

HK\$2,300,000,000 Facility agreement

Dated 5 May 2021

for

CHINA MENGNIU DAIRY COMPANY LIMITED

(中國蒙牛乳業有限公司)

arranged by

BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)

CITIGROUP GLOBAL MARKETS ASIA LIMITED (花旗環球金融亞洲有限公司)

DBS BANK LTD.

acting as Mandated Lead Arrangers

with

BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)

acting as Coordinating Bank

BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)

acting as Agent

and

BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)

CITIGROUP GLOBAL MARKETS ASIA LIMITED (花旗環球金融亞洲有限公司)

DBS BANK LTD.

acting as Green Loan Advisors

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THIS AGREEMENT is dated 5 May 2021 and made between:

- (1) **CHINA MENGNIU DAIRY COMPANY LIMITED (中國蒙牛乳業有限公司)**, a company incorporated under the laws of the Cayman Islands with limited liability with company number 132871 and its registered address at PO Box 309, Ugland House, Grand Cayman KY1-1104, Cayman Islands and listed on the HKSE (stock code 2319) as borrower (the "**Borrower**");
- (2) **BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)**, **CITIGROUP GLOBAL MARKETS ASIA LIMITED (花旗環球金融亞洲有限公司)** and **DBS BANK LTD.**, a company incorporated in Singapore with limited liability, as mandated lead arrangers (whether acting individually or together the "**Mandated Lead Arrangers**");
- (3) **BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)**, as coordinating bank (the "**Coordinating Bank**");
- (4) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Original Lenders*) as lenders (the "**Original Lenders**");
- (5) **BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)**, as agent of the Finance Parties (other than itself) (the "**Agent**"); and
- (6) **BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)**, **CITIGROUP GLOBAL MARKETS ASIA LIMITED (花旗環球金融亞洲有限公司)** and **DBS BANK LTD.**, a company incorporated in Singapore with limited liability, as green loan advisors (the "**Green Loan Advisors**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Administrative Party**" means the Agent, the Mandated Lead Arrangers, the Coordinating Bank or the Green Loan Advisors, and "**Administrative Parties**" means all of them.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Anti-Corruption Laws**" means all laws, rules, and regulations from time to time, as amended, concerning or relating to bribery or corruption, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and all other applicable anti-bribery and corruption laws.

"**APLMA**" means the Asia Pacific Loan Market Association Limited.

"**Assignment Agreement**" means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor, assignee and the Agent.

"**Authorisation**" means:

- (a) an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, lodgement or registration; or

- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

"**Availability Period**" means the period from and including the date of this Agreement to and including the date falling three Months from the date of this Agreement.

"**Available Commitment**" means a Lender's Commitment *minus*:

- (a) the amount of its participation in any outstanding Loans; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

"**Available Facility**" means the aggregate for the time being of each Lender's Available Commitment.

"**Break Costs**" means the amount (if any) by which:

- (a) the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Hong Kong.

"**Code**" means the US Internal Revenue Code of 1986.

"**Commitment**" means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in Schedule 1 (*The Original Lenders*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 6 (*Form of Compliance Certificate*) and signed by an authorised signatory of the Borrower.

"**Confidential Information**" means all information relating to the Borrower, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group or any of its advisers; or

- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (i) information that:
- (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 33 (*Confidential Information*);
 - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraph (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate or Reference Bank Quotation.

"Confidentiality Undertaking" means a confidentiality undertaking substantially in a recommended form of the APLMA or in any other form agreed between the Borrower and the Agent.

"Default" means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Eligible Green Project" means a project specifically defined as an eligible project in the Green Financing Framework.

"Environmental Claim" means any claim, proceeding or investigation by any person in respect of any Environmental Law.

"Environmental Law" means any applicable law in any jurisdiction in which any member of the Group conducts business which relates to the pollution or protection of the environment or harm to or the protection of human health or the health of animals or plants.

"Environmental Permits" means any Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by the relevant member of the Group.

"Event of Default" means any event or circumstance specified as such in Clause 21 (*Events of Default*).

"Facility" means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

"Facility Office" means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

"FATCA" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

"FATCA Deduction" means a deduction or withholding from a payment under a Finance Document required by FATCA.

"FATCA Exempt Party" means a Party that is entitled to receive payments free from any FATCA Deduction.

"FATCA FFI" means a foreign financial institution as defined in section 1471(d)(4) of the Code which, if any Finance Party is not a FATCA Exempt Party, could be required to make a FATCA Deduction.

"Fee Letter" means any letter or letters referring to this Agreement or the Facility between one or more Administrative Parties and the Borrower setting out any of the fees referred to in Clause 11 (*Fees*).

"Final Maturity Date" means the date falling 60 Months from the first Utilisation Date.

"Finance Document" means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) any Utilisation Request;
- (d) any subordination agreement required to be entered into pursuant to Clause 20.15 (*Subordination*); or
- (e) any other document designated as such by the Agent and the Borrower,

and **"Finance Documents"** means all of the above.

"Finance Lease" means any lease or hire purchase contract, a liability under which would, in accordance with IFRS, be treated as a balance sheet liability (other than a lease or hire purchase contract which would, in accordance with IFRS in force prior to the adoption of IFRS 16 (Leases), have been treated as an operating lease).

"**Finance Party**" means an Administrative Party or a Lender, and "**Finance Parties**" means all of the above.

"**Financial Indebtedness**" means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds (but not Trade Instruments), notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any amount raised by the issue of redeemable shares which are redeemable (other than those solely at the option of the issuer) before the Final Maturity Date;
- (i) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

"**Funding Rate**" means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 10.3 (*Cost of funds*).

"**Governmental Agency**" means any government or any governmental agency, semi-governmental or judicial entity or authority (including any stock exchange or any self-regulatory organisation established under statute).

"**Green Financing Framework**" means a green loan framework (as amended from time to time) describing, amongst the others, (a) the main features of the Facility in line with the Guidance on Green Loan Principles and (b) environmental method statement of the Borrower in connection with the Facility, as delivered to the Agent under Clause 4.1 (*Initial conditions precedent*).

"**Group**" means the Borrower and its Subsidiaries from time to time.

"**Guidance on Green Loan Principles**" means the Guidance on Green Loan Principles issued by the Loan Market Association, the APLMA and the Loan Syndication & Trading Association in February 2021 and as further updated from time to time.

"**HIBOR**" means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for Hong Kong dollars and for a period equal in length to the Interest Period of that Loan; or
 - (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),
- and if, in either case, that rate is less than zero, HIBOR shall be deemed to be zero.

"**HKSE**" means The Stock Exchange of Hong Kong Limited.

"**Holding Company**" means, in relation to a person, any other person in respect of which it is a Subsidiary.

"**Hong Kong**" means the Hong Kong Special Administrative Region of the PRC.

"**HKQAA**" means the Hong Kong Quality Assurance Agency.

"**IFRS**" means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**Indirect Tax**" means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

"**Interest Period**" means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

"**Interpolated Screen Rate**" means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time for Hong Kong dollars.

"**Legal Reservations**" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Ordinance (Cap. 347) and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of its jurisdiction of incorporation; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered under Clause 4.1 (*Initial conditions precedent*).

"**Lender**" means:

- (a) any Original Lender; and

- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 22 (*Changes to the Lenders*),

which in each case has not ceased to be a Party as such in accordance with the terms of this Agreement, and "**Lenders**" means all of them.

"**Loan**" means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

"**Majority Lenders**" means:

- (a) if there are no Loans then outstanding, a Lender or Lenders whose Commitments aggregate 66²/₃% or more of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated 66²/₃% or more of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate 66²/₃% or more of all the Loans then outstanding.

"**Margin**" means 1.12 per cent. per annum.

"**Material Adverse Effect**" means a material adverse effect on:

- (a) the business, operations, assets or financial condition of the Group taken as a whole;
- (b) the ability of the Borrower to perform its obligations under any Finance Document; or
- (c) the validity or enforceability of, or any right or remedy of any Finance Party under, any Finance Document.

"**Material Subsidiary**" means:

- (a) 蒙牛高科乳制品（马鞍山）有限公司；
- (b) 蒙牛高科乳制品（北京）有限责任公司；
- (c) 蒙牛乳业（衡水）有限公司；
- (d) 内蒙古蒙牛乳业（集团）股份有限公司；
- (e) 内蒙古蒙牛乳业包头有限责任公司；
- (f) 蒙牛乳业（滦南）有限责任公司；
- (g) 蒙牛乳业（马鞍山）有限公司；
- (h) 内蒙古蒙牛高科乳业有限公司； or
- (i) any other Subsidiary of the Borrower designated as such in accordance with Clause 20.21 (*Material Subsidiaries*),

and "**Material Subsidiaries**" means all of the above.

"**Month**" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which

that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

"NDRC" means the National Development and Reform Commission in the People's Republic of China, including its local counterparts and any successors.

"NDRC Circular 2044" means the NDRC Notice on Promoting the Reform of the Filing and Registration System for the Issuance of Foreign Debt by Corporates (Fa Gai Wai Zi [2015] No 2044) promulgated on 14 September 2015, together with any notices, rules or regulations relating to its implementation.

"New Lender" has the meaning given to that term in Clause 22 (*Changes to the Lenders*).

"Original Financial Statements" means the consolidated financial statements of the Group for the financial half year ended 30 June 2020.

"Party" means a party to this Agreement, and **"Parties"** means all of them.

"Person" means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company, a government or any political subdivision or agency thereof, or any other entity.

"PRC" means the People's Republic of China (excluding Hong Kong, Taiwan and the Macau Special Administrative Region of the PRC for this purpose).

"Quasi-Security" has the meaning given to it in Clause 20.4 (*Negative pledge*).

"Quotation Day" means:

- (a) in relation to any period for which an interest rate is to be determined, the first day of that period unless market practice differs in the Relevant Market, in which case the Quotation Day will be determined by the Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days); and
- (b) in relation to any Interest Period the duration of which is selected by the Agent pursuant to Clause 8.3 (*Default interest*), such date as may be determined by the Agent (acting reasonably).

"Reference Bank Quotation" means any quotation supplied to the Agent by a Reference Bank.

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks:

- (a) (other than where paragraph (b) below applies) as the rate at which the relevant Reference Bank could borrow funds in the Hong Kong interbank market in Hong Kong dollars for the relevant period, were it to do so by asking for and then accepting

interbank offers for deposits in reasonable market size in that currency and for that period; or

- (b) if different, as the rate (if any and applied to the relevant Reference Bank and the relevant currency and period) which contributors to the Screen Rate are asked to submit to the relevant administrator.

"Reference Banks" means the principal Hong Kong offices of such two or more banks as may be appointed by the Facility Agent in consultation with the Borrower, and **"Reference Bank"** means any of them.

"Related Fund", in relation to a fund (the **"first fund"**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

"Relevant Market" means the Hong Kong interbank market.

"Repeating Representations" means each of the representations set out in Clause 17.1 (*Status*) to Clause 17.6 (*Governing law and enforcement*), Clause 17.9 (*No default*), Clause 17.12 (*Financial statements*), Clause 17.13 (*Pari passu ranking*), Clause 17.15 (*Sanctions*), Clause 17.16 (*Anti-money laundering*), Clause 17.17 (*Anti-terrorism financing*), Clause 17.18 (*Anti-bribery and anti-corruption*) and Clause 17.21 (*Good title to assets*) and Clause 17.22 (*Material Subsidiaries*).

"Representative" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"Sanctions" means economic, trade, or financial sanctions (including export controls), regulations, requirements, embargoes or restrictive measures imposed, administered, or enforced from time to time by any Sanctions Authority. Without prejudice to the generality of the foregoing, Sanctions shall include:

- (a) in relation to the US, any sanction applied by the US (unilaterally or multilaterally) and shall include regulations imposed by the Office of Foreign Assets Control of the US Department of the Treasury, the US Department of State or, to the extent applicable, the US Department of Commerce's Bureau of Industry and Security, including but not limited to US Export Administration Regulations; and
- (b) in relation to Hong Kong, any sanctions applied by the government of Hong Kong (unilaterally or multilaterally) and shall include regulations imposed by the Hong Kong Monetary Authority, the Hong Kong Financial Services and the Treasury Bureau, including but not limited to the United Nations Sanctions Ordinance (Cap. 537), United Nations (Anti-Terrorism Measures) Ordinance (Cap.575), Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526) and Import and Export (strategic commodities) Regulations (Cap. 60G).

"Sanctions Authority" means: the US (including, without limitation, the Office of Foreign Assets Control of the US Department of the Treasury, the US Department of State and the US Department of Commerce Bureau of Industry Security), the United Kingdom (including, without limitation, Her Majesty's Treasury), the European Union and any of its member state, the United Nations (including, without limitation, the United Nations Security Council), the PRC, Hong Kong (including, without limitation, the Hong Kong Monetary Authority), the respective Government Agency of any of the foregoing and any other relevant sanctions authority.

"Sanctioned Jurisdiction" means, at any time, a country or territory that is, or whose government is, the subject of Sanctions, including, without limitation, the Crimean region, Cuba, Iran, the Democratic People's Republic of Korea and Syria.

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions related list maintained by any Sanctions Authority, (b) any Person located, organized, or resident in a Sanctioned Jurisdiction, or (c) any other subject of Sanctions, including, without limitation, any Person that is, directly or indirectly, owned or controlled (as such terms are interpreted in accordance with applicable Sanctions laws and regulations) by any such Person or Persons described in the foregoing paragraphs (a) or (b).

"Screen Rate" means the Hong Kong interbank offered rate administered by the Treasury Markets Association (or any other person which takes over the administration of that rate) for Hong Kong dollars for the relevant period displayed on page HKABHIBOR of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Selection Notice" means a notice substantially in the form set out in Part II of Schedule 3 (*Requests*) given in accordance with Clause 9 (*Interest Periods*).

"Specified Time" means a day or time determined in accordance with Schedule 8 (*Timetables*).

"Subsidiary" means, in relation to any company or corporation, a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) more than half the issued equity share capital of which is beneficially owned, directly or indirectly, by the first mentioned company or corporation; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and, for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Tax Deduction" has the meaning given to such term in Clause 12.1 (*Tax definitions*).

"Total Commitments" means at any time the aggregate of the Commitments (being HK\$2,300,000,000 at the date of this Agreement).

"Trading Day" means a day on which HKSE is generally open for trading of securities.

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower.

"Transfer Date" means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

"**Unpaid Sum**" means any sum due and payable but unpaid by the Borrower under the Finance Documents.

"**US**" means the United States of America.

"**US Tax Obligor**" means the Borrower:

- (a) if it is resident for tax purposes in the US; or
- (b) if some or all of its payments under the Finance Documents are from sources within the US for US federal income tax purposes.

"**Utilisation**" means a utilisation of the Facility.

"**Utilisation Date**" means the date of a Utilisation, being the date on which the relevant Loan is to be made.

"**Utilisation Request**" means a notice substantially in the form set out in Part I of Schedule 3 (*Requests*).

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) any "**Administrative Party**", the "**Agent**", the "**Coordinating Bank**", any "**Finance Party**", any "**Green Loan Advisor**", any "**Lender**", any "**Mandated Lead Arranger**", the "**Borrower**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
 - (ii) "**assets**" includes present and future properties, revenues and rights of every description;
 - (iii) "**disposal**" means any sale, lease, licence, transfer, conveyance, assignment or other disposal by a person of any asset or any interest therein (including any other transaction or arrangement pursuant to which the economic benefit of or beneficial interest in such asset is lost or diluted) (whether by a voluntary or involuntary single transaction or series of transactions) and "**dispose**" shall be construed accordingly;
 - (iv) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (v) a "**group of Lenders**" includes all the Lenders;
 - (vi) "**including**" shall be construed as "including without limitation" (and cognate expressions shall be construed similarly);
 - (vii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (viii) a "**law**" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case, of any jurisdiction whatsoever (and "**lawful**" and "**unlawful**" shall be construed accordingly);

- (ix) a Lender's "**participation**" in a Loan or Unpaid Sum includes an amount (in the currency of such Loan or Unpaid Sum) representing the fraction or portion (attributable to such Lender by virtue of the provisions of this Agreement) of the total amount of such Loan or Unpaid Sum and the Lender's rights under this Agreement in respect thereof;
 - (x) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (xi) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (xii) "**shares**" or "**share capital**" includes issued shares and other equivalent ownership interests (and "**shareholder**" and similar expressions shall be construed accordingly);
 - (xiii) a provision of law is a reference to that provision as amended or re-enacted from time to time; and
 - (xiv) a time of day is a reference to Hong Kong time.
- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
 - (c) Section, Clause and Schedule headings are for ease of reference only.
 - (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (e) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been remedied or waived.
 - (f) Where this Agreement specifies an amount in a given currency (the "**specified currency**") "**or its equivalent**", the "**equivalent**" is a reference to the amount of any other currency which, when converted into the specified currency utilising the Agent's spot rate of exchange (or, if the Agent does not have an available spot rate of exchange, any publicly available spot rate of exchange selected by the Agent (acting reasonably)) for the purchase of the specified currency with that other currency at or about 11 a.m. on the relevant date, is equal to the relevant amount in the specified currency.

1.3 Currency symbols and definitions

"**RMB**" denotes the lawful currency of the PRC.

"**US\$**" denotes the lawful currency of US.

"**HK\$**" and "**Hong Kong dollars**" denote the lawful currency of Hong Kong.

1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) (the "**Third Parties Ordinance**") to enforce or to enjoy the benefit of any term of this Agreement.

- (b) Subject to Clause 32.3 (*Other exceptions*) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

SECTION 2 THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a Hong Kong dollar term loan facility in an aggregate amount equal to the Total Commitments.

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Borrower is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by the Borrower.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility:

- (a) to refinance the existing debts of the Group;
- (b) for the general corporate purposes of the Group; and
- (c) to pay fees, costs and expenses in relation to the arrangement of the Facility,

provided that, in the case of paragraphs (a) and (b) above, the Borrower shall use such proceeds to support Eligible Green Projects or shall ensure that an amount equivalent to such proceeds will be applied to support Eligible Green Projects as soon as reasonably practicable after the relevant Utilisation Date and in any event prior to the Final Maturity Date. .

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. **CONDITIONS OF UTILISATION**

4.1 **Initial conditions precedent**

- (a) The Borrower may not deliver a Utilisation Request unless the Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 **Further conditions precedent**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if:

- (a) on the date of the Utilisation Request and on the proposed Utilisation Date:
 - (i) no Default is continuing or would result from the proposed Loan; and
 - (ii) the Repeating Representations to be made by the Borrower are true in all material respects, and
- (b) no later than one Business Day before the proposed Utilisation Date, the Agent has received in form and substance satisfactory to the Agent evidence that all the government approvals, filing and registration have been obtained in respect of the Facility, including without limited to the evidence that the Facility has been duly registered with the NDRC pursuant to NDRC Circular 2044.

4.3 **Maximum number of Loans**

- (a) The Borrower may not deliver more than five Utilisation Requests under the Facility.
- (b) The Borrower may not request that a Loan be divided if, as a result of the proposed division, five or more Loans would be outstanding.

SECTION 3 UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies whether the proceeds of the proposed Utilisation or an amount equivalent to such proceeds are to be applied towards any Eligible Green Project;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (iii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
 - (iv) the proposed first Interest Period complies with Clause 9 (*Interest Periods*).
- (b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be Hong Kong dollars.
- (b) The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of HK\$200,000,000 or, if less, the Available Facility.

5.4 Lenders' participation

- (a) If the conditions set out in Clause 4 (*Conditions of Utilisation*) and Clauses 5.1 (*Delivery of a Utilisation Request*) to 5.3 (*Currency and amount*) have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

5.5 Cancellation of Available Facility

The Commitments which, at that time, are unutilised shall be immediately cancelled at 5:00 p.m. on the last day of the Availability Period.

**SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION**

6. REPAYMENT

6.1 Repayment of Loans

The Borrower shall repay each Loan in full on the Final Maturity Date.

6.2 Reborrowing

The Borrower may not reborrow any part of the Facility which is repaid.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

If, at any time, it is or will become unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan (or it is or will become unlawful for any Affiliate of a Lender for that Lender to do so):

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event and the Agent shall promptly notify the Borrower upon the receipt of such notification from that Lender;
- (b) upon the Agent notifying the Borrower, the Available Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to paragraph (d) of Clause 7.4 (*Right of prepayment and cancellation in relation to a single Lender*), the Borrower shall repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by that Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be immediately cancelled in the amount of the participation repaid.

7.2 Voluntary cancellation

The Borrower may, if it gives the Agent not less than 10 Business Days' (or such shorter period as the Majority Lenders may agree) prior written notice, cancel the whole or any part (being a minimum amount of HK\$200,000,000) of the Available Facility. Any cancellation under this Clause 7.2 shall reduce the Commitments of the Lenders rateably.

7.3 Voluntary prepayment of Loans

- (a) The Borrower may, if it gives the Agent not less than 10 Business Days' (or such shorter period as the Majority Lenders may agree) prior written notice, prepay the whole or any

part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of HK\$200,000,000).

- (b) A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

7.4 Right of prepayment and cancellation in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by the Borrower is required to be increased under paragraph (a) of Clause 12.2 (*Tax gross-up*); or
 - (ii) any Lender claims indemnification from the Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13.1 (*Increased costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the prepayment of that Lender's participation in the Loans or give the Agent notice of its intention to replace that Lender in accordance with paragraph (d) below.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall prepay that Lender's participation in that Loan and that Lender's corresponding Commitment shall be immediately cancelled in the amount of the participations repaid.
- (d) If:
 - (i) any of the circumstances set out in paragraph (a) above apply to a Lender; or
 - (ii) the Borrower becomes obliged to pay any amount in accordance with Clause 7.1 (*Illegality*) to any Lender,

the Borrower may, on 10 Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 22 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under the Finance Documents to a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower which (A) is not a member of the Group or any Affiliate of any member of the Group and (B) confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 22 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
 - (i) the Borrower shall have no right to replace the Agent;
 - (ii) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;

- (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (iv) no Lender shall be obliged to execute a Transfer Certificate unless it is satisfied that it has completed all "know your customer" and other similar procedures that it is required (or deems desirable) to conduct in relation to the transfer to such replacement Lender.
- (f) A Lender shall perform the procedures described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Borrower when it is satisfied that it has completed those checks.

7.5 **Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- (g) If all or part of any Lender's participation in a Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

7.6 **Application of prepayments**

Any prepayment of a Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality*) or Clause 7.4 (*Right of prepayment and cancellation in relation to a single Lender*)) shall be applied pro rata to each Lender's participation in that Loan.

**SECTION 5
COSTS OF UTILISATION**

8. INTEREST

8.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the:

- (a) Margin; and
- (b) HIBOR.

8.2 Payment of interest

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period and if the Interest Period is longer than six Months, on the dates falling at six-monthly intervals after the first day of the Interest Period.

8.3 Default interest

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date to the date of actual payment (both before and after judgment) at a rate which is, subject to paragraph (b) below, two per cent. per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted a Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Agent.
- (b) If any Unpaid Sum consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the Unpaid Sum during that first Interest Period shall be two per cent. per annum higher than the rate which would have applied if the Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

8.4 Notification of rates of interest

- (a) The Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- (b) The Agent shall promptly notify the Borrower of each Funding Rate relating to a Loan.

9. INTEREST PERIODS

9.1 Selection of Interest Periods

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.

- (b) Each Selection Notice for a Loan is irrevocable and must be delivered to the Agent by the Borrower not later than the Specified Time.
- (c) If the Borrower fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will be one Month.
- (d) Subject to this Clause 9, the Borrower may select an Interest Period of one, three or (subject to funding availability) six, nine or 12 Months or any other period agreed between the Borrower, the Agent and all the Lenders.
- (e) An Interest Period for a Loan shall not extend beyond the Final Maturity Date.
- (f) Each Interest Period for a Loan shall start on the Utilisation Date or (if a Loan has already been made) on the last day of the preceding Interest Period of such Loan.
- (g) The first Interest Period for the second or any subsequent Loans (each a "**Subsequent Loan**") shall end on the last day of the Interest Period then current (or commencing) for each other Loan which is then outstanding when that Subsequent Loan is made.

9.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

9.3 Consolidation and division of Loans

- (a) Subject to paragraph (b) below, if the Interest Periods of two or more Loans end on the same date, those Loans will, unless the Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Loan on the last day of the Interest Period.
- (b) Subject to Clause 4.3 (*Maximum number of Loans*) and Clause 5.3 (*Currency and amount*), if the Borrower requests in a Selection Notice that a Loan be divided into two or more Loans, that Loan will, on the last day of its Interest Period, be divided into the amounts specified in that Selection Notice, being an aggregate amount equal to the amount of the Loan immediately before its division.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for HIBOR for the Interest Period of a Loan, the applicable HIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for HIBOR for:
 - (i) Hong Kong dollars; or
 - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

the applicable HIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of that Loan.

- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for Hong Kong dollars or the relevant Interest Period there shall be no HIBOR for that Loan and Clause 10.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

10.2 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if HIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about noon on the Quotation Day, none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

10.3 Cost of funds

- (a) If this Clause 10.3 applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event on the date falling one Business Day before the date on which interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this Clause 10.3 applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If this Clause 10.3 applies pursuant to Clause 10.1 (*Unavailability of Screen Rate*) but any Lender does not supply a quotation by the time specified in paragraph (a)(ii) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

10.4 Notification to Borrower

If Clause 10.3 (*Cost of funds*) applies the Agent shall, as soon as is practicable, notify the Borrower.

10.5 Break Costs

- (a) The Borrower shall, within five Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11. FEES

11.1 Commitment fee

- (a) The Borrower shall pay to the Agent (for the account of each Lender) a fee computed and accruing on a daily basis at the rate of 0.2 per cent. per annum on the undrawn

and uncanceled amount of each Lender's Commitment at 5 p.m. (in Hong Kong) on each day of the Availability Period (or, if any such day shall not be a Business Day, at 5 p.m. on the immediately preceding Business Day).

- (b) The accrued commitment fee is payable:
- (i) on the last day of each successive period of three Months which ends during the Availability Period;
 - (ii) on the last day of the Availability Period; and
 - (iii) if a Lender's Commitment is reduced to zero before the last day of the Availability Period, on the day on which such reduction to zero becomes effective.

11.2 **Agency fee**

The Borrower shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

11.3 **Arrangement fee**

The Borrower shall pay to the Agent (for the account of the Mandated Lead Arrangers) an arrangement fee in the amount and at the times agreed in a Fee Letter.

**SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS**

12. TAX GROSS-UP AND INDEMNITIES

12.1 Tax definitions

(a) In this Clause 12:

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

(b) Unless a contrary indication appears, in this Clause 12 a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

(a) All payments to be made by the Borrower to any Finance Party under the Finance Documents shall be made free and clear of and without any Tax Deduction unless the Borrower is required to make a Tax Deduction, in which case the sum payable by the Borrower (in respect of which such Tax Deduction is required to be made) shall be increased to the extent necessary to ensure that such Finance Party receives a sum net of any deduction or withholding equal to the sum which it would have received had no such Tax Deduction been made or required to be made.

(b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower.

(c) If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(d) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 Tax indemnity

(a) Without prejudice to Clause 12.2 (*Tax gross-up*), if any Finance Party is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under the Finance Documents (including any sum deemed for the purposes of Tax to be received or receivable by such Finance Party whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against any Finance Party, the Borrower shall, within 15 Business Days of demand of the Agent, promptly indemnify the Finance Party which suffers a loss or liability as a result against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith, **provided that** this Clause 12.3 shall not apply to:

(i) any Tax imposed on and calculated by reference to the net income actually received or receivable by such Finance Party (but, for the avoidance of doubt, not including any sum deemed for the purposes of Tax to be received or receivable by such Finance Party but not actually receivable) by the jurisdiction in which such Finance Party is incorporated;

- (ii) any Tax imposed on and calculated by reference to the net income of the Facility Office of such Finance Party actually received or receivable by such Finance Party (but, for the avoidance of doubt, not including any sum deemed for the purposes of Tax to be received or receivable by such Finance Party but not actually receivable) by the jurisdiction in which its Facility Office is located; or
 - (iii) a FATCA Deduction required to be made by a Party.
- (b) A Finance Party intending to make a claim under paragraph (a) above shall notify the Agent of the event giving rise to the claim, whereupon the Agent shall notify the Borrower thereof.
 - (c) A Finance Party shall, on receiving a payment from the Borrower under this Clause 12.3, notify the Agent.

12.4 **Stamp taxes**

The Borrower shall:

- (a) pay all stamp duty, registration and other similar Taxes payable in respect of any Finance Document; and
- (b) within 15 Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to any stamp duty, registration or other similar Tax paid or payable in respect of any Finance Document.

12.5 **Indirect tax**

- (a) All amounts set out or expressed in a Finance Document to be payable by any Party to a Finance Party shall be deemed to be exclusive of any Indirect Tax. If any Indirect Tax is chargeable on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the Indirect Tax.
- (b) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all Indirect Tax incurred by that Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that it is not entitled to credit or repayment in respect of the Indirect Tax.

12.6 **FATCA information**

- (a) Subject to paragraph (c) below, each Party shall, within 10 Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes

of that other Party's compliance with any other law, regulation, or exchange of information regime.

- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If the Borrower is a US Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within 10 Business Days of:
 - (i) where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where the Borrower is a US Tax Obligor on a date on which any other Lender becomes a Party as a Lender, that date; or
 - (iii) where the Borrower is not a US Tax Obligor, the date of a request from the Agent,supply to the Agent:
 - (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (B) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.

- (h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraph (e), (f) or (g) above.

12.7 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Agent and the Agent shall notify the other Finance Parties.

13. INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within 21 Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs reasonably incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement. The terms "law" and "regulation" in this paragraph (a) shall include any law or regulation concerning capital adequacy, prudential limits, liquidity, reserve assets or Tax.
- (b) In this Agreement:

"Increased Costs" means:
 - (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital (including as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by such Finance Party);
 - (ii) an additional or increased cost; or
 - (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to the undertaking, funding or performance by such Finance Party of any of its obligations under any Finance Document or any participation of such Finance Party in any Loan or Unpaid Sum.

13.2 Increased cost claims

- (a) A Finance Party (other than the Agent) intending to make a claim pursuant to Clause 13.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party (other than the Agent) shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by the Borrower;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (a) of Clause 12.3 (*Tax indemnity*) applied); or
- (d) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14. MITIGATION BY THE LENDERS

14.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax Gross-up and Indemnities*) or Clause 13 (*Increased Costs*), including in relation to any circumstances which arise following the date of this Agreement, transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

14.2 Limitation of liability

A Finance Party is not obliged to take any steps under Clause 14.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

14.3 Conduct of business by the Finance Parties

- (a) No provision of this Agreement will:
 - (i) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
 - (ii) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
 - (iii) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.
- (b) Notwithstanding any other provisions of this Agreement to the contrary, no Finance Party is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any applicable law or regulation.

15. OTHER INDEMNITIES

15.1 Currency indemnity

- (a) If any sum due from the Borrower under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from

the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (i) making or filing a claim or proof against the Borrower; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within 15 Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

15.2 Other indemnities

The Borrower shall, within 15 Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) any information produced or approved by the Borrower being or being alleged to be misleading and/or deceptive in any respect;
- (c) any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Borrower or with respect to the transactions contemplated or financed under this Agreement;
- (d) a failure by the Borrower to pay any amount due under a Finance Document on its due date or in the relevant currency, including any cost, loss or liability arising as a result of Clause 25 (*Sharing among the Finance Parties*);
- (e) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (f) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

15.3 Indemnity to the Agent

The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement, **provided that** any fees or costs in relation to engagement of such advisers or experts shall only be incurred by the Agent

with the prior consent of the Borrower (such consent not to be unreasonably withheld or delayed).

16. COSTS AND EXPENSES

16.1 Fees, costs and expenses

The Borrower shall pay the following fees, costs and expenses within the timeframe prescribed in the relevant provisions of this Agreement, Fee Letters, engagement agreement or similar document providing for the Borrower's payment obligation in relation thereto (provided that if there is no specific timeline, within five Business Days of demand by the relevant counterparty):

- (a) the commitment fee in accordance with Clause 11.1 (*Commitment fee*);
- (b) the agency fee in accordance with Clause 11.2 (*Agency fee*);
- (c) the arrangement fee in accordance with Clause 11.3 (*Arrangement fee*);
- (d) the legal fees of legal advisers to any one or more Administrative Parties in accordance with the respective engagement agreement between such one or more Administrative Parties, or as the case may be, the Borrower and the relevant legal adviser and as approved by the Borrower;
- (e) the fees, costs and expenses in relation to certification of the Green Financing Framework with HKQAA.

16.2 Amendment costs

If:

- (a) the Borrower requests an amendment, waiver or consent;
- (b) an amendment is required pursuant to Clause 26.9 (*Change of currency*); or
- (c) any amendment or waiver is contemplated or agreed pursuant to Clause 32.4 (*Replacement of Screen Rate*),

the Borrower shall, within five Business Days of demand, reimburse the Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with or implementing that request or actual or contemplated agreement, provided that any costs and expenses pursuant to paragraphs (b) and (c) above shall only be incurred by the Agent with the prior consent of the Borrower (such consent not to be unreasonably withheld or delayed).

16.3 Enforcement costs

The Borrower shall, within five Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

SECTION 7
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

The Borrower makes the representations and warranties set out in this Clause 17 to each Finance Party.

17.1 Status

- (a) It and each of its Material Subsidiaries is a corporation or company, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It and each of its Material Subsidiaries has the power to own its assets and carry on its business as it is being conducted.
- (c) It and each of its Material Subsidiaries is not a FATCA FFI or a US Tax Obligor.

17.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

17.3 Non-conflict with other obligations

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

- (a) any law or regulation applicable to it;
- (b) its constitutional documents;
- (c) any agreement or instrument binding upon it or any of its Material Subsidiaries or any of its or any of its Material Subsidiaries' assets.

17.4 Power and authority

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

17.5 Validity and admissibility in evidence

All Authorisations required by the Borrower:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;
- (b) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation; and
- (c) for it and its Material Subsidiaries to carry on their respective businesses, and which are material,

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

17.6 Governing law and enforcement

Subject to the Legal Reservations:

- (a) the choice of Hong Kong law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation; and
- (b) any judgment obtained in Hong Kong in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

17.7 Deduction of Tax

It is not required under the law applicable where it is incorporated or resident or at the address specified in this Agreement to make any Tax Deduction from any payment it may make under any Finance Document.

17.8 No filing or stamp taxes

Under the laws of its jurisdiction of incorporation, it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents, save that:

- (a) Cayman Islands stamp duty will be payable if any Finance Document is executed in, or brought into, the Cayman Islands; and
- (b) the Facility is required to be registered with NDRC in accordance with the requirements of NDRC Circular 2044.

17.9 No default

- (a) No Event of Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, or the performance of any transaction contemplated by, any Finance Document to which it is a party.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Material Subsidiaries or to which its (or any of its Material Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

17.10 No breach of laws

Neither it nor any Material Subsidiary has breached any law or regulation which breach is reasonably likely to have a Material Adverse Effect.

17.11 No misleading information

- (a) Any written factual information contained in any or all of the Finance Documents or provided by or on behalf of the Borrower or any Material Subsidiary in connection with any or all of the Finance Documents and/or the Facility was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Any financial projections provided by or on behalf of the Borrower or any Material Subsidiary in connection with any or all of the Finance Documents and/or the Facility have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from the information provided to any or all of the Finance Parties in connection with any or all of the Finance Documents and/or the Facility and no information has been given or withheld that results in such information being untrue or misleading in any material respect.

- (d) All written information supplied by or on behalf of the Borrower or any Material Subsidiary is true, complete and accurate in all material respects as at the date it was given and is not misleading in any respect.

17.12 Financial statements

- (a) Its financial statements most recently supplied to the Agent (which, as at the date of this Agreement, are its Original Financial Statements) were prepared in accordance with IFRS consistently applied save to the extent expressly disclosed in such financial statements.
- (b) Its financial statements most recently supplied to the Agent (which, as at the date of this Agreement, are its Original Financial Statements) give a true and fair view of (if audited) or fairly represent (if unaudited) its consolidated financial condition and operations for the period to which they relate, save to the extent expressly disclosed in such financial statements.
- (c) There has been no material adverse change in its business or financial condition or the business or consolidated financial condition of the Group since the date in respect of which the Original Financial Statements were drawn up.

17.13 Pari passu ranking

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all of its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

17.14 No proceedings

- (a) No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, is reasonably likely to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it or any of its Material Subsidiaries.
- (b) No judgment or order of a court, arbitral body or agency which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief) been made against it or any of its Material Subsidiaries.

17.15 Sanctions

Neither the Borrower, any of its Material Subsidiaries nor any of their respective directors, officers, nor to the knowledge of the Borrower, any employees or agents of the Borrower or of any of its Material Subsidiaries is a Sanctioned Person.

17.16 Anti-money laundering

The operations of the Borrower and its Subsidiaries are and have been conducted at all times in compliance with, in all material respects, applicable financial recordkeeping and reporting requirements, as amended, the applicable money laundering statutes of all jurisdictions where the Borrower or any of its Subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental or regulatory agency having jurisdiction over the Borrower or any Subsidiary (collectively, the “**Anti-Money Laundering Laws**”) and no action, suit or proceeding by or before any court or government agency, authority or body or any arbitrator involving the Borrower or any of its Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Borrower, threatened.

17.17 **Anti-terrorism financing**

None of the Borrower nor any Subsidiary engages in the act of providing or collecting funds with the intention that they be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.

17.18 **Anti-bribery and anti-corruption**

The Borrower and its Subsidiaries are conducting their business in compliance with applicable Anti-Corruption Laws. The Borrower and its Subsidiaries have implemented and maintained in effect policies and procedures to ensure compliance by the Borrower, its Subsidiaries and their respective directors and officers with applicable Anti-Corruption Laws.

17.19 **Environmental laws**

- (a) Each of the Borrower and each Material Subsidiary is in compliance with Clause 20.9 (*Environmental compliance*) and to the best of the Borrower's knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against the Borrower or any Material Subsidiary where that claim has or is reasonably likely, if determined against the Borrower or that Material Subsidiary, to have a Material Adverse Effect.

17.20 **Security**

No Security or Quasi-Security exists over all or any of the present or future assets of the Borrower and any Material Subsidiary other than as permitted by this Agreement.

17.21 **Good title to assets**

The Borrower and each Material Subsidiary has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

17.22 **Material Subsidiaries**

- (a) The aggregate total revenue of the Material Subsidiaries (in each case calculated on a standalone basis and excluding all intra-Group items) exceeds 70 per cent. of the total revenue of the Group calculated on a consolidated basis by reference to the most recent financial statements of the Borrower delivered to the Agent pursuant to Clause 18.1 (*Financial statements*).
- (b) The aggregate gross assets of the Material Subsidiaries (in each case calculated on a standalone basis and excluding all intra-Group items) exceeds 50 per cent. of the gross assets of the Group calculated on a consolidated basis by reference to the most recent financial statements of the Borrower delivered to the Facility Agent pursuant to Clause 18.1 (*Financial statements*).

17.23 **Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 21.7 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 21.8 (*Creditors' process*),

has been taken or, to the knowledge of the Borrower, threatened in relation to the Borrower or any Material Subsidiary and none of the circumstances described in Clause 21.6 (*Insolvency*) applies to the Borrower or any Material Subsidiary.

17.24 **Authorised signatures**

Any person specified as its authorised signatory under Schedule 2 (*Conditions Precedent*) or paragraph (e) of Clause 18.4 (*Information: miscellaneous*) is authorised to sign Utilisation Requests (in the case of the Borrower only) and other notices on its behalf.

17.25 **Repetition**

- (a) The representations and warranties set out in this Clause 17 are made by the Borrower on the date of this Agreement.
- (b) The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request and the first day of each Interest Period.

18. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

18.1 **Financial statements**

The Borrower shall supply to the Agent in sufficient copies for all the Lenders:

- (a) as soon as the same become available, but in any event within 150 days after the end of each of its financial years, its audited consolidated financial statements for that financial year; and
- (b) as soon as the same become available, but in any event within 90 days after the end of the first half of each of its financial years, its unaudited consolidated financial statements for that financial half year,

provided that any such financial statements shall be deemed to be so delivered upon being posted onto any electronic website of (i) the Hong Kong Stock Exchange and/or (ii) the Borrower, that is accessible to the public.

18.2 **Compliance Certificate**

- (a) The Borrower shall supply to the Agent, with each set of financial statements delivered pursuant to Clause 18.1 (*Financial statements*) or if such financial statement is deemed to delivered according to the proviso in Clause 18.1 (*Financial statements*), separately within 150 days after the end of each of its financial years and 90 days after the end of the first half of each of its financial years, a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 19 (*Financial Covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate delivered pursuant to paragraph (a) above shall be certified by an authorised signatory of the Borrower.

18.3 **Requirements as to financial statements**

- (a) Each set of financial statements delivered by the Borrower pursuant to Clause 18.1 (*Financial statements*) shall be certified by an authorised signatory of the Borrower as giving a true and fair view of (in the case of any such financial statements which are audited) or fairly representing (in the case of any such financial statements which are

unaudited) its financial condition as at the date as at which those financial statements were drawn up.

- (b) The Borrower shall procure that each set of financial statements of the Borrower delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in IFRS, the accounting practices or reference periods and its auditors deliver to the Agent:
- (i) a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 19 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

18.4 Information: miscellaneous

The Borrower shall supply to the Agent (in sufficient copies for all the Finance Parties, if the Agent so requests):

- (a) all material documents dispatched by the Borrower to its shareholders (or any class of them) or its creditors generally (other than those dispatched in the ordinary course of business or routine communication with its shareholders (or any class of them) or its creditors) at the same time as they are despatched, provided that any such document shall be deemed to be so delivered upon being posted onto any electronic website of (i) the Hong Kong Stock Exchange and/or (ii) the Borrower, that is accessible to the public other than where such disclosure is restricted by confidentiality obligations or regulatory restrictions (including stock exchange or listing rules) binding on the Borrower (provided that such confidential obligations were not entered into primarily so that such disclosure would be exempted pursuant to this exception);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, has or is reasonably likely to have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group, and which might have a Material Adverse Effect;
- (d) promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party (through the Agent) may reasonably request;
- (e) promptly, notice of any change in authorised signatories of the Borrower signed by a director or company secretary of the Borrower accompanied by specimen signatures of any new authorised signatories;
- (f) promptly together with any Finance Document, document or notice under or in connection with the Finance Documents signed by such person, a specimen of the signature of such person who is authorised by the minutes of the Borrower referred to

in paragraph 1(b) of Schedule 2 (*Conditions Precedent*) to the extent not delivered under Clause 4.1 (*Initial conditions precedent*) and Schedule 2(*Conditions Precedent*); and

- (g) any other information regarding the Borrower and its Subsidiaries as is/are material to the Group taken as a whole as may be reasonably requested by the Agent on behalf of the Lenders for the purpose of ascertaining whether the Borrower has duly preformed its obligations under the Finance Documents.

18.5 Information: Green Financing Framework

- (a) The Borrower shall provide the Agent with:
 - (i) a report containing description of the Eligible Green Projects to which the proceeds of any Loan or an amount equivalent to such proceeds have been applied and the amounts so allocated to each of such Eligible Green Project, together with each Compliance Certificate delivered in respect of the financial statements referred to in paragraph (a) of Clause 18.1 (*Financial statements*), until all the proceeds of the Facility borrowed for purposes as set out in paragraphs (a) and (b) of Clause 3.1 (*Purpose*) or an amount equivalent to such proceeds have been applied to the Eligible Green Projects;
 - (ii) information regarding any changes to the Green Financing Framework and a copy of the updated Green Financing Framework, if such changes relate to the Eligible Green Projects to which the proceeds of any Loan have been allocated, not later than 10 Business Days prior to such changes becoming effective, until all the proceeds of the Facility borrowed for purposes as set out in paragraphs (a) and (b) of Clause 3.1 (*Purpose*) or an amount equivalent to such proceeds have been applied to the Eligible Green Projects.
- (b) Without limiting the generality of paragraph (a) above, the Borrower shall promptly notify the Agent in writing upon becoming aware of any project where the proceeds of any Loan or an amount equivalent to such proceeds have been applied ceasing to be classified as a Eligible Green Project pursuant to the Green Financing Framework or being terminated or cancelled.

18.6 Notification of default

- (a) The Borrower shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by one of its directors on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

18.7 Use of websites

- (a) The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Agent (the "**Designated Website**") if:
 - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and

- (iii) the information is in a format previously agreed between the Borrower and the Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall supply the Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.
- (c) The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Borrower notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within 10 Business Days.

18.8 "Know your customer" checks

- (a) The Borrower shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender (including for any Lender on behalf of any prospective new Lender)) in order for the Agent, such Lender or any prospective new Lender to conduct all "know your customer" and other similar procedures that it is required (or deems desirable) to conduct (including under any applicable law or regulation).
- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to conduct all "know your customer" and other similar procedures that it is required (or deems desirable) to conduct.

19. FINANCIAL COVENANTS

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Financial definitions

In this Agreement:

"Borrowings" means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptances (except bank acceptances) under any acceptance credit facility (or dematerialised equivalent);
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds (but not Trade Instruments), notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of an entity which is not a member of the Group which liability would fall within one of the other paragraphs of this definition;
- (g) any amount raised by the issue of shares which are redeemable (other than those solely at the option of the issuer) before the Final Maturity Date;
- (h) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing ; and
- (i) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

"EBITDA" means, in respect of any period, the consolidated operating profit of the Group for that period before taxation:

- (a) before deducting any Interest Expense in respect of that period;
- (b) not including any accrued interest owing to any member of the Group;
- (c) after adding back any amount attributable to the amortisation or depreciation of assets of members of the Group;
- (d) after deducting the amount of any profit (or adding back the amount of any loss) for that period of any member of the Group which is attributable to minority interests (that is, any interest in any Subsidiary of the Borrower that is held or owned by any person that is not a member of the Group)
- (e) after deducting the amount of any profit of any Non-Group Entity to the extent that the amount of such profit included in the consolidated financial statements of the Group exceeds the amount actually received in cash by members of the Group during such period through distributions by such Non-Group Entity;
- (f) before taking into account any exceptional, one-off, non-recurring or extraordinary items;

- (g) before taking into account any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis); and
- (h) before taking into account any gain or loss arising from an upward or downward revaluation of any asset at any time after the Original Financial Statements,

in each case, to the extent otherwise added or included (in the case of paragraph (b) or (e) (in the case of any profit referred to therein)), deducted (in the case of paragraph (a), (c) or (e) (in the case of any loss referred to therein)), or taken into account (in the case of paragraph (d), (g) or (h)), as the case may be, for the purposes of determining the consolidated operating profit of the Group for that period before taxation.

"Interest Expense" means, for any Relevant Period, the aggregate of amounts that fall within the scope of interest expenses and financial expenses (excluding any interest income) (in each case, including any equivalent, substitute or replacement line item of similar accounting meaning) to the extent such amounts constitute the accrued interest, commission, fees, discounts, prepayment fees, premiums, charges or other finance payments in respect of Borrowings paid or payable by any member of the Group (calculated on a consolidated basis) in cash or capitalised in respect of that Relevant Period, taking no account of any unrealized gains or losses on any derivative instruments other than any derivative instruments which are accounted for on a hedge accounting basis.

"Net Debt" means, at any time:

- (a) Total Debt at such time

less

- (b) the aggregate cash, bank balances and other cash equivalents (the terms of "cash", "bank balance" and "cash equivalents" herein shall be those treated as such in accordance with IFRS or accounting practices as applied in the financial statements delivered to the Agent pursuant to Clause 18.1 (*Financial statements*)) held and beneficially owned by members of the Group (on a consolidated basis) at such time provided that if such cash is subject to any security interest or Quasi-Security interest in favour of a party other than the Agent or the Lenders, such cash shall not be included in this paragraph.

"Non-Group Entity" means any investment or entity (which is not itself a member of the Group (including associates and joint ventures)) in which any member of the Group has an ownership interest.

"Relevant Period" means each period of 12 months ending on the last day of a financial year of the Borrower and each period of 12 months ending on the last day of the first half of a financial year of the Borrower.

"Tangible Net Worth" means, at any time, the aggregate of the amounts paid up (or credited as paid up) on the issued share capital of the Borrower and the aggregate amount of the reserves of the Group:

- (a) including (to the extent not otherwise included) any balance standing to the credit of the consolidated profit and loss account of the Borrower;
- (b) deducting (to the extent not otherwise deducted) any debit balance on the consolidated profit and loss account of the Borrower;
- (c) deducting any amount in respect of any interest of any person (that is not a member of the Group) in any Subsidiary of the Borrower;

- (d) deducting (to the extent otherwise included) any amount shown in respect of goodwill (including goodwill arising only on consolidation) or other intangible assets (excluding land use rights) of the Group or any member thereof;
- (e) deducting (to the extent otherwise included) any amount set aside for taxation, deferred taxation or bad debts;
- (f) deducting (to the extent otherwise included) any amounts arising from an upward revaluation of assets; and
- (g) deducting any amount in respect of any dividend or distribution declared, recommended or made by any member of the Group to the extent that such dividend or distribution is payable to a person that is not a member of the Group and is not provided for in and deducted from the most recent financial statements of the Group,

and so that no amount shall be included or excluded more than once.

"**Total Debt**" means, at any time without double-counting, the aggregate amount of all obligations of members of the Group for or in respect of Borrowings at that time but:

- (a) excluding any such obligations to any other member of the Group;
- (b) including, in the case of any Finance Lease only, its capitalized value;
- (c) excluding any Borrowings in nature of shareholder loans or intercompany debt which have been subordinated on terms acceptable to the Agent; and
- (d) excluding, for the avoidance of doubt, any trade payable incurred by any member of the Group in its ordinary course of trading provided that the payment terms of such trade payable are not longer than 90 days,

and so that no amount shall be included or excluded more than once.

"**Trade Instruments**" means any advance payment bonds or documentary letters of credit issued in respect of the obligations of any member of the Group arising in the ordinary course of trading of that member of the Group.

19.2 Financial condition

The Borrower shall ensure that,:

- (a) Tangible Net Worth: Tangible Net Worth shall not at any time be less than RMB8,000,000,000.
- (b) Net Debt to EBITDA: the ratio of Net Debt to EBITDA shall not be more than 3.00 to 1.00 in respect of any Relevant Period.
- (c) EBITDA to Interest Expense: the ratio of EBITDA to Interest Expense shall not be less than 5.00 to 1.00 in respect of any Relevant Period.

19.3 Financial testing

- (a) The financial covenants set out in Clause 19.2 (*Financial condition*) shall be calculated in accordance with IFRS and tested by reference to each of the financial statements delivered pursuant to Clause 18.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 18.2 (*Compliance Certificate*).
- (b) For the purpose of this Clause 19, no item shall be included or excluded more than once in any calculation.

20. GENERAL UNDERTAKINGS

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

20.1 Authorisations

The Borrower shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of,

any Authorisation required to enable it to perform the obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation, of any Finance Document.

20.2 Compliance with laws

The Borrower shall comply in all respects with all laws to which it may be subject, where failure to so comply would materially impair its ability to perform its obligations under the Finance Documents to which it is a party.

20.3 *Pari passu* ranking

The Borrower shall ensure that its payment obligations under the Finance Documents rank and continue to rank at least *pari passu* with the claims of all of its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

20.4 Negative pledge

In this Clause 20.4, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

- (a) The Borrower shall not (and the Borrower shall ensure that no Material Subsidiary will) create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not (and the Borrower shall ensure that no Material Subsidiary will):
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into or permit to subsist any title retention arrangement;
 - (iv) enter into or permit to subsist any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (v) enter into or permit to subsist any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- (c) Paragraphs (a) and (b) above do not apply to:
- (i) any Security or Quasi-Security listed in Schedule 7 (*Existing Security*) provided that the principal amount secured by that Security or Quasi-Security does not exceed the amount stated in that Schedule (in respect of that Security or Quasi-Security) and is not increased at any time after the date of this Agreement;
 - (ii) any Security or Quasi-Security in connection with, as a result of or otherwise for the purpose of providing incentive to the management and/or employees of the Borrower and/or its Subsidiaries as disclosed in the Borrower's announcement posted onto the website of the HKSE on 24 January 2021;
 - (iii) any Security or Quasi-Security ("**Replacement Security**") that replaces any Security or Quasi-Security falling within paragraph (c)(i) ("**Original Security**") pursuant to the refinancing of any Financial Indebtedness secured by or related to such Original Security being so replaced ("**Original Financial Indebtedness**"), provided that (A) such Replacement Security only secures or relates to Financial Indebtedness which refinances such Original Financial Indebtedness ("**New Financial Indebtedness**") and which is permitted under this Agreement, (B) such Replacement Security subsists over and/or relates to the same assets over which such Original Security subsisted or to which such Original Security related and (C) the aggregate principal amount secured by such Replacement Security does not exceed the aggregate principal amount of such Original Financial Indebtedness that is so refinanced by such New Financial Indebtedness, and is not increased after the date on which such New Financial Indebtedness is first incurred;
 - (iv) any netting or set-off arrangement entered into by the Borrower or any Material Subsidiary in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of any member of the Group, provided that such netting or set-off arrangement does not allow any credit balance or asset of:
 - (A) the Borrower to be set off or applied against any debit balance or obligation of any other person; or
 - (B) any Material Subsidiary to be set off or applied against any debit balance or obligation of any other person (other than any Material Subsidiary);
 - (v) any payment or close-out netting or set-off arrangement pursuant to any hedging transaction entered into by the Borrower or any Material Subsidiary for the purpose of:
 - (A) hedging any risk to which the Borrower or any Material Subsidiary is exposed in its ordinary course of trading; or
 - (B) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,

excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction and provided that such arrangement does not allow any credit balance or asset of (I) the Borrower to be set off or applied against any debit balance or obligations of any other person or (II) any Material Subsidiary to be set off or applied against any debit balance or obligations of any other person (other than any Material Subsidiary);

- (vi) any lien arising by operation of law and in the ordinary course of business **provided that** the debt which is secured thereby is paid when due or contested in good faith by appropriate proceedings and properly provisioned;
- (vii) any Security or Quasi-Security over or affecting any asset acquired by the Borrower or any Material Subsidiary after the date of this Agreement if:
 - (A) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by the Borrower or Material Subsidiary;
 - (B) the principal amount secured by that Security or to which such Quasi-Security relates has not been increased in contemplation of, or since the acquisition of that asset by the Borrower or Material Subsidiary; and
 - (C) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset by the Borrower or Material Subsidiary;
- (viii) any Security or Quasi-Security over or affecting any asset of any person which becomes a Material Subsidiary after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that person becomes a Material Subsidiary, if:
 - (A) that Security or Quasi-Security was not created in contemplation of the acquisition of any interest in that person by any member of the Group;
 - (B) the principal amount secured by that Security or to which that Quasi-Security relates has not increased in contemplation of or since the acquisition of any interest in that person by any member of the Group; and
 - (C) that Security or Quasi-Security is removed or discharged within three months of that person becoming a Material Subsidiary;
- (ix) any Security or Quasi-Security created pursuant to any Finance Document;
- (x) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to the Borrower or Material Subsidiary in the ordinary course of day-to-day business and on the supplier's standard or usual terms and not arising as a result of any default or omission by the Borrower or Material Subsidiary;
- (xi) any arrangement entered into by the Borrower or any Material Subsidiary in its ordinary course of day-to-day business for the factoring, forfaiting or discounting of account receivables;
- (xii) any Security or Quasi-Security arising as a result of legal proceedings discharged within sixty (60) days or otherwise contested in good faith (and not otherwise constituting an Event of Default) or in connection with judgments or awards (which do not constitute an Event of Default and which are discharged or satisfied within thirty (30) days);
- (xiii) any Security or Quasi-Security (A) over documents of title and goods and rights relating to those goods as part of a documentary credit transaction in the ordinary course of day-to-day business or (B) over cash collateral securing letters of credit, performance bonds or similar instruments in the ordinary course of day-to-day business;

- (xiv) any Security over cash of the Borrower or Material Subsidiary that is required to be paid into an escrow or similar account in connection with an acquisition or disposal by the Borrower or Material Subsidiary that is not otherwise prohibited under this Agreement;
- (xv) any customary set-off rights given by the Borrower or Material Subsidiary as part of the documentation for any Financial Indebtedness provided that (A) such rights do not permit credit balances of the Borrower to be netted or set off against debit balances of any other person and (B) such rights do not give rise to other Security over the assets of the Borrower in support of liabilities of any other person;
- (xvi) any Security or Quasi-Security arising as a consequence of any Finance Lease of the Borrower or Material Subsidiary, provided that such Security or Quasi-Security only subsists over the asset to which such Finance Lease relates and only secures obligations in respect of such Finance Lease;
- (xvii) any Security or Quasi-Security granted with the prior written consent of the Agent (acting on the instructions of the Majority Lenders);
- (xviii) any Security or Quasi-Security granted by any Material Subsidiary over any of its assets in favour of the Borrower; and
- (xix) any Security or Quasi-Security securing indebtedness the principal amount of which (when aggregated with the aggregate principal amount of any and all other indebtedness which has the benefit of Security or Quasi-Security given by the Borrower or any Material Subsidiary other than any permitted under paragraphs (c)(i) to (xviii) above) does not exceed US\$500,000,000 (or its equivalent in another currency or currencies).

20.5 Disposals

- (a) The Borrower shall not (and the Borrower shall ensure that no Material Subsidiary will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:
 - (i) of trading stock, inventory or cash made in the ordinary course of the day to day business of the disposing entity;
 - (ii) of assets in exchange for other assets which are of a comparable or superior type and which are used in the operation of the business for a similar purpose;
 - (iii) of assets which are obsolete, redundant or no longer required for the business or operation of the Group for cash;
 - (iv) of any asset by the Borrower or any Material Subsidiary (the "**Disposing Company**") to another member of the Group (the "**Acquiring Company**"), provided that (i) at the time of such disposal, the Borrower will be in compliance with Clause 19.2 (*Financial condition*) and (ii) if there is any difference between the Borrower's direct or indirect ownership (expressed as a percentage) in the share capital of the Disposing Company and the Borrower's direct or indirect ownership (expressed as a percentage) in the share capital of such Acquiring Company, such sale, lease, transfer or other disposal is made on arm's length terms;
 - (v) constituted by the investment of cash (that is not immediately required in the Group's business) in short term cash equivalent investments or the realisation

of such cash equivalent investments for cash, in each case in the ordinary course of business of the Borrower or Material Subsidiary making such investment or realization (as the case may be);

- (vi) constituted by the discounting by the Borrower or Material Subsidiary of its book debts for cash collection in the ordinary course of its business and not for the purpose of raising Financial Indebtedness;
- (vii) that the Borrower or Material Subsidiary is under any legally binding commitment to make, provided that such commitment is subsisting as at the date of this Agreement and has been disclosed to the Mandated Lead Arrangers in writing prior to the date of this Agreement;
- (viii) constituted by the making by the Borrower or Material Subsidiary of the declaration and payment of any lawful dividend in cash to its shareholders out of its distributable profits or reserves;
- (ix) constituted by any re-organisation solely among members of the Group that is permitted under Clause 20.7 (*Merger*);
- (x) constituted by any Finance Leases or hire purchase arrangements entered into by the Borrower or a Material Subsidiary (for the acquisition or leasing of any equipment or machinery required by the Borrower or such Material Subsidiary) in its ordinary course of business;
- (xi) pursuant to any arrangement entered into by the Borrower or Material Subsidiary for the factoring, forfaiting or discounting of account receivables on arm's length terms for collection in cash, which is either (A) on a non-recourse basis and not involving the incurrence of any Financial Indebtedness or (B) on a recourse basis and constituting the incurrence of Financial Indebtedness;
- (xii) constituted by any termination or close-out of any hedging transaction, provided that such hedging transaction shall be on arm's length terms and shall not be for speculative purposes;
- (xiii) constituted by any lease, licence, sub-lease or sub-licence of any real property or intellectual property in the ordinary course of day-to-day business;
- (xiv) of cash or share capital constituted by any acquisition or investment permitted under Clause 20.11 (*Acquisitions*);
- (xv) made by the Borrower or a Material Subsidiary that is on arm's length terms provided that:
 - (A) such disposal does not have and is not reasonably likely to have a Material Adverse Effect and does not materially impair the Borrower's ability to perform its obligations under the Finance Documents; and
 - (B) the aggregate amount of the higher of the market value or consideration receivable in respect of the asset subject to such disposal does not exceed 25 per cent. of the total gross assets of the Group (by reference to the most recent financial statements of the Borrower delivered to the Facility Agent under Clause 18.1 (*Financial statements*)) during the life of the Facility;
- (xvi) any disposal of equity or debt securities or any other similar transaction by the Borrower or the Material Subsidiaries in connection with, as a result of or otherwise for the purpose of providing incentive to the management and/or employees of the Borrower and/or its Subsidiaries as disclosed in the

Borrower's announcement posted onto the website of the HKSE on 24 January 2021;

- (xvii) any sale, lease, transfer or other disposal or other similar transaction in relation to or in connection with or otherwise for the purpose of any agreement, transaction and/or the arrangement as disclosed in the announcement of China Modern Dairy Holdings Ltd. posted onto the website of the HKSE on 22 March 2021;
- (xviii) any disposal of equity or debt securities or any other similar transaction by the Borrower or the Material subsidiaries in connection with the US\$100,000,000 1.50 per cent. exchangeable bonds due 2023 issued by the Borrower, exchangeable into ordinary shares of China Modern Dairy Holdings Ltd. in the Borrower's announcement posted onto the website of the HKSE on 24 June 2020;
- (xix) that is made with the prior written consent or approval of the Agent (acting on the instructions of the Majority Lenders); or
- (xx) of any asset by the Borrower or Material Subsidiary for cash where the higher of the market value or consideration receivable in respect of such asset (when aggregated with the higher of the market value or consideration receivable (as the case may be) for any other sale, lease, licence, transfer or other disposal by the Borrower or the Material Subsidiaries, other than any permitted under paragraphs (b)(i) to (xiv) above) does not exceed US\$1,000,000,000 (or its equivalent in another currency or currencies) during the life of the Facility.

20.6 Loans and guarantees

- (a) The Borrower shall not (and the Borrower shall ensure that no Material Subsidiary will) make or allow to subsist any loans, grant any credit (save in the ordinary course of business) or give or allow to remain outstanding any guarantee or indemnity (except as required under any of the Finance Documents) to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any person.
- (b) Paragraph (a) above does not apply to:
 - (i) any loan, credit, guarantee or indemnity expressly required to be given under the Finance Documents;
 - (ii) any loan or credit granted by the Borrower or a Material Subsidiary in its ordinary course of business and on arm's length terms;
 - (iii) any loan or credit granted by the Borrower or Material Subsidiary to any other member of the Group provided that the making or granting of such loan or credit does not or is not reasonably likely to have a Material Adverse Effect;
 - (iv) any loan, credit, guarantee or indemnity granted with the prior written consent or approval of the Majority Lenders;
 - (v) any guarantee or indemnity given by the Borrower or Material Subsidiary in respect of any obligations or liabilities of any member of the Group, provided that such guarantee or indemnity does not have or is not reasonably likely to have a Material Adverse Effect;
 - (vi) the endorsement of negotiable instruments in the ordinary course of business;

- (vii) any loan, credit, guarantee or indemnity which constitutes Financial Indebtedness, the incurrence and subsistence of which Financial Indebtedness is permitted under this Agreement;
- (viii) any customary indemnity given in the ordinary course of the documentation of any acquisition or disposal permitted under this Agreement;
- (ix) any counter-indemnity given by the Borrower or Material Subsidiary in respect of any bond or similar surety of performance issued by any bank or financial institution in respect of the obligations of the Borrower or Material Subsidiary under any contract entered into in the ordinary course of business;
- (x) any loan, credit, guarantee or indemnity in relation to or in connection with or otherwise for the purpose of any agreement, transaction and/or the arrangement as disclosed in the announcement of the Borrower posted onto the website of the HKSE on 24 January 2021; and
- (xi) any loan, credit, guarantee or indemnity granted by the Borrower or Material Subsidiary where the aggregate principal amount of such loan or credit, when aggregated with the aggregate principal amount of any and all other loans and credits granted by the Borrower and the Material Subsidiaries (other than any permitted under paragraphs (b)(i) to (b)(ix) above), does not at any time exceed US\$1,000,000,000 (or its equivalent in any other currency or currencies).

20.7 Merger

- (a) The Borrower shall not (and shall ensure that no Material Subsidiary will) enter into any amalgamation, demerger, merger or corporate reconstruction.
- (b) Paragraph (a) above does not apply to:
 - (i) any amalgamation, demerger, merger or corporate reconstruction provided that:
 - (A) if it involves any member of the Group (other than the Borrower), it does not have and is not reasonably likely to have a Material Adverse Effect;
 - (B) if it involves the Borrower:
 - (1) it is a solvent amalgamation, demerger, merger or corporate reconstruction and does not have or is not reasonably likely to have a Material Adverse Effect;
 - (2) the obligations of the Borrower under the Finance Documents shall remain legal, valid and binding and shall be binding on the surviving or resulting entity of that solvent amalgamation, demerger, merger or corporate reconstruction;
 - (3) the surviving or resulting entity is the Borrower;
 - (4) no Default has occurred or would occur as a result of the amalgamation, demerger, merger or corporate reconstruction; and
 - (5) the Borrower has provided to the Agent (in form and substance satisfactory to it (acting on the instructions of all the Lenders)):

- (AA) all relevant know-your-client documents as reasonably requested by the Agent in respect of the surviving or resulting entity;
- (BB) legal opinions as reasonably requested by the Agent with respect to all applicable laws, the capacity of, and the enforceability of the Finance Documents against, the Borrower (being the surviving or resulting entity); and
- (CC) tax opinions as reasonably requested by the Agent confirming that there are no adverse tax consequence for the Borrower or the Finance Parties as a result of the merger or, to the extent there is any such adverse tax consequence, the Borrower has demonstrated to the reasonable satisfaction of the Majority Lenders that such tax consequence does not have a Material Adverse Effect; and

- (ii) any sale, lease, transfer or other disposal permitted pursuant to Clause 20.5 (*Disposals*).

20.8 **Change of business**

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower, or of the Group taken as a whole, from that carried on at the date of this Agreement.

20.9 **Environmental compliance**

The Borrower shall (and the Borrower shall ensure that each Material Subsidiary will):

- (a) comply in all respects with all Environmental Law where failure to so comply would have or would be reasonably likely to have a Material Adverse Effect;
- (b) obtain and maintain any Environmental Permits; and
- (c) take all reasonable steps in anticipation of known or expected future changes to or obligations under Environmental Law or any Environmental Permits.

20.10 **Environmental Claims**

The Borrower shall inform the Agent in writing as soon as reasonably practicable upon becoming aware of:

- (a) any Environmental Claim which has been commenced or (to the best of the Borrower's knowledge and belief) is threatened against the Borrower or Material Subsidiary; or
- (b) any facts or circumstances which is reasonably likely to result in any Environmental Claim being commenced or threatened against the Borrower or Material Subsidiary,

in each case where such Environmental Claim is reasonably likely, if determined against the Borrower or Material Subsidiary, to have a Material Adverse Effect.

20.11 **Acquisitions**

- (a) The Borrower shall not (and the Borrower shall ensure that no Material Subsidiary will) acquire any company, business, assets or undertaking or make any investment.

- (b) Paragraph (a) above does not apply to an acquisition or investment:
- (i) any acquisition or investment on arm's length basis by the Borrower or a Material Subsidiary of any shares, business, assets or undertaking of any member of the Group or pursuant to a sale, lease, transfer or disposal that is permitted under Clause 20.5 (*Disposals*);
 - (ii) the acquisition of or investment in shares in companies or businesses or of assets or undertakings which will not result in substantial change in the general nature of the business of the Borrower and of the Group taken as a whole, provided that such acquisition or investment (A) is on arm's length basis; (B) would not, and is not reasonably likely to, have a Material Adverse Effect; and (C) would not, or is not reasonably likely to result in an Event of Default;
 - (iii) the incorporation by the Borrower or Material Subsidiary of a wholly-owned Subsidiary;
 - (iv) any acquisition made with the prior written consent of the Agent (acting on the instructions of the Majority Lenders); or
 - (v) any acquisition or investment by the Borrower or any Material Subsidiary where the consideration paid in respect of such acquisition or investment, when aggregated with the aggregate consideration paid in respect of any and all other acquisitions and investments by the Borrower and the Material Subsidiaries (other than any permitted under paragraphs (b)(i) to (iv) above), does not exceed US\$1,000,000,000 (or its equivalent in any other currency or currencies) during the life of the Facility,

provided that such acquisition or investment does not result in a breach of any Authorisation or of any other provision of this Agreement.

20.12 **NDRC Circular 2044**

Promptly following and in any event within 15 PRC working days of the date of this Agreement, the Borrower shall submit with the NDRC the documents that are required to register the Facility in accordance with NDRC Circular 2044 and provide to the Agent the evidence of such submission.

20.13 **Access**

If a Default is continuing, the Borrower shall (and the Borrower shall ensure that each Material Subsidiary will) permit the Agent and its representatives and delegates, and professional advisers and/or contractors of the Agent, free access at all reasonable times and on reasonable notice at the risk and cost of the Borrower to the premises, assets, books, accounts and records of the Borrower and each Material Subsidiary and to inspect and take copies and extracts from the books, accounts and records of the Borrower and each Material Subsidiary.

20.14 **Amendments to constitutional documents**

Other than as required under the Finance Documents, the Borrower may not amend, vary, novate, supplement, supersede, waive or terminate any term of any of its constitutional documents to the extent that that amendment, variation, novation, supplement, superseding, waiver or termination is materially prejudicial to the rights of the Lenders under the Finance Documents. The Borrower shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in this Clause 20.14.

20.15 **Subordination**

The Borrower shall ensure that any Financial Indebtedness from time to time owed by the Borrower to any member of the Group will be subordinated to the Facility on terms of a

subordination agreement in form and substance satisfactory to the Agent (acting on the instructions of all the Lenders) before the incurrence of any such Financial Indebtedness.

20.16 Use of proceeds

- (a) The Borrower shall ensure that the proceeds of the Facility will only be applied for the purposes set out in Clause 3.1 (*Purpose*) and the relevant Utilisation Request and shall keep track of such application in a manner that would enable the Borrower to comply with the obligation in the foregoing sentence. The Borrower shall keep proper accounting records and books of such use of proceeds and shall promptly supply such records and books to the Agent as reasonably requested by the Agent.
- (b) The Borrower shall ensure that, as soon as reasonably practicable and in any event prior to the Final Maturity Date, any proceeds borrowed by it under the Facility for purposes as set out in paragraphs (a) and (b) of Clause 3.1 (*Purpose*) or an amount equivalent to such proceeds are actually used towards Eligible Green Projects.

20.17 Application of FATCA

The Borrower shall ensure that neither it nor any Material Subsidiary becomes a FATCA FFI or a US Tax Obligor.

20.18 Sanctions

The Borrower shall not (and shall ensure that no member of the Group will) directly or indirectly use any part of the proceeds of the Facility or lend, contribute, or otherwise make available such proceeds (a) to fund or facilitate any activities or business of or with any Person that, at the time of such funding or facilitation, is a Sanctioned Person, (b) to fund or facilitate any activities or business of or in any Sanctioned Jurisdiction, or (c) in any other manner that would result in a violation by any Finance Party of any Sanctions.

20.19 Anti-money laundering

The Borrower will not (and will procure that none of its Subsidiaries will) fund all or part of any payment under a Finance Document out of proceeds derived from any unlawful activity which would result in any violation of any Anti-Money Laundering Laws.

20.20 Anti-bribery and Anti-corruption laws

The Borrower shall not (and shall ensure that no member of the Group will) directly or indirectly, use any part of the proceeds of the Facility for any payment that could constitute a violation of any applicable Anti-Corruption Laws.

20.21 Material Subsidiaries

- (a) If the Borrower fails or is reasonably expected to fail to comply with Clause 17.22 (*Material Subsidiaries*), the Borrower shall, no later than 30 Business Days of the earliest of:
 - (i) the Borrower becoming aware of such failure to comply;
 - (ii) the date on which the representations under Clause 17.22 (*Material Subsidiaries*) are deemed to be repeated in accordance with Clause 17.25 (*Repetition*); or
 - (iii) the date of the relevant Compliance Certificate where the Borrower is required confirm its compliance with Clause 17.22 (*Material Subsidiaries*),

designate any other Subsidiary of the Group as a Material Subsidiary to ensure that after such designation, the requirements under Clause 17.22 (*Material Subsidiaries*) would be met as if the representation had been made on the date of such designation, provided that the Subsidiary so designated must be:

- (A) a Subsidiary whose total revenue and/or gross assets are larger than that of any other Subsidiaries of the Borrower (other than the Material Subsidiaries existing at that time); or
- (B) a Subsidiary whose total assets and/or total revenues account for more than five (5) per cent. of the Group's total assets and/or total revenues (as the case may be),

in each case, calculated by reference to the most recent financial statements of the Borrower delivered to the Agent pursuant to Clause 18.1 (*Financial statements*).

- (b) On the date on which a Subsidiary is designated as a Material Subsidiary in accordance with paragraph (a) above, the Borrower shall provide to the Agent a certificate signed by an authorised person of the Borrower setting out (in reasonable detail) computations as to compliance with the minimum percentage requirements under Clause 17.22 (*Material Subsidiaries*) as at the date of such designation.
- (c) For avoidance of doubt, any terms of the Facilities Agreement applicable to any Material Subsidiary shall apply to any Subsidiary of the Borrower so designated in accordance with paragraph (a) above on and from the date of such designation.

20.22 **Conditions subsequent**

The Borrower shall, with 364 days after each Utilisation Date, deliver to the Agent documentary evidence of the use of proceeds from the relevant Utilisation.

21. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in the following sub-clauses of this Clause 21 (other than Clause 21.15 (*Acceleration*)) is an Event of Default.

21.1 **Non-payment**

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by administrative or technical error; and
- (b) payment of such amount is made within three Business Days of its due date.

21.2 **Financial covenants**

Any requirement of Clause 19 (*Financial Covenants*) is not satisfied.

21.3 **Other obligations**

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*) and Clause 21.2 (*Financial covenants*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 14 Business Days of the earlier of (i) the

Agent (acting on the instructions of the Majority Lenders) giving notice to the Borrower and (ii) the Borrower becoming aware of the failure to comply.

21.4 **Misrepresentation**

- (a) Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur if the circumstances giving rise to the misrepresentation, breach of warranty or misstatement:
 - (i) are capable of remedy; and
 - (ii) are remedied within 14 Business Days of the earlier of (i) the Agent (acting on the instructions of the Majority Lenders) giving notice to the Borrower and (ii) the Borrower becoming aware of the misrepresentation, breach of warranty or misstatement.

21.5 **Cross default**

Any:

- (a) Financial Indebtedness of the Borrower or any Material Subsidiary is not paid when due nor within any originally applicable grace period;
- (b) Financial Indebtedness of the Borrower or any Material Subsidiary is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described);
- (c) commitment for any Financial Indebtedness of the Borrower or any Material Subsidiary is cancelled or suspended by a creditor of the Borrower or any Material Subsidiary (as the case may be) as a result of an event of default (however described); or
- (d) creditor of the Borrower or any Material Subsidiary becomes entitled to declare any Financial Indebtedness of the Borrower or any Material Subsidiary (as the case may be) due and payable prior to its specified maturity as a result of an event of default (however described),

provided that no Event of Default will occur under this Clause 21.5 if the aggregate amount of Financial Indebtedness and/or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than US\$50,000,000 (or its equivalent in any other currency or currencies).

21.6 **Insolvency**

- (a) The Borrower or any Material Subsidiary is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of the Borrower or any Material Subsidiary is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Borrower or any Material Subsidiary.

21.7 **Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower or any Material Subsidiary (other than a solvent liquidation or reorganisation of any Material Subsidiary);
- (b) a composition or arrangement with any creditor of the Borrower or any Material Subsidiary, or an assignment for the benefit of creditors generally of the Borrower or any Material Subsidiary or a class of such creditors;
- (c) the appointment of a liquidator (other than in respect of a solvent liquidation of a Material Subsidiary), receiver, administrator, administrative receiver, compulsory manager, provisional supervisor or other similar officer in respect of the Borrower or any Material Subsidiary or any of its assets; or
- (d) enforcement of any Security over any assets of the Borrower or any Material Subsidiary,

or any analogous procedure or step is taken in any jurisdiction, provided that no Event of Default shall occur under this Clause 21.7 in relation to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 Business Days of commencement.

21.8 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower or any Material Subsidiary unless (a) such expropriation, attachment, sequestration, distress or execution is discharged within 14 days and (b) the aggregate value of any and all assets of the Borrower and each of the Material Subsidiaries that are subject to any or all events of expropriation, attachment, sequestration, distress and/or execution does not exceed US\$50,000,000 (or its equivalent in any other currency or currencies).

21.9 **Expropriation**

- (a) The authority or ability of the Borrower or any Material Subsidiary to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, intervention, restriction or other action by or on behalf of any Governmental Agency or any other governmental, regulatory or other authority in relation to the Borrower or any Material Subsidiary or any of its assets; or
- (b) by or under the authority of any Governmental Agency or any other governmental, regulatory or other authority, any share capital in the Borrower or any Material Subsidiary, or the whole or any part (the aggregate book value of which is not less than US\$50,000,000 or its equivalent in any other currency or currencies in any financial year of the Borrower) of the revenues and/or assets of any or all of the Borrower and the Material Subsidiaries, is seized, expropriated or compulsorily acquired.

21.10 **Unlawfulness**

- (a) It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.
- (b) Any obligation or obligations of the Borrower under any Finance Document are not (subject to Legal Reservations) or cease to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force and effect.

21.11 Repudiation

The Borrower rescinds or repudiates or purports (in writing) to rescind or repudiate or evidences an intention (in writing) to rescind or repudiate a Finance Document to which it is a party or evidences an intention to repudiate any such Finance Document.

21.12 Cessation of business

The Borrower or the Group (taken as a whole) suspends or ceases to carry on all or a material part of its business or of the business of the Group taken as a whole.

21.13 Suspension or cessation of listing

- (a) The shares of the Borrower cease to be listed and traded on the Main Board of HKSE.
- (b) The shares of the Borrower are suspended from trading on the Main Board of HKSE for more than 20 consecutive Trading Days, unless such suspension is:
 - (i) for purely technical reasons affecting the Borrower; or
 - (ii) by reason of any voluntary suspension of trading requested by the Borrower in connection with any material corporate activity (or proposed material corporate activity) of the Borrower or any of its Subsidiaries, provided that the Borrower shall provide such relevant information as may be reasonably requested by any Lender through the Agent unless such information constitute inside information, price sensitive information, material non-public information (or some other class of information as may be relevant) or otherwise be subject to legal or regulatory control due to its non-public nature in relation to the Borrower and that the use of such information may be regulated or prohibited by applicable laws and regulations relating to, among other things, insider dealing and/or market abuse,

which, in each case, is not attributable to any breach (or alleged breach) of any listing rules, laws or regulations and does not have or would reasonably be expected to have a Material Adverse Effect.

21.14 Material adverse change

Any event or circumstances occurs which has or would reasonably be expected to have a Material Adverse Effect, **provided that** if any of the following event or circumstance occurs:

- (a) changes in law or regulation or interpretations thereof, applicable to the Group;
- (b) changes generally applicable to financial, economic, political or geopolitical, or similar conditions (including acts of war, declared or undeclared, armed hostilities and terrorism);
- (c) earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires or other natural disasters,

when determining their effect on the matters set out in paragraph (a) of the definition of “Material Adverse Effect”, it shall be taken into account all relevant mitigating factors and circumstances including, but not limited to, any warranty, indemnity or other resources available to the Group (including the financial resources available from other members of the Group) or right of

recourse against any third party with respect to such event or circumstance and any obligation in force of any person to provide any additional equity investment).

21.15 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:

- (a) without prejudice to the participations of any Lender in any Loans then outstanding:
 - (i) cancel each Available Commitment of each Lender (and reduce them to zero), whereupon each such Available Commitment shall immediately be cancelled (and reduced to zero) and the Facility shall immediately cease to be available for further utilisation; or
 - (ii) cancel any part of any Commitment (and reduce such Commitment accordingly), whereupon the relevant part shall immediately be cancelled (and the relevant Commitment shall be immediately reduced accordingly); and/or
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders.

**SECTION 8
CHANGES TO PARTIES**

22. CHANGES TO THE LENDERS

22.1 Assignments and transfers by the Lenders

Subject to this Clause 22, a Lender (the "**Existing Lender**") may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

under the Finance Documents to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "**New Lender**").

22.2 Conditions of assignment or transfer

- (a) The consent of the Borrower is required for any assignment or transfer unless the assignment or transfer is:
 - (i) to another Lender or an Affiliate of any Lender; or
 - (ii) at a time when an Event of Default is continuing.
- (b) The consent of the Borrower to an assignment or transfer (if required) must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent five Business Days after the Borrower is given notice of the request unless consent is expressly refused by the Borrower within that time.
- (c) A transfer will be effective only if the procedure set out in Clause 22.5 (*Procedure for transfer*) is complied with.
- (d) An assignment will be effective only if the procedure and conditions set out in Clause 22.6 (*Procedure for assignment*) are complied with.

22.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of HK\$40,000.

22.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of the Borrower;
 - (iii) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 22; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

22.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 22.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall not be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender unless it is satisfied that it has completed all "know your customer" and other similar procedures that it is required (or deems desirable) to conduct in relation to the transfer to such New Lender.
- (c) On the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");
 - (ii) the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
 - (iii) the Agent, the Mandated Lead Arrangers, the Coordinating Bank, the Green Loan Advisors, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Mandated Lead Arrangers, the Coordinating Bank, the Green Loan Advisors and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

- (iv) the New Lender shall become a Party as a "Lender".
- (d) The procedure set out in this Clause 22.5 shall not apply to any right or obligation under any Finance Document (other than this Agreement) if and to the extent its terms, or any laws or regulations applicable thereto, provide for or require a different means of transfer of such right or obligation or prohibit or restrict any transfer of such right or obligation, unless such prohibition or restriction shall not be applicable to the relevant transfer or each condition of any applicable restriction shall have been satisfied.

22.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 22.2 (*Conditions of assignment or transfer*), an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall not be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender unless it is satisfied that it has completed all "know your customer" and other similar procedures that it is required (or deems desirable) to conduct in relation to the assignment to such New Lender.
- (c) On the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released by the Borrower and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement; and
 - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 22.6 to assign their rights under the Finance Documents (but not, without the consent of the Borrower or unless in accordance with Clause 22.5 (*Procedure for transfer*), to obtain a release by the Borrower from the obligations owed to the Borrower by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 22.2 (*Conditions of assignment or transfer*).
- (e) The procedure set out in this Clause 22.6 shall not apply to any right or obligation under any Finance Document (other than this Agreement) if and to the extent its terms, or any laws or regulations applicable thereto, provide for or require a different means of assignment of such right or release or assumption of such obligation or prohibit or restrict any assignment of such right or release or assumption of such obligation, unless such prohibition or restriction shall not be applicable to the relevant assignment, release or assumption or each condition of any applicable restriction shall have been satisfied.

22.7 Copy of Transfer Certificate or Assignment Agreement to Borrower

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

22.8 Existing consents and waivers

A New Lender shall be bound by any consent, waiver, election or decision given or made by the relevant Existing Lender under or pursuant to any Finance Document prior to the coming into effect of the relevant assignment or transfer to such New Lender.

22.9 Exclusion of Agent's liability

In relation to any assignment or transfer pursuant to this Clause 22, each Party acknowledges and agrees that the Agent shall not be obliged to enquire as to the accuracy of any representation or warranty made by a New Lender in respect of its eligibility as a Lender.

22.10 Assignments and transfers to the Borrower and its Affiliates

A Lender may not assign or transfer to the Borrower or any of its Affiliates any of such Lender's rights or obligations under any Finance Document, except with the prior written consent of all the Lenders.

22.11 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 22, each Lender may without consulting with or obtaining consent from the Borrower, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

23. CHANGES TO THE BORROWER

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents, except with the prior written consent of all the Lenders.

**SECTION 9
THE FINANCE PARTIES**

24. ROLE OF THE ADMINISTRATIVE PARTIES AND THE REFERENCE BANKS

24.1 Appointment of the Agent

- (a) Each of the Mandated Lead Arrangers, the Coordinating Bank, the Green Loan Advisors and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Mandated Lead Arrangers, the Coordinating Bank, the Green Loan Advisors and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

24.2 Instructions

- (a) The Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all-Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

24.3 Duties of the Agent

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to Clause 22.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than to any Administrative Party) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

24.4 Role of the Mandated Lead Arrangers

Except as specifically provided in the Finance Documents, none of the Mandated Lead Arrangers has obligations of any kind to any other Party under or in connection with any Finance Document.

24.5 Role of the Coordinating Bank

Except as specifically provided in the Finance Documents, the Coordinating Bank has no obligations of any kind to any other Party under or in connection with any Finance Document.

24.6 Role of the Green Loan Advisors

Except as specifically provided in the Finance Documents, no Green Loan Advisor has obligations of any kind to any other Party under or in connection with any Finance Document.

24.7 No fiduciary duties

- (a) Nothing in any Finance Document constitutes any Administrative Party as a trustee or fiduciary of any other person.
- (b) No Administrative Party shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

24.8 Business with the Group

Any Administrative Party may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

24.9 Rights and discretions of the Agent

- (a) The Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lender or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which is reasonably likely to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 21.1 (*Non-payment*)); and
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised.
- (c) The Agent may engage, and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.
- (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Agent may act in relation to the Finance Documents through its officers, employees and agents.
- (g) Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, no Administrative Party is obliged to do or omit to do anything if it would or might in its

reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

- (i) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

24.10 **Responsibility for documentation**

No Administrative Party is responsible or liable for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by any Administrative Party, the Borrower or any other person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

24.11 **No duty to monitor**

The Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

24.12 **Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent will not be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of its gross negligence or wilful misconduct; or
 - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability

whatsoever (but not including any claim based on the fraud of the Agent) arising as a result of:

- (A) any act, event or circumstance not reasonably within its control; or
- (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause 24 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Ordinance.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige any Administrative Party to conduct:
 - (i) any "know your customer" or other procedures in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender or for any Affiliate of any Lender,

on behalf of any Lender and each Lender confirms to each Administrative Party that it is solely responsible for any such procedures or check it is required to conduct and that it shall not rely on any statement in relation to such procedures or check made by any Administrative Party.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

24.13 Lenders' indemnity to the Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by the Borrower pursuant to a Finance Document).

24.14 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates acting through an office as successor by giving notice to the Lenders and the Borrower.
- (b) Alternatively, the Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the retiring Agent (after consultation with the Borrower) may appoint a successor Agent (acting through an office in Hong Kong).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 24 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. The Borrower shall, within 21 Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 15.3 (*Indemnity to the Agent*) and this Clause 24 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations among themselves as they would have had if such successor had been an original Party.
- (h) After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.
- (i) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents:
 - (i) the Agent fails to respond to a request under Clause 12.6 (*FATCA information*) and the Borrower or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

- (ii) the information supplied by the Agent pursuant to Clause 12.6 (*FATCA information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (iii) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) the Borrower or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and the Borrower or that Lender, by notice to the Agent, requires it to resign.

24.15 Confidentiality

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- (c) The Agent shall not be obliged to disclose to any Finance Party any information supplied to it by the Borrower or any Affiliates of the Borrower on a confidential basis and for the purpose of evaluating whether any waiver or amendment is or may be required or desirable in relation to any Finance Document.

24.16 Relationship with the Lenders

- (a) The Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 28.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 28.2 (*Addresses*) and paragraph (a)(ii) of Clause 28.5 (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

24.17 Credit appraisal by the Lenders

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to each Administrative Party that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

24.18 Agent's management time

Any amount payable to the Agent under Clause 15.3 (*Indemnity to the Agent*) and Clause 16 (*Costs and Expenses*) and Clause 24.13 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrower and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 11 (*Fees*).

24.19 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

24.20 Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 24.20 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Ordinance.

24.21 **Third party Reference Banks**

A Reference Bank which is not a Party may rely on Clause 24.20 (*Role of Reference Banks*), Clause 32.3 (*Other exceptions*) and Clause 34 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Ordinance.

25. **SHARING AMONG THE FINANCE PARTIES**

25.1 **Payments to Finance Parties**

If a Finance Party (a "**Recovering Finance Party**") receives or recovers (whether by set-off or otherwise) any amount from the Borrower other than in accordance with Clause 26 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 26 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 26.5 (*Partial payments*).

25.2 **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 26.5 (*Partial payments*) towards the obligations of the Borrower to the Sharing Finance Parties.

25.3 **Recovering Finance Party's rights**

- (a) On a distribution by the Agent under Clause 25.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Borrower.
- (b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the Borrower shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

25.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and

- (b) as between the Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

25.5 **Exceptions**

- (a) This Clause 25 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 25, have a valid and enforceable claim against the Borrower.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

SECTION 10 ADMINISTRATION

26. PAYMENT MECHANICS

26.1 Payments to the Agent

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Agent, in each case, specifies.

26.2 Distributions by the Agent

- (a) Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 26.3 (*Distributions to the Borrower*) and Clause 26.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.
- (b) The Agent shall distribute payments received by it in relation to all or any part of a Loan to the Lender indicated in the records of the Agent as being so entitled on that date **provided that** the Agent is authorised to distribute payments to be made on the date on which any transfer becomes effective pursuant to Clause 22 (*Changes to the Lenders*) to the Lender so entitled immediately before such transfer took place regardless of the period to which such sums relate.

26.3 Distributions to the Borrower

The Agent may (with the consent of the Borrower or in accordance with Clause 27 (*Set-off*)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

26.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

26.5 Partial payments

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Agent shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:

- (i) **first**, in or towards payment *pro rata* of any unpaid amount owing to any Administrative Party under the Finance Documents;
 - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee (other than as provided in paragraph (i) above) or commission due but unpaid under the Finance Documents;
 - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (a)(iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

26.6 **No set-off by the Borrower**

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

26.7 **Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement, interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

26.8 **Currency of account**

- (a) Subject to paragraphs (b) and (c) below, Hong Kong dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Hong Kong dollars shall be paid in that other currency.

26.9 **Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

27. SET-OFF

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

28. NOTICES

28.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

28.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified with its name below;
- (b) in the case of each Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

28.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will be effective:
 - (i) if by way of fax, only when received in legible form; or
 - (ii) if by way of letter, only when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 28.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).
- (c) All notices from or to the Borrower shall be sent through the Agent.

- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

28.4 **Notification of address and fax number**

Promptly upon changing its address or fax number, the Agent shall notify the other Parties (other than the Mandated Lead Arrangers, the Coordinating Bank and the Green Loan Advisors).

28.5 **Electronic communication**

- (a) Any communication or document to be made or delivered between any two Parties under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between the Borrower and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
- (c) Any such electronic communication or delivery as specified in paragraph (a) above made or delivered between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received or a document being delivered or received shall be construed to include that communication or document being made available in accordance with this Clause 28.5.

28.6 **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

29. **CALCULATIONS AND CERTIFICATES**

29.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

29.2 **Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

29.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

30. **PARTIAL INVALIDITY**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

31. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

32. **AMENDMENTS AND WAIVERS**

32.1 **Required consents**

- (a) Subject to Clause 32.2 (*All-Lender matters*) and Clause 32.3 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 32.

32.2 **All-Lender matters**

Subject to Clause 32.4 (*Replacement of Screen Rate*), an amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;

- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment, an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
- (f) any provision which expressly requires the consent of all the Lenders; or
- (g) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 5.1 (*Delivery of a Utilisation Request*), Clause 7.1 (*Illegality*), Clause 7.6 (*Application of prepayments*), Clause 22 (*Changes to the Lenders*), Clause 23 (*Changes to the Borrower*), Clause 25 (*Sharing among the Finance Parties*), this Clause 32, Clause 37 (*Governing Law*), or Clause 38.1 (*Jurisdiction of Hong Kong courts*),

shall not be made without the prior consent of all the Lenders.

32.3 Other exceptions

An amendment or waiver which relates to the rights or obligations of the Agent, the Mandated Lead Arrangers or the Coordinating Bank or the Green Loan Advisors or a Reference Bank (each in their capacity as such) may not be effected without the consent of the Agent, the Mandated Lead Arrangers, the Coordinating Bank, the Green Loan Advisors or that Reference Bank, as the case may be.

32.4 Replacement of Screen Rate

- (a) Subject to Clause 32.3 (*Other exceptions*), if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for Hong Kong dollars, any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Benchmark in relation to Hong Kong dollars in place of that Screen Rate; and
 - (ii)
 - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Benchmark;
 - (D) providing for appropriate fallback (and, where applicable, market disruption) provisions for that Replacement Benchmark; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Borrower.

(b) In this Clause:

"Relevant Nominating Body" means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

"Replacement Benchmark" means a benchmark rate which is:

- (i) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (A) the administrator of that Screen Rate; or
 - (B) any Relevant Nominating Body,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (B) above;
- (ii) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or
- (iii) in the opinion of the Majority Lenders and the Borrower, an appropriate successor to a Screen Rate.

"Screen Rate Replacement Event" means, in relation to a Screen Rate:

- (iv) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders and the Borrower, materially changed;
- (v)
 - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
 - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;
- (vi) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
- (vii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or

- (viii) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
- (c) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or
 - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than one month; or
- (d) in the opinion of the Majority Lenders and the Borrower, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

33. CONFIDENTIAL INFORMATION

33.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 33.2 (*Disclosure of Confidential Information*) and Clause 33.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

33.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, insurers, insurance brokers, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including any person appointed under paragraph (b) of Clause 24.16 (*Relationship with the Lenders*));

- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (i) or (ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 22.11 (*Security over Lenders' rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Borrower,

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (i), (ii) and (iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to paragraph (iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information; or
 - (C) in relation to paragraphs (v), (vi) and (vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party; and
 - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential

nature and that some or all of such Confidential Information may be price-sensitive information.

33.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or the Borrower the following information:
- (i) name of the Borrower;
 - (ii) country of domicile of the Borrower;
 - (iii) place of incorporation of the Borrower;
 - (iv) date of this Agreement;
 - (v) Clause 37 (*Governing Law*);
 - (vi) the names of the Agent, the Mandated Lead Arrangers, the Coordinating Bank and the Green Loan Advisors;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facility (and any tranches);
 - (ix) amount of Total Commitments;
 - (x) currency of the Facility;
 - (xi) type of Facility;
 - (xii) ranking of Facility;
 - (xiii) Final Maturity Date for the Facility;
 - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
 - (xv) such other information agreed between such Finance Party and the Borrower,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Borrower represents that none of the information set out in paragraphs (a)(i) to (a)(xv) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrower and the other Finance Parties of:
- (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or the Borrower; and

- (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or the Borrower by such numbering service provider.

33.4 **Entire agreement**

This Clause 33 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

33.5 **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

33.6 **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 33.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 33.

33.7 **Continuing obligations**

The obligations in this Clause 33 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 24 months from the earlier of:

- (a) the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

34. **CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS**

34.1 **Confidentiality and disclosure**

- (a) The Agent and the Borrower agree to keep each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Agent may disclose:
 - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause 8.4 (*Notification of rates of interest*); and
 - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide

those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender or Reference Bank, as the case may be.

- (c) The Agent may disclose any Funding Rate or any Reference Bank Quotation, and the Borrower may disclose any Funding Rate, to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The Agent's obligations in this Clause 34 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.4 (*Notification of rates of interest*) **provided that** (other than pursuant to paragraph (b)(i) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

34.2 Related obligations

- (a) The Agent and the Borrower acknowledge that each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and the Borrower undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.

- (b) The Agent and the Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 34.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 34.

34.3 **No Event of Default**

No Event of Default will occur under Clause 21.3 (*Other obligations*) by reason only of the Borrower's failure to comply with this Clause 34.

35. **CONTRACTUAL RECOGNITION OF BAIL-IN**

35.1 **Bail-in**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

35.2 **Bail-in definitions**

In this Agreement:

"Article 55 BRRD" means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

"Bail-In Action" means the exercise of any Write-down and Conversion Powers.

"Bail-In Legislation" means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual

recognition of any Write-down and Conversion Powers contained in that law or regulation; and

- (c) in relation to the United Kingdom, the UK Bail-In Legislation.

"EEA Member Country" means any member state of the European Union, Iceland, Liechtenstein and Norway.

"EU Bail-In Legislation Schedule" means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

"Resolution Authority" means any body which has authority to exercise any Write-down and Conversion Powers.

"UK Bail-In Legislation" means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

"Write-down and Conversion Powers" means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail-In Legislation other than the UK Bail-In Legislation:
- (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
- (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to the UK Bail-In Legislation, any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers.

36. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 11
GOVERNING LAW AND ENFORCEMENT

37. GOVERNING LAW

This Agreement is governed by the laws of Hong Kong.

38. ENFORCEMENT

38.1 Jurisdiction of Hong Kong courts

- (a) The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including any dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

38.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Borrower agrees that its place of business at 32nd Floor, COFCO Tower, 262 Gloucester Road, Causeway Bay, Hong Kong may be used for service of process in respect of any proceedings relating to the Finance Documents before the Hong Kong courts. If for any reason such address ceases to be the Borrower's place of business, the Borrower shall promptly either: (i) notify the Agent of its current place of business within Hong Kong to be used for this purpose; or (ii) appoint a person as its agent for this purpose and deliver to the Agent evidence that such person has accepted such appointment. Failing this, the Agent may (at the cost of the Borrower appoint an agent for service of process for the Borrower).

38.3 Waiver of immunities

The Borrower irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from:

- (a) suit;
- (b) jurisdiction of any court;
- (c) relief by way of injunction or order for specific performance or recovery of property;
- (d) attachment of its assets (whether before or after judgment); and
- (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction (and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any immunity in any such proceedings).

This Agreement has been entered into on the date stated at the beginning of this Agreement.

**SCHEDULE 1
THE ORIGINAL LENDERS**

Name of Original Lender	Commitment
Bank of China (Hong Kong) Limited (中國銀行(香港)有限公司)	HK\$1,150,000,000
Citibank N.A., Hong Kong Branch, organised under the laws of the USA with limited liability	HK\$383,000,000
DBS Bank Ltd., Hong Kong Branch, a company incorporated in Singapore with limited liability	HK\$767,000,000
Total	HK\$2,300,000,000

SCHEDULE 2
CONDITIONS PRECEDENT

1. The Borrower

- (a) A copy of the constitutional documents of the Borrower (including its certificate of incorporation and any certificate(s) of incorporation on change of name, memorandum and articles of association and register of directors and officers).
- (b) A copy of an extract of the minutes of a meeting of the board of directors of the Borrower:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the minutes referred to in paragraph (b) above who will execute the Finance Documents to which the Borrower is a party and all other documents and notices to be signed and/or despatched by such person, on behalf of the Borrower, under or in connection with the Finance Documents to which the Borrower is a party.
- (d) A certificate from the Borrower (signed by an authorised signatory) confirming that borrowing the Total Commitments would not cause any borrowing or similar limit binding on it to be exceeded.
- (e) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to (or delivered by) it specified in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (f) A copy of a certificate of good standing in respect of the Borrower issued by the Registrar of Companies in the Cayman Islands dated no earlier than 30 days prior to the date of this Agreement.

2. Legal opinions

- (a) A legal opinion in relation to Hong Kong law from Linklaters addressed to the Mandated Lead Arrangers, the Coordinating Bank, the Green Loan Advisors, the Agent Original Lenders, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (b) A legal opinion as to Cayman Islands law from Maples and Calder (Hong Kong) LLP addressed to the Mandated Lead Arrangers, the Coordinating Bank, the Green Loan Advisors, the Agent and the Original Lenders, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

3. Other documents and evidence

- (a) A copy of this Agreement and the Fee Letters in relation to the upfront fee and agency fee referred to in Clause 11 (*Fees*), each duly executed by the parties to it.
- (b) A copy of the Original Financial Statements.

- (c) A copy of the pre-issuance stage certificate in respect of the Green Financing Framework issued by the HKQAA under the HKQAA Green Finance Certification Scheme, together with the Green Financing Framework, certified by an authorised signatory of the Borrower.
- (d) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and Expenses*) have been paid or will be paid by the first Utilisation Date.
- (e) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

**SCHEDULE 3
REQUESTS**

**PART I
UTILISATION REQUEST**

[To be placed on Borrower letterhead]

From: China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司), a company incorporated under the laws of the Cayman Islands with limited liability

To: Bank of China (Hong Kong) Limited (中國銀行(香港)有限公司)

Dated:

China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司) – HK\$2,300,000,000 Facility Agreement dated [_____] (the "Facility Agreement")

1. We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement shall have the same meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:

Purpose	<i>[To identify whether the proceeds of the proposed Utilisation or an amount equivalent to such proceeds are to be applied to any Eligible Green Project]</i>
Proposed Utilisation Date:	[] (or, if that is not a Business Day, the next Business Day)
Amount:	HK\$[] or, if less, the Available Facility
First Interest Period:	[]
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) of the Facility Agreement is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to *[account]*.
5. We confirm that the proceeds of this Loan shall be used in accordance with purpose set out in Clause 3.1 (*Purpose*) of the Facility Agreement.
6. This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for
China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司)

**PART II
SELECTION NOTICE**

[To be placed on Borrower letterhead]

From: China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司), a company incorporated under the laws of the Cayman Islands with limited liability

To: Bank of China (Hong Kong) Limited (中國銀行(香港)有限公司)

Dated:

**China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司) – HK\$2,300,000,000 Facility Agreement
dated [_____] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This is a Selection Notice. Terms defined in the Facility Agreement shall have the same meaning in this Selection Notice.
2. We refer to the following Loan[s] with an Interest Period ending on []*.
3. [We request that the above Loan[s] be divided into [] Loans with the following amounts and Interest Periods:]**

or

[We request that the next Interest Period for the above Loan[s] is [].]***

4. This Selection Notice is irrevocable.

Yours faithfully

.....
authorised signatory for
China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司)

* Insert details of all Loans which have an Interest Period ending on the same date.

** Use this option if division of Loans is requested.

*** Use this option if sub-division is not required.

SCHEDULE 4
FORM OF TRANSFER CERTIFICATE

To: Bank of China (Hong Kong) Limited (中國銀行(香港)有限公司) as Agent

From: [*the Existing Lender*] (the "**Existing Lender**") and [*the New Lender*] (the "**New Lender**")

Dated:

China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司) – HK\$2,300,000,000 Facility Agreement
dated [_____] (the "Facility Agreement")

1. We refer to Clause 22.5 (*Procedure for transfer*) of the Facility Agreement. This is a Transfer Certificate. Terms used in the Facility Agreement shall have the same meaning in this Transfer Certificate.
2. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 22.5 (*Procedure for transfer*) of the Facility Agreement, all of the Existing Lender's rights and obligations under the Facility Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Facility Agreement as specified in the Schedule.
3. The proposed Transfer Date is [].
4. The Facility Office and address, fax number and attention particulars for notices of the New Lender for the purposes of Clause 28.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
5. The New Lender expressly acknowledges:
 - (a) the limitations on the Existing Lender's obligations set out in paragraphs (a) and (c) of Clause 22.4 (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement; and
 - (b) that it is the responsibility of the New Lender to ascertain whether any document is required or any formality or other condition requires to be satisfied to effect or perfect the transfer contemplated by this Transfer Certificate or otherwise to enable the New Lender to enjoy the full benefit of each Finance Document.
6. The New Lender confirms that it is a "New Lender" within the meaning of Clause 22.1 (*Assignments and transfers by the Lenders*) of the Facility Agreement.
7. [The Existing Lender and the New Lender confirm that the New Lender is not the Borrower or an Affiliate of the Borrower.]
8. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
9. This Transfer Certificate is governed by the laws of Hong Kong.
10. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[the Existing Lender]

[the New Lender]

By:

By:

This Transfer Certificate is executed by the Agent and the Transfer Date is confirmed as [].

Bank of China (Hong Kong) Limited (中國銀行(香港)有限公司)

By:

Note: It is the New Lender's responsibility to ascertain whether any other document is required, or any formality or other condition is required to be satisfied, to effect or perfect the transfer contemplated in this Transfer Certificate or to give the New Lender full enjoyment of all the Finance Documents.

SCHEDULE 5
FORM OF ASSIGNMENT AGREEMENT

To: Bank of China (Hong Kong) Limited (中國銀行(香港)有限公司) as Agent, China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司), a company incorporated under the laws of the Cayman Islands with limited liability as Borrower

From: [*the Existing Lender*] (the "**Existing Lender**") and [*the New Lender*] (the "**New Lender**")

Dated: [*insert date*]

China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司) – HK\$2,300,000,000 Facility Agreement dated [_____] (the "Facility Agreement")

1. We refer to the Facility Agreement. This is an Assignment Agreement. Terms defined in the Facility Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 22.6 (*Procedure for assignment*) of the Facility Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facility Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Facility Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment and participations in Loans under the Facility Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [].
4. On the Transfer Date, the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 28.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
6. The New Lender expressly acknowledges:
 - (a) the limitations on the Existing Lender's obligations set out in paragraphs (a) and (c) of Clause 22.4 (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement; and
 - (b) that it is the responsibility of the New Lender to ascertain whether any document is required or any formality or other condition requires to be satisfied to effect or perfect the transfer contemplated by this Assignment Agreement or otherwise to enable the New Lender to enjoy the full benefit of each Finance Document.
7. The New Lender confirms that it is a "New Lender" within the meaning of Clause 22.1 (*Assignments and transfers by the Lenders*) of the Facility Agreement.
8. The Existing Lender and the New Lender confirm that the New Lender is not the Borrower or an Affiliate of the Borrower.

9. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 22.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*) of the Facility Agreement, to the Borrower of the assignment referred to in this Assignment Agreement.
10. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
11. This Assignment Agreement is governed by the laws of Hong Kong.
12. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [].

Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

Bank of China (Hong Kong) Limited (中國銀行(香港)有限公司) as Agent

By:

Note: It is the New Lender's responsibility to ascertain whether any other document is required, or any formality or other condition is required to be satisfied, to effect or perfect the assignment/release/assumption of obligations contemplated in this Assignment Agreement or to give the New Lender full enjoyment of all the Finance Documents.

**SCHEDULE 6
FORM OF COMPLIANCE CERTIFICATE**

[To be placed on Borrower letterhead]

To: Bank of China (Hong Kong) Limited (中國銀行(香港)有限公司) as Agent

From: China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司), a company incorporated under the laws of the Cayman Islands with limited liability

Dated:

**China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司) – HK\$2,300,000,000 Facility Agreement
dated [_____] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This is a Compliance Certificate. Terms used in the Facility Agreement shall have the same meaning in this Compliance Certificate.
2. We confirm that: *[Insert details of covenants to be certified including calculations]*
3. We confirm that, as of the date of this Compliance Certificate and with reference to the most recent financial statements delivered together with this Compliance Certificate:
 - (a) the aggregate total revenue of the Material Subsidiaries (in each case calculated on a standalone basis and excluding all intra-Group items) exceeds 70 per cent. of the total revenue of the Group calculated on a consolidated basis; and
 - (b) the aggregate gross assets of the Material Subsidiaries (in each case calculated on a standalone basis and excluding all intra-Group items) exceeds 50 per cent. of the gross assets of the Group calculated on a consolidated basis.
4. *[We confirm that no Default is continuing.]**

Signed:
[Authorised signatory]
of
China Mengniu Dairy Company Limited (中國蒙牛乳業有限公司)

* If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

**SCHEDULE 7
EXISTING SECURITY**

In connection with the issuance of the 1.50% exchangeable bonds due 2023 in the principal amount of US\$100,000,000 which are exchangeable into ordinary shares of China Modern Dairy Holdings Ltd. ("CMD Shares") by the Borrower as disclosed in the Borrower's announcement posted onto the website of the HKSE on 24 June 2020, the Borrower as lender and BOCI Financial Products Limited as borrower have entered into a securities lending agreement dated 17 June 2020 for the lending of up to 613,877,227 CMD Shares in aggregate.

**SCHEDULE 8
TIMETABLES**

Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) or a Selection Notice (Clause 9.1 (<i>Selection of Interest Periods</i>))	D-3 10:00 a.m.
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Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' participation</i>)	D-3 11:00 a.m.
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HIBOR is fixed	Quotation Day as at 11:00 a.m. Hong Kong time
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Reference Bank Rate calculated by reference to available quotations in accordance with Clause 10.2 (<i>Calculation of Reference Bank Rate</i>)	Noon (Hong Kong time) on the Quotation Day
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Where:

"D" is the applicable Utilisation Date or the first day of the applicable Interest Period (as the case may be).

"D-X" is the day falling X Business Days prior to D.

SIGNATURES

The Borrower

CHINA MENGNIU DAIRY COMPANY LIMITED (中國蒙牛乳業有限公司)

By:

A handwritten signature in black ink, appearing to be 'Wai Cheong', written over a horizontal line.

x

Address: Room A, 32/F, COFCO Tower 262 Gloucester Road Causeway Bay HK

Fax No: +852 2180 9039

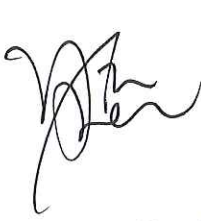
Attention: Kwok Wai Cheong, Chris

Email: guoweichang@mengniu.cn

The Mandated Lead Arranger and the Green Loan Advisor

BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)

By:



Fung Yuen Pik, Fiona
(8851662)

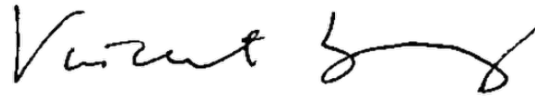


Wong Pik Sin
(8850620)

The Mandated Lead Arranger and the Green Loan Advisor

CITIGROUP GLOBAL MARKETS ASIA LIMITED (花旗環球金融亞洲有限公司)

By:

A handwritten signature in black ink, appearing to read 'Vincent Yeung', with a stylized flourish at the end.

Vincent Yeung
Director

The Mandated Lead Arranger and the Green Loan Advisor

DBS BANK LTD.

By:

A handwritten signature in black ink, appearing to read 'Simon', written in a cursive style.

Simon Hok Wang LEUNG
Specimen Signature No. A00010505

The Coordinating Bank

BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)

By:



Fung Yuen Pik, Fiona
(8851662)



Wong Pik Sin
(8850620)

The Original Lender

BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)

By:



Fung Yuen Pik, Fiona
(8851662)



Wong Pik Sin
(8850620)

The Original Lender

CITIBANK N.A., HONG KONG BRANCH (organised under the laws of the USA with limited liability)

By:



**James Arnold
Director**

The Original Lender

DBS BANK LTD., HONG KONG BRANCH

By:

A handwritten signature in black ink, appearing to read 'Kit Yi Chu', written in a cursive style.

Kit Yi Chu
Specimen Signature No. A00010493

The Agent

BANK OF CHINA (HONG KONG) LIMITED (中國銀行(香港)有限公司)

By:



Fung Yuen Pik, Fiona
(8851662)



Wong Pik Sin
(8850620)

Address: 23/F, Bank of China Centre, Olympian City, 11 Hoi Fai Road, West Kowloon, Hong Kong

Fax No: (852) 2526 7478

Attention: Ms. K.H. Li/ Ms. Doris Chan

Email: khli@bochk.com/ dorischan@bochk.com