (i) the Issuer shall not waive any breach or proposed breach in any of the Project Documents by its counterparties if the consequence of such waiver would have a

Material Adverse Effect;

- (j) the Issuer 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 where such illegality, voidness, voidability or unenforceability would have a Material Adverse Effect; and
- (k) such other covenants customary to project financing facilities as may be advised by the Lead Arranger's legal counsel and agreed by the Issuer.

(iv) Covenants on Shareholdings

- : (a) TNB shall not dispose, sell or transfer any of its shareholding in the Issuer which will result in it holding less than fifty one percent (51%) of the issued and paid up capital of the Issuer throughout the tenure of the Sukuk;
- (b) the Issuer shall not allow any changes to its shareholding which will result in TNB holding less than fifty one percent (51%) of its issued and paid up capital throughout the tenure of the Sukuk; and
- (c) the Issuer shall ensure that Malakoff Corporation Berhad ("**Malakoff**") shall not reduce its shareholding in the Issuer to less than forty percent (40%) throughout the tenure of the Sukuk;

without the prior approval of the Sukukholders by way of a special resolution.

Notwithstanding the above, TNB and Malakoff shall not be restricted from transferring their respective shares in the Issuer to any of their respective related corporation pursuant to a bona fide internal restructuring subject to the receipt by the Trustee of a written confirmation from MARC that there is no adverse impact to the prevailing credit rating of the Issuer.

(v) Information Covenants

- : (a) The Issuer shall deliver to the Trustee/ Facility Agent the following:-

- (i) as soon as they are available (in any event within one hundred and eighty (180) days after the end of each of its financial year), audited copies of its financial statements for that financial year;
 - (ii) as soon as they are available (in any event within ninety (90) days after the end of the first half of its financial year) unaudited copies of its half yearly financial statements; and
 - (iii) within ten (10) business days of receipt by the Issuer, all notices and/or documents received by the Issuer from its Shareholders whose contents, in the reasonable opinion of the Issuer, could materially and adversely affect the interests of the Sukukholders;
- (b) the Issuer shall deliver to the Trustee/Facility Agent its proposed annual budgets at least ten (10) business days prior to the start of the operating year to which such budget relates;
- (c) the Issuer shall notify the Trustee/Facility Agent of any change in its Board of Directors within ten (10) business days of such changes;
- (d) upon becoming aware of the same, the Issuer shall notify the Trustee/Facility Agent of any Event of Default or any event which, in the reasonable opinion of the Issuer, upon the passing of time or the giving of notice, would constitute an Event of Default;
- (e) the Issuer shall give notice to the Trustee/Facility Agent and the Rating Agency of any amendments, variations, terminations, replacements or supplements to the Project Documents within ten (10) business days of such amendments, variations, terminations, replacements or supplements;
- (f) the Issuer shall deliver a certified copy of any material documents related to the Kapar Power Plant which would give rise to a material impact on the business and operation of the Issuer,

entered into subsequent to the Transaction Documents within thirty (30) business days from execution;

- (g) the Issuer shall deliver to the Trustee/Facility Agent such other information as reasonably required by the Trustee/Facility Agent, provided that disclosure of any such information by the Issuer will only be required to be made at the relevant time after such information would be available to the public;
- (h) simultaneously with the delivery of the financial statements pursuant to item (a)(i) above, a certificate signed by an authorised officer of the Issuer certifying that:-
 - (i) the Issuer has complied with its obligations, terms and conditions under the Transaction Documents to which the Issuer is a party;
 - (ii) no Event of Default has occurred since the date of the issue of the Sukuk or the date of the previous certificate, as the case may be and if an Event of Default has occurred or did exist since the date of the issue of the Sukuk or date of the previous certificate, as the case may be, the details of such Event of Default; and
- (i) such other covenants customary to project financing facilities as may be advised by the Lead Arranger's legal counsel and agreed by the Issuer.

(u) Provision on buy-back and early redemption of the Sukuk

- (i) **Redemption on Maturity** : Unless previously redeemed or purchased and cancelled, the Sukuk will be redeemed by the Issuer at 100% of their nominal value on their respective maturity dates.
- (ii) **Early Redemption** : Subject to the approval of the Sukukholders via an extraordinary resolution, the Issuer may redeem in whole any series of the Sukuk prior to their

respective maturity dates.

- (iii) **Repurchase and Cancellation** : The Issuer or its subsidiaries or its agent(s) who is/are acting for the redemption or purchase, may at any time purchase the Sukuk at any price in the open market or by private treaty, but these Sukuk which are redeemed or purchased by the Issuer or its subsidiaries or its agent(s) who is acting for the redemption or purchase shall be cancelled by the Issuer and cannot be resold.

Any of the Sukuk acquired by the Issuer's related corporations (other than the Issuer's subsidiaries) need not be cancelled but shall not entitle them to participate in the voting of any Sukukholders' resolution nor form part of the quorum of any meeting. The Sukuk held by any interested person (who shall include directors, major shareholders and chief executive) of the Issuer shall not be counted for the purposes of voting.

The Issuer shall confirm in writing to the Trustee that (i) the amounts paid in respect of such Sukuk as have been redeemed or paid and cancelled, (ii) the aggregate nominal amount and certificate numbers of those Sukuk which have been purchased and cancelled, and (iii) that such Sukuk have been cancelled, as soon as reasonably possible (and in any event within one (1) month) after the end of each calendar quarter during which any such redemption, purchase and surrender for cancellation, payment or replacement (as the case may be) takes place.

(v) Other Principal Terms and Conditions for the Issue

- (i) **Priority of Cash Flows** : The Issuer may withdraw sums from the PBA for the following purposes and in the following order of priority (the "**Priority of Cash Flows**"):
- (a) taxes, operating costs, maintenance and capital expenditure of KEV;
 - (b) profit, fees, costs, expenses payable in connection with, in terms of priority, firstly, the Sukuk and, secondly, any Permitted Indebtedness;

- (c) all principal obligations in connection with in terms of priority, firstly, the Sukuk and, secondly, any Permitted Indebtedness;
- (d) transfer to the FSRA to meet the Minimum FSRA Balance;
- (e) transfer to the MRA to meet the Minimum MRA Balance; and
- (f) distribution payments as directed by the Issuer in respect of dividend payments, interest and principal repayments on the subordinated shareholder loans.

(ii) Distributions : The Issuer may not remit to the Shareholders any dividends, interest or principal payments in respect of the subordinated shareholder loans from amounts standing to the credit of the PBA, unless the Issuer delivers a certificate (the “**Distribution Certificate**”) to the Facility Agent within fourteen (14) days prior to the relevant date of any distribution to Shareholders in which the Issuer shall represent and warrant that:-

- (a) the FSCR shall be at least 1.3:1 (after payments of such distribution) and the FSCR shall be calculated by the Issuer on each profit payment date or fourteen (14) days prior to the relevant date of any distribution to shareholders;
- (b) the Finance to Equity ratio shall not be more than 80:20 (after payments of such distribution) and the Finance to Equity ratio shall be calculated by the Issuer on each profit payment date or fourteen (14) days prior to the relevant date of any distribution to shareholders;
- (c) the proposed distribution shall comply with the laws of Malaysia;
- (d) no Event of Default has occurred and is continuing or may reasonably be expected to arise as a result of the making of the proposed distribution;

- (e) the FSRA is fully funded to the Minimum FSRA Balance; and
- (f) the MRA is fully funded to the Minimum MRA Balance.

If the Facility Agent does not object in writing to the proposed remittance within five (5) business days of receipt of the Distribution Certificate, it shall be deemed to have accepted the Distribution Certificate and the proposed remittance may be made.

(iii) Permitted Investments

- : (a) The Issuer shall be permitted from time to time to utilise funds held in the Designated Accounts to make Permitted Investments which are Shariah-compliant, provided that:
 - (i) such funds utilised for Permitted Investments shall be remitted to the Designated Accounts in a timely manner to meet any payment obligations of the Issuer when due; and
 - (ii) such Permitted Investments are to be denominated in Ringgit Malaysia.
- (b) Permitted Investments shall include Shariah-compliant investment products approved by the SAC of the SC and/or BNM's Shariah Advisory Council. Permitted Investments are as follows:
 - (i) mudharabah, wadiah and other Islamic deposits under Shariah principles with licensed financial institutions;
 - (ii) Islamic banker acceptances, Islamic bills, Islamic money market instruments issued by licensed financial institutions with a short-term rating of P1 or MARC-1 and a minimum long-term rating of AA3 or AA- or its equivalent;
 - (iii) Islamic money market funds which are approved by the SC;
 - (iv) Islamic principal guaranteed structured investments approved by BNM and issued

by licensed financial institutions with a short-term rating of P1 or MARC-1 and a minimum long-term rating of AA3 or AA- or its equivalent or their local or foreign equivalents;

- (v) Islamic treasury bills, Islamic money market instruments, and any other Islamic securities instruments issued by BNM or the Government of Malaysia; and
- (vi) sukuk issued by corporations, financial institutions, or guaranteed by licensed financial institutions with a short-term rating of P1 or MARC-1 and a minimum long-term rating of AA3 or AA- or its equivalent

Provided that in respect of the Permitted Investments,

- (a) fifty percent (50%) of the Permitted Investments standing to the credit of the FSRA must have a final maturity before the next payment date; and
- (b) the Permitted Investments standing to the credit of the MRA need only mature at or before the relevant date required for their use to meet the maintenance requirements as at the relevant date.

- (iv) **Permitted Indebtedness** : The Issuer shall be permitted to incur the following indebtedness in addition to the Sukuk (the **"Permitted Indebtedness"**):-
- (a) bank guarantees, tradeline facilities and/or letters of credit of up to RM150 million that may be procured by the Issuer in relation to the Kapar Power Plant to be financed by financiers to be determined subsequently;
 - (b) 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 Kapar Power Plant of which the aggregate principal amount outstanding at any point in time granted by such lenders does

not exceed RM50 million;

- (c) any foreign exchange or interest rate hedging products that arise in the normal course of business;
- (d) the existing RM200 million revolving credit facility under the Shariah principle of Murabahah financed by AmlInvestment Bank Berhad, RHB Bank Berhad and *Hong Leong Bank Berhad with Bank Muamalat Malaysia Berhad as the security agent ("**Murabahah Financing Facility**"); and
- (e) indebtedness in respect of any capital expenditure incurred by the Issuer of which the aggregate principal amount granted by such lenders does not exceed RM50 million.

The Permitted Indebtedness in respect of (a) and (d) shall share in the Security whereas the Permitted Indebtedness for (b), (c) and (e) shall only be secured on the assets financed by them respectively and shall have no rights in the Security.

**note: The facility was granted by EON Bank Berhad which is now part of Hong Leong Bank Berhad*

- (v) **Purchase Undertaking** : In respect of each series of the Sukuk Ijarah Facility, the Obligor shall also undertake to acquire the relevant Ijarah Assets via a Purchase Undertaking granted up-front to the Trustee, acting on behalf of the Sukukholders,
- (a) upon declaration of an Event of Default (save for Mandatory Event of Default due to Total Loss Event);or
 - (b) upon the Maturity Date;

whichever is earlier, at the relevant Exercise Price and the proceeds therefrom shall be utilised by the Issuer for the redemption of such relevant Sukuk held by the Sukukholders which shall then be cancelled.

(vi) **Exercise Price** : In relation to the Purchase Undertaking, the Exercise Price for the purchase of the Ijarah Assets is as follows:

- (i) in the case of a purchase of the Ijarah Assets due to declaration of an Event of Default, the Exercise Price shall be an amount equal to the Dissolution Distribution Amount plus the Ownership Expenses; and
- (ii) in the case of a purchase of the relevant Ijarah Assets on the relevant Maturity Date of a tranche of Sukuk, the Exercise Price shall be an amount equal to the Scheduled Distribution Amount for the relevant Sukuk plus the Ownership Expenses;

“Dissolution Distribution Amount” means the aggregate of the following in respect of all respective Sukuk to be redeemed:

(a) Par Sukuk

The Dissolution Distribution Amount shall consist of:

- (1) the nominal value; and
- (2) the accrued but unpaid Periodic Distributions (if any), accrued to the date of the declaration of Event of Default, and shall be in accordance with the Participation and Operation Rules for Payments and Securities Services issued by MyClear (**“MyClear Rules”**).

(b) Discounted Sukuk

The Dissolution Distribution Amount shall consist of:

- (1) The accreted value of the Sukuk; and
- (2) The accrued but unpaid Periodic Distributions (if any), accrued to the date of the declaration of Event of

Default and shall be in accordance with MyClear Rules.

“Scheduled Distribution Amount” means in respect of relevant Sukuk to be redeemed the aggregate of the following for both Par Sukuk and Discounted Sukuk:

- (1) the nominal value; and
- (2) the accrued but unpaid Periodic Distributions (if any) up to the Maturity Date of the relevant Sukuk and shall be in accordance with MyClear Rules.

The Exercise Price payable by KEV to the Trustee (on behalf of the Sukukholders) shall be set off against reimbursement of Ownership Expenses. Upon full settlement of the Exercise Price pursuant to the sale agreement or purchase notice under the Purchase Undertaking, the Ijarah Agreement will be terminated and the trust created under the Declaration of Trust will also be dissolved subsequently, and neither the Trustee nor the Sukukholders shall thereafter have further rights and/or obligations to the Trust Assets

- (vii) **Ijarah Assets** : The Shariah-compliant leasable assets which the Trustee (acting on behalf of the Sukukholders) purchases from the Issuer by way of transfer of the beneficial ownership and interest and leases back to the Issuer, the undivided proportionate interest in relation to the series of Sukuk it relates to of such Shariah-compliant leasable assets, consisting of plant and machinery assets of the Kapar Power Plant and/or such other Shariah-compliant leasable assets approved by the Shariah Adviser.
- (viii) **Ijarah Agreement** : Under the terms of an Ijarah Agreement between the Lessee and the Lessor, the Lessor will agree to lease to the Lessee, and the Lessee will agree to lease from the Lessor, the Ijarah Assets during the term commencing on the lease commencement date and expiring on the respective Maturity Date. The Ijarah Agreement is subject to early termination upon the occurrence of certain events to be determined

- (ix) Servicing Agency Agreement** : Under the Servicing Agency Agreement, KEV (in such capacity as the Servicing Agent) on behalf of the Lessor, will be responsible for, among others, the performance of all major maintenance and Ownership Expenses in respect of the Ijarah Assets.
- (x) Status** : The Sukuk will represent the Sukukholders' undivided proportionate ownership and interest in the Ijarah Assets. The Sukuk shall constitute direct, unconditional and secured obligations of the Issuer and shall at all times rank pari passu, without discrimination, preference, or priority amongst themselves and pari passu with the obligations of the Issuer under the Permitted Indebtedness (only to the extent outlined above and shall rank prior to all the other present and future unsecured and unsubordinated obligations of the Issuer), subject to those preferred by law and the Transaction Documents.
- (xi) Transaction Expenses** : All agreed legal and professional fees, Shariah Adviser fees, the cost of due diligence exercises, stamp duties (where applicable), taxes and any other out-of-pocket expenses incurred pursuant to the Issuer's acceptance of the Sukuk Ijarah Facility and for purposes of preparation and submission of any application or information memorandum (as the case may be) to the relevant authorities and the preparation of security documentation (if applicable), in connection with the Sukuk Ijarah Facility shall be borne by the Issuer.
- (xii) Compensation for late payment ("Ta'widh")** : In the event of any overdue and defaulted payments of any amounts due under the Sukuk Ijarah Facility, the Issuer shall pay to the Sukukholders compensation on such overdue and defaulted amounts at a rate and in the manner prescribed by the SC's Shariah Advisory Council from time to time.
- (xiii) Governing Laws** : The Sukuk and the Transaction Documents shall be governed by the laws of Malaysia.
- (xiv) Taxation** : Save and except where the Sukukholder is not a Malaysian resident, all payments by the Issuer shall be made without withholding or deductions for or on account of any present or future tax, duty or charge of whatsoever nature imposed or levied by or on

behalf of Malaysia or any other applicable jurisdictions, or any authority thereof or therein having power to tax, unless such withholding or deduction is required by law, in which event the payer shall be required to make such additional amount so that the payee would receive the full amount which the payee would have received if no such withholding or deductions are made.

- (xv) Jurisdiction**

: The Issuer shall unconditionally and irrevocably submit to the non-exclusive jurisdictions of the courts of Malaysia.
- (xvi) No Payment of Interest**

: For the avoidance of doubt and notwithstanding any other provision to the contrary herein, it is hereby agreed and declared that nothing herein and the Transaction Documents shall oblige or entitle any party nor shall any party pay or receive or recover interest on any amount due or payable to another party pursuant to the provisions herein or the Transaction Documents and the parties hereby expressly waive and reject any entitlement to recover such interest.
- (xvii) Conditions Subsequent**

: In the event the necessary consents from the relevant state authority are required for the creation of the first fixed charge over the leases stated in item (i) under Section 2(i) – Security/Collateral above and such consents are not obtained prior to the redemption of the Existing BaIDS, the Issuer shall obtain such consents and once the relevant consents have been obtained, the Issuer shall take all necessary steps to perfect the first fixed charge over the leases under item (i) of Section 2(i) – Security/Collateral above within one hundred and eighty (180) days from the redemption of the Existing BaIDS.

Failure to comply with the Conditions Subsequent above shall be an Event of Default.
- (xviii) Other Conditions**

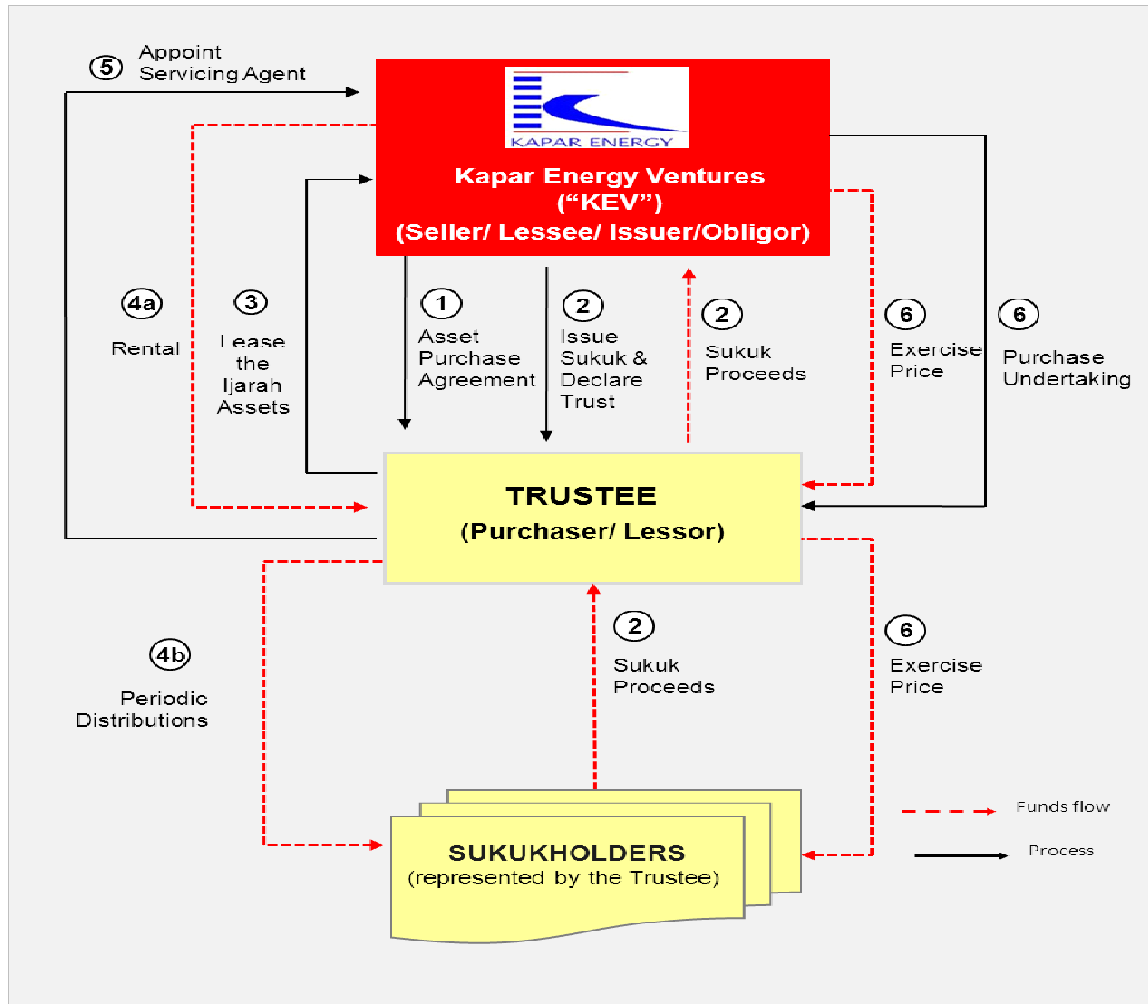
: The Sukuk shall at all times be governed by the guidelines issued and to be issued from time to time by the SC, BNM and MyClear having jurisdiction over matters pertaining to the Sukuk.

(xix) Definitions

- (a) Project Documents** : Collectively,
- (a) the Power Purchase Agreement;
 - (b) the Coal Supply Agreement;
 - (c) the Fuel Oil Supply Agreement;
 - (d) the Gas Supply Arrangement Letter;
 - (e) the Secondment Agreement;
 - (f) such other agreements to be agreed by the Lead Arranger and the Issuer as project documents.

- (b) Transaction Documents** : Collectively,
- (a) the Trust Deed;
 - (b) the Facility Agreement;
 - (c) the Ijarah Agreement;
 - (d) the Asset Purchase Agreement;
 - (e) the Asset Sale Agreement;
 - (f) the Servicing Agency Agreement
 - (g) the Purchase Undertaking;
 - (h) the Substitution Undertaking;
 - (i) the Security Documents; and
 - (j) such other agreements to be agreed by the Lead Arranger and the Issuer as transaction documents.

Annexure 1



Step 1	KEV as the Seller (" Seller ") shall enter into an Asset Purchase Agreement with the Trustee (acting on behalf of Sukukholders), as the Purchaser (" Purchaser ") for the sale of the beneficial ownership and interest of the Shariah-compliant leasable assets consisting of plant and machinery assets of the Kapar Power Plant and/or such other Shariah-compliant leasable assets approved by the Shariah Adviser (" Ijarah Assets ") at the Asset Purchase Price.
Step 2	KEV as the Issuer (" Issuer ") shall issue Sukuk to the Sukukholders and shall concurrently declare a trust (" Declaration of Trust ") over the Ijarah Assets, the present and future rights and interest in the Ijarah Agreement, the Purchase Undertaking (as defined) and the proceeds of the foregoing (" Trust Assets ") (including rights to receive the Rental), for the benefit of the Sukukholders.

	The Sukuk herein represents the Sukukholders' undivided and proportionate beneficial ownership in the said Trust Assets.
Step 3	Thereafter, the Trustee (on behalf of the Sukukholders), in its capacity as the lessor (" Lessor ") shall lease the Ijarah Assets to KEV (" Lessee ") for a pre-determined rental amount (" Rental ") and tenure (" Lease Term ") pursuant to the Ijarah Agreement.
Step 4	Rental paid by the Lessee will be distributed by the Issuer (via Trustee) as Periodic Distributions under the Sukuk to the Sukukholders, proportionate to their sukukholdings.
Step 5	KEV shall be appointed as the Servicing Agent by the Trustee as Lessor (on behalf of the Sukukholders) and will, amongst other things, be responsible, on behalf of the Lessor, for the performance and/or maintenance and/or physical repair of the Ijarah Assets and/or the related payment and/or Ownership Expenses in respect of the Ijarah Assets, which are to be reimbursed by the Trustee to KEV upon the expiry of the Ijarah Agreement.
Step 6	KEV, as the Obligor, shall also undertake to acquire the Ijarah Assets via a Purchase Undertaking granted up-front to the Trustee, acting on behalf of the Sukukholders, upon declaration of an Event of Default or upon maturity of the Sukuk at an agreed formula (" Exercise Price "). The Exercise Price received from the Obligor will be used to pay all amounts due under the relevant Sukuk to the Sukukholders.