

**DATED 26 SEPTEMBER 2019**

**(1) NEW FOCUS AUTO TECH HOLDINGS LIMITED**  
**(新焦点汽车技术控股有限公司)**

**(2) HIGH INSPIRING LIMITED**

and

**(3) CCBI SOLAR ENERGY (HOLDING) LIMITED**  
**(建銀國際光電(控股)有限公司)**

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**NOTE EXCHANGE AGREEMENT**

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PROSKAUER ROSE  
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Hong Kong

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**THIS NOTE EXCHANGE AGREEMENT** (this “**Agreement**”) is made on 26 September 2019 by and among:

- (1) **NEW FOCUS AUTO TECH HOLDINGS LIMITED** (新焦点汽车技术控股有限公司) (Company Number 117682), an exempted company incorporated with limited liability under the laws of the Cayman Islands with its principal place of business at 5/F, 180 Hennessy Road, Wan Chai, Hong Kong (the “**Company**”);
- (2) **HIGH INSPIRING LIMITED** (Company No. 1472382), a BVI business company incorporated under the laws of the British Virgin Islands with its registered office at Vistra Corporate Services Centre, Wickhams Cay II, Road Town, Tortola, VG1110, British Virgin Islands (the “**Initial Investor**”); and
- (3) **CCBI SOLAR ENERGY (HOLDING) LIMITED** (建銀國際光電(控股)有限公司) (Company Registration No. 1237094), a private company limited by shares incorporated under the laws of Hong Kong with its registered office at 12/F, CCB Tower, 3 Connaught Road Central, Central, Hong Kong (the “**New Investor**”).

#### **RECITALS**

- A. The Company is listed on the Main Board of the Stock Exchange of Hong Kong with stock code 360 and, through its subsidiaries, carries on the Business (as defined below).
- B. The Company issued to the Initial Investor certain secured convertible notes in the initial aggregate principal amount of US\$35,000,000 (the “**Convertible Notes**”), pursuant to a convertible note purchase agreement dated 21 August 2017 entered into between the Company and the Initial Investor (as the same may be amended from time to time, the “**Convertible Note Purchase Agreement**”).
- C. The Convertible Notes were secured by a deed of share charge dated 1 September 2017 entered into between CDH (as defined below) as chargor and the Initial Investor as chargee (the “**Existing Share Charge**”).
- D. The Initial Investor has converted, in aggregate, US\$10,800,000 principal amount of the Convertible Notes into 275,300,160 Shares (as defined below) pursuant to three conversion notices respectively dated 12 September 2017, 28 September 2017 and 31 August 2018, each in the principal amount of US\$5,000,000, US\$5,000,000 and US\$800,000 at the conversion price of HK\$0.306085, HK\$0.306085 and HK\$0.280511 per Share respectively. As of the date of this Agreement, the outstanding aggregate principal amount of the Convertible Notes is US\$24,200,000 (the “**Outstanding Convertible Notes**”). The Outstanding Convertible Notes have matured on 1 September 2019.
- E. Each of the Initial Investor and the New Investor is an indirectly wholly-owned special purpose vehicle of CCB International (Holdings) Limited.
- F. The Company, on the one hand, and the Initial Investor and the New Investor, on the other hand, desire to exchange the Outstanding Convertible Notes for

the Notes (as defined below) in the aggregate principal amount of US\$24,200,000 (the “**Note Exchange**”) to be issued by the Company to the New Investor, which is designated by the Initial Investor to be the holder of the Notes.

- G. In connection with the Note Exchange, (i) CDH will charge to the New Investor, by way of first fixed charge, all of the Shares owned by CDH pursuant to the New Share Charge (as defined below), and (ii) the Corporate Guarantor (as defined below) will provide a guarantee in favour of the New Investor pursuant to the Corporate Guarantee (as defined below).
- H. This Agreement is intended to take effect as a deed.

The Parties therefore agree as follows:

## **1. Definitions and Interpretation**

### **1.1 Definitions**

In this Agreement:

“**Account Documentation**” means the Cash Securities Trading Account Terms and Conditions of CCB International Securities Limited in the form attached hereto as Exhibit 4.

“**Affiliate**” means, with respect to a Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person.

“**Agreement**” has the meaning set forth in the Preamble of this Agreement.

“**Announcement**” means the announcement in the form approved in writing in advance by the New Investor relating to this Agreement and the other Transaction Documents to be issued by the Company in accordance with applicable Law, including the Listing Rules.

“**Approval**” means any approval, licence, authorisation, release, order, or consent required to be obtained from, or any registration, qualification, designation, declaration, filing, notice, statement or other communication required to be filed with or delivered to, any Governmental Authority or any other Person, or any waiver of any of the foregoing.

“**Board of Directors**” means the board of directors of the Company.

“**Business**” means principally the manufacture and sale of electronic and power-related automotive parts and accessories; the provision of automobile wash, beauty, repair, maintenance and restyling services and retail distribution of merchandise goods through its service chain stores network; wholesale distribution of automobile accessories; sales of automotive, automotive after-sales service and the distribution of automotive insurance products and automotive financial products; and in respect of the Company, investment holding.

“**Business Day**” means a day on which commercial banks in Hong Kong are generally open for business other than Saturday and Sunday or a public holiday, or a day on which commercial banks do not open for business owing to a tropical cyclone warning signal number 8 or above or a “black” rainstorm warning signal being in force in Hong Kong.

“**CDH**” means CDH Fast Two Limited (Company Number 1770358), a BVI business company incorporated under the laws of the British Virgin Islands with its registered address at Kingston Chambers, P.O. Box 173, Road Town, Tortola, British Virgin Islands.

“**CDH Securities Account**” means a securities account opened with CCB International Securities Limited in the name of CDH for depositing 2,889,580,226 Shares pursuant to the Transaction Documents.

“**Change of Control**” means any event or circumstance the result of which is that (i) CDH fails to maintain the power to control the composition of, or to appoint or remove, a majority of the Board of Directors or (ii) CDH fails to remain the largest shareholder of the Company.

“**Closing**” has the meaning set forth in Clause 3.1.

“**Closing Date**” has the meaning set forth in Clause 3.1

“**Company**” has the meaning set forth in the Preamble of this Agreement.

“**Confidential Information**” has the meaning set forth in Clause 7.2(a).

“**Contract**” means, with respect to any Person, any oral or written contract, agreement, undertaking, understanding, indenture, option, warrant or other form of obligation which upon exercise would require the Company to issue any Equity Securities, note, bond, loan or other form of debt obligation, instrument, lease, mortgage, deed of trust, franchise, or licence to which such Person is a party or by which such Person or any of its property is bound.

“**Control**” means, with respect to any Person, the power or authority, whether exercised or not, to direct the business, management, policies or activities of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; provided, that such power or authority shall conclusively be presumed to exist upon possession of beneficial ownership or power to direct the vote of more than fifty percent (50%) of the votes entitled to be cast at a meeting of the members or shareholders of such Person or power to control the composition of, or to appoint or remove, a majority of the board of directors of such Person. The terms “**Controlled**” and “**Controlling**” have meanings correlative to the foregoing.

“**Convertible Notes**” has the meaning set forth in Recital B.

“**Convertible Note Certificate**” means the convertible note certificate no. 1 issued by the Company to the Initial Investor on 1 September 2017 in respect of the Convertible Notes in the principal amount of US\$35,000,000.

“**Convertible Note Purchase Agreement**” has the meaning set forth in Recital B.

“**Convertible Notes Terms and Conditions**” means the terms and conditions upon which the Convertible Notes were issued by the Company, as attached to the Convertible Note Certificate.

“**Corporate Guarantee**” means the corporate guarantee to be entered into between the Corporate Guarantor and the New Investor on or prior to the Closing Date in the form attached hereto as Exhibit 6.

“**Corporate Guarantor**” means Dr.Peng Holding Hongkong Limited (鵬博士投資控股香港有限公司) (Company Registration Number 1604159), a public company limited by shares incorporated under the laws of Hong Kong with its registered address at Level 54, Hopewell Centre, 183 Queen’s Road East, Hong Kong.

“**Deed of Adherence**” means a deed of adherence to be executed by the transferee of the Notes pursuant to the terms of the Transaction Documents in the form attached hereto as Exhibit 2.

“**Disclosing Party**” has the meaning set forth in Clause 7.2(d).

“**Effective Period**” has the meaning set forth in Clause 7.5.

“**Equity Securities**” means, with respect to any Person, such Person’s shares, capital stock, membership interests, partnership interests, registered capital, joint venture or other ownership interests or any options, warrants or other securities that are directly or indirectly convertible into, or exercisable or exchangeable for, such capital stock, membership interests, partnership interests, registered capital or joint venture or other ownership interest (whether or not such derivative securities are issued by such Person).

“**Event of Default**” has the meaning set forth in the Notes Terms and Conditions.

“**Existing Account Documentation**” means the Cash Securities Trading Account Terms and Conditions of CCB International Securities Limited revised in June 2017.

“**Existing Share Charge**” has the meaning set forth in Recital C.

“**Existing Supplemental Deed**” means the supplemental deed to the Existing Account Documentation dated 1 September 2017 entered into between CCB International Securities Limited, CDH and the Initial Investor.

“**Existing Transaction Documents**” means (i) the Convertible Note Purchase Agreement, (ii) the Convertible Notes and the Convertible Note Certificate (together with the Convertible Notes Terms and Conditions), (iii) the Existing Share Charge, (iv) the Existing Account Documentation, (v) the Existing Supplemental Deed, (vi) the letter of undertaking from CDH dated 1 September 2017, and (vii) any other document designated in writing as such by the Initial Investor.

“**FATCA**” means:

(a) sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986 or any associated regulations or other official guidance;

(b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or

(c) any agreement pursuant to the implementation of paragraph (a) or (b) above with the U.S. Internal Revenue Service, the U.S. government or any governmental or taxation authority in any other jurisdiction.

**“FATCA Deduction”** means a deduction or withholding from a payment under any of the Transaction Documents required by FATCA.

**“Fully-Diluted Basis”** means the calculation of shareholding ratio on the basis of the assumption that all the outstanding options, warrants and other stock equity securities convertible into, exercisable or exchangeable for ordinary shares of the relevant company (whether or not they are at present convertible, exercisable or exchangeable according to the relevant provisions) have been converted, exercised or exchanged accordingly.

**“GAAP”** means generally accepted accounting principles and practices in effect from time to time in the relevant jurisdiction applied consistently throughout the periods involved.

**“Governmental Authority”** means any nation or government or any federation, province or state or any other political subdivision thereof; any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any government authority, agency, department, board, commission, instrumentality, securities exchange, supervisory or regulatory body of any country, or any political subdivision thereof, any court, tribunal or arbitrator, and any self-regulatory organisation.

**“Governmental Order”** means any applicable order, ruling, decision, verdict, decree, writ, subpoena, mandate, precept, command, directive, consent, approval, award, judgment, injunction or other similar determination or finding by, before or under the supervision of any Governmental Authority.

**“Group”** means the Company and each of its Subsidiaries; and **“Group Member”** means a member of the Group.

**“HK Dollar”** or **“HK\$”** means Hong Kong Dollars, the lawful currency of Hong Kong.

**“HKSE”** means The Stock Exchange of Hong Kong Limited.

**“Hong Kong”** means the Hong Kong Special Administrative Region of the People’s Republic of China.

**“Indebtedness”** means any obligation (whether incurred as principal or as surety) for or in respect of the payment or repayment of (a) money borrowed; (b) any issue of bonds, notes or any similar debt instrument; or (c) the amount of any liability in respect of any guarantee for any of the items referred to in (a) or (b), in each case,



whether the obligation is present or future, actual or contingent, secured or unsecured or otherwise.

**“Indemnifiable Loss”** means, with respect to any Person, any action, cost, damage, disbursement, expense, liability, loss, deficiency, diminution in value, obligation, penalty or settlement of any kind or nature. Indemnifiable Loss shall include, but shall not be limited to, (i) interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by such Person and (ii) any Taxes that may be payable by such Person by reason of the indemnification of any Indemnifiable Loss hereunder.

**“Indemnified Party”** has the meaning set forth in Clause 8.3(b).

**“Indemnifying Party”** has the meaning set forth in Clause 8.3(b).

**“Intellectual Property”** means any and all (a) patents, all patent rights and all applications therefor and all reissues, reexaminations, continuations, continuations-in-part, divisions, and patent term extensions thereof, (b) inventions (whether patentable or not), discoveries, improvements, concepts, innovations and industrial models, (c) registered and unregistered copyrights, copyright registrations and applications, author’s rights and works of authorship (including artwork of any kind and software of all types in whatever medium, inclusive of computer programs, source code, object code and executable code, and related documentation), (d) URLs, web sites, web pages and any part thereof, (e) technical information, know-how, trade secrets, drawings, designs, design protocols, specifications for parts and devices, quality assurance and control procedures, design tools, manuals, research data concerning historic and current research and development efforts, including the results of successful and unsuccessful designs, databases and proprietary data, (f) proprietary processes, technology, engineering, formulae, algorithms and operational procedures, (g) trade names, trade dress, trademarks, domain names, and service marks, and registrations and applications therefor, and (h) the goodwill of the Business symbolized or represented by the foregoing, customer lists and other proprietary information and common-law rights.

**“Investor”** means each of the Initial Investor and the New Investor and shall include any Person who execute a Deed of Adherence to become a party to this Agreement.

**“Latest Financial Statements”** means the published consolidated balance sheets, income statement and cash flow statements of the Group for the six months ended 30 June 2019.

**“Law” or “Laws”** means any constitutional provision, statute or other law, rule, regulation, guidance, decisions, published official policy or published official interpretation of any Governmental Authority and any injunction, judgment, order, ruling, assessment or writ issued by any Governmental Authority.

**“Liabilities”** means, with respect to any Person, all liabilities owing by such Person of any nature, whether accrued, absolute, contingent or otherwise, and whether due or to become due.

“**Lien**” means any mortgage, pledge, claim, security interest, encumbrance, title defect, lien, charge or other restriction or limitation.

“**Listing Rules**” means the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited.

“**Long Stop Date**” has the meaning set forth in Clause 5.2.

“**Material Adverse Effect**” means a material adverse effect on:

- (i) the validity or enforceability of any of the Transaction Documents;
- (ii) the business, operations, assets, liabilities, financial condition or prospects of the Group taken as a whole;
- (iii) the ability of the Obligors to perform their obligations under any of the Transaction Documents; or
- (iv) the rights and remedies of the New Investor under any of the Transaction Documents.

“**Memorandum and Articles**” means the Memorandum of Association and Articles of Association of the Company, as amended from time to time.

“**New Investor**” has the meaning set forth in the Preamble of this Agreement.

“**New Share Charge**” means the share charge to be entered into between CDH as chargor and the New Investor as chargee pursuant to which CDH will charge certain Shares held by it in favour of the New Investor on or prior to the Closing Date in the form attached hereto as Exhibit 3.

“**No Negotiation Period**” has the meaning set forth in Clause 8.19.

“**Notes**” means the notes in the aggregate principal amount of US\$24,200,000 to be issued by the Company to the New Investor at the Closing.

“**Note Certificate No. 1**” means the certificate in respect of the Notes in the principal amount of US\$4,840,000 in the form attached hereto as Exhibit 1-A.

“**Note Certificate No. 2**” means the certificate in respect of the Notes in the principal amount of US\$7,260,000 in the form attached hereto as Exhibit 1-B.

“**Note Certificate No. 3**” means the certificate in respect of the Notes in the principal amount of US\$12,100,000 in the form attached hereto as Exhibit 1-C.

“**Note Certificates**” means collectively the Note Certificate No.1, the Note Certificate No.2 and the Note Certificate No.3.

“**Note Exchange**” has the meaning set forth in Recital F.

“**Notes Terms and Conditions**” means the terms and conditions upon which the Notes shall be issued by the Company, as attached to the Note Certificates.

“**Noteholder**” means a holder of any amount of the Notes from time to time.

“**Obligors**” means collectively the Company, CDH and the Corporate Guarantor, and each an “**Obligor**”.

“**Ordinary Course of Business**” means an action taken by any Person in the ordinary course of such Person's business that is in all material respects consistent with the past customs and practices of such Person (including past practice with respect to quantity, amount, magnitude and frequency, standard employment and payroll policies and past practice with respect to management of working capital and the making of capital expenditures) and that is taken in the ordinary course of the normal day-to-day operations of such Person.

“**Outstanding Convertible Notes**” has the meaning set forth in Recital D.

“**Parties**” means collectively all the parties to this Agreement, and “**Party**” means each party to this Agreement.

“**Person**” means any individual, corporation, partnership, limited partnership, proprietorship, association, limited liability company, firm, trust, estate or other enterprise or entity.

“**PRC**” means the People’s Republic of China excluding, for the purposes of this Agreement, Hong Kong, Macao and the territory of Taiwan.

“**Public Information**” means all information contained in any announcement, circular, report or other document issued by the Company either (i) under the Listing Rules, or (ii) on a voluntary basis through the HKSE.

“**Public Official**” means any employee of a Governmental Authority, member of a political party, political candidate, officer of a public international organisation, or officer or employee of a state-owned enterprise, including a PRC state-owned enterprise.

“**Reimbursed Expenses**” has the meaning set forth in Clause 8.7(b).

“**Representative**” means a director, officer, agent, employee, or any other person acting for or on behalf of the foregoing.

“**SFC**” means the Hong Kong Securities and Futures Commission.

“**Shares**” means ordinary shares in the share capital of the Company and if there is a sub-division, consolidation or reclassification of those shares, the shares resulting from it, and “**Share**” shall be construed accordingly.

“**Statement Date**” means 30 June 2019.

“**Subsidiary**” means a company which is for the time being and from time to time a subsidiary of the Company within the meaning of section 15 of the Companies Ordinance (Cap. 622 of the laws of Hong Kong).

**“Supplemental Deed”** means the supplemental deed to the Account Documentation to be entered into between CCB International Securities Limited, CDH and the New Investor on or prior to the Closing Date in the form attached hereto as Exhibit 5.

**“Tax”** or **“Taxes”** means all applicable forms of taxation, duties, levies imposts and social security charges, whether direct or indirect including without limitation corporate income tax, wage withholding tax, national social security contributions and employee social security contributions, value added tax, business tax, customs and excise duties, capital tax and other legal transaction taxes, dividend withholding tax, dividend distribution tax, land taxes, environmental taxes and duties and any other type of taxes or duties payable by virtue of any applicable national, regional or local law or regulation and which may be due directly or by virtue of joint and several liability in any relevant jurisdiction; together with any interest, penalties, surcharges or fines relating to them, due, payable, levied, imposed upon or claimed to be owed in any relevant jurisdiction.

**“Tax Return”** means report or statement showing Taxes, used to pay Taxes, or required to be filed with respect to any Tax (including any elections, declarations, schedules or attachments thereto, and any amendment thereof), including any information return, claim for refund, amended return or declaration of estimated or provisional Tax.

**“Transaction Documents”** means (i) this Agreement, (ii) the Notes and the Note Certificates (together with the Notes Terms and Conditions), (iii) the New Share Charge, (iv) the Account Documentation, (v) the Supplemental Deed, (vi) the Corporate Guarantee, and (vii) any other document designated in writing as such by the New Investor.

**“Transaction Proposal”** has the meaning set forth in Clause 8.19.

**“Warranties”** has the meaning set forth in Clause 4.1.

**1.2 Headings.** The headings and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

**1.3 Miscellaneous.** In this Agreement, unless the context requires otherwise:

- (a) references to “Clauses”, “Recitals”, “Schedules”, “Annexures” and “Exhibits” are references to those in this Agreement; references to Sub-sections or Paragraphs are, unless otherwise stated, references to sub-sections of the Clause or Paragraphs of the Schedule in which the reference appears;
- (b) references to the singular shall include the plural and vice versa and references to the masculine shall include the feminine or neuter and vice versa;
- (c) the term “or” is not exclusive;

- (d) the terms “herein”, “hereof”, and other similar words refer to this Agreement as a whole and not to any particular section, sub-section, paragraph, clause, or other subdivision;
- (e) the terms “include” and “including” shall be construed to mean “including without limitation”;
- (f) the terms “shall”, “will”, and “agrees” are mandatory, and the term “may” is permissive;
- (g) the term “day” means “calendar day”;
- (h) the phrase “in agreed form” means the form agreed between the Parties;
- (i) references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and shall include references to any provisions of which they are re-enactments (whether with or without modification);
- (j) references to any document are to be construed as references to such document as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time;
- (k) a reference to a legal term for a legal document, court, judicial process, action, remedy, legal status, official or any other legal concept, in respect of a jurisdiction other than Hong Kong, shall be deemed to be a reference to whatever most closely equates to the Hong Kong legal term in that jurisdiction;
- (l) references to dates and times are references to Hong Kong dates and times; and
- (m) the Recitals, Schedules, Annexures and Exhibits to this Agreement form part of it and shall have the same force and effect as if expressly set forth in the body of this Agreement.

**1.4 Third-Party Rights.** Except with respect to Indemnified Parties under Clause 8.3(b), the Persons permitted to disclose the Investor’s investment under Clause 7.2(c)(ii) and the Investor’s Affiliates under Clause 7.7, a Person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) to enforce the terms of this Agreement. The rights of the Parties to terminate, rescind or agree to any variation, waiver or settlement under this Agreement are not subject to the consent of any third party.

## **2. Exchange and Issue of the Notes**

**2.1 Note Exchange.** Subject to the fulfillment of each of the conditions set forth in Clause 5.1 on or before the Long Stop Date (any or all of such conditions

may be waived in writing by the New Investor at its sole discretion), the Initial Investor and the New Investor agree with the Company that at Closing:

- (a) the Outstanding Convertible Notes (excluding amounts in respect of any accrued but unpaid interest, default interest (where applicable), premium and any other payment (not being principal) owing under the Outstanding Convertible Notes, which shall be dealt with in accordance with Clauses 2.2, 2.3 and 2.4, to the extent applicable) shall be cancelled with effect from Closing and exchanged for the Notes representing an amount equal to the cancelled indebtedness in the aggregate principal amount of US\$24,200,000;
- (b) the Initial Investor shall deliver the original Convertible Note Certificate to the Company for cancellation unless waived by the Company; and
- (c) in consideration for the cancellation of the Outstanding Convertible Notes, the Company shall issue, at the direction of the Initial Investor (which it hereby gives), deliver the Notes to the New Investor.

**2.2 Administrative Fee.** On the date of this Agreement, the Company shall pay to the New Investor the administrative fee in the amount of US\$726,000, being 3% of the aggregate principal amount of the Notes.

**2.3 Premium.** On the date of this Agreement, the Company shall pay to the Initial Investor the sum of US\$2,474,257.97, being the premium on the Outstanding Convertible Notes payable by the Company pursuant to Condition 9.1(iv) of the Convertible Notes Terms and Conditions.

**2.4 Extension Fee.** At Closing, the Company shall pay to the New Investor an extension fee computed and accruing on a daily basis at the rate of 10% per annum on the outstanding principal amount of the Outstanding Convertible Notes, calculated from and including 2 September 2019 up to and including the date immediately prior to the Closing Date. Such extension fee under this Clause 2.4 shall be calculated on the basis of a 360-day year of twelve 30-day months.

### **3. Closing**

**3.1 Closing.** The consummation of the Note Exchange and the issue of the Notes shall be conducted by exchange of signed originals of relevant documents (or by electronic or other means as determined by the New Investor), on a date no later than three (3) Business Days (or such shorter period agreed by the New Investor) after the fulfillment or waiver by the New Investor of the conditions to the Closing as set forth in Clause 5.1 (other than those conditions which can be satisfied only at the Closing or with respect to actions the relevant Party shall take at the Closing itself) or at such other time as the Company and the New Investor may mutually agree upon (the “**Closing**”, and the date of the Closing, the “**Closing Date**”).

### **3.2 Closing Deliverables**

- (a) At the Closing, the Company shall deliver or cause to be delivered the following items to the New Investor:
- (i) the original signed Note Certificate No. 1 representing the Notes in the principal amount of US\$4,840,000 duly executed by the Company in favour of the New Investor;
  - (ii) the original signed Note Certificate No. 2 representing the Notes in the principal amount of US\$7,260,000 duly executed by the Company in favour of the New Investor;
  - (iii) the original signed Note Certificate No. 3 representing the Notes in the principal amount of US\$12,100,000 duly executed by the Company in favour of the New Investor;
  - (iv) a certified true copy of the Company's register of Noteholders (certified by a director or the company secretary of the Company) reflecting the entry of the New Investor as the holder of the Notes in the aggregate principal amount of US\$24,200,000;
  - (v) a compliance certificate dated as of the Closing Date signed by the Company certifying that all the conditions specified in Clause 5.1 (other than the conditions specified in Clauses 5.1(t) and 5.1(u)) have been fulfilled, that (A) each document provided is correct, complete and in full force and effect as at the date of this Agreement and as of the Closing Date and (B) neither a material adverse change described in Clause 5.1(r) nor Event of Default described in Clause 5.1(s) has occurred since the date of this Agreement up to and including the Closing Date;
  - (vi) counterparts of each Transaction Document, each of which shall have been duly executed by the parties thereto (other than the Initial Investor and/or the New Investor);
  - (vii) a certified true copy of the directors' resolutions of the Company approving, among other things, (A) the Note Exchange contemplated under this Agreement, (B) the issue of the Notes and corresponding Note Certificates to the New Investor, (C) the execution of the Transaction Documents to which the Company is a party, (D) the entry of the name of the New Investor into the Company's register of Noteholders reflecting the New Investor as the holder of the Notes, and (E) the transactions contemplated under the relevant Transaction Documents to which the Company is a party;
  - (viii) a certified true copy of the directors' resolutions and shareholder's resolutions of CDH, approving, among other things, (A) the grant of the New Share Charge in favour of the New Investor, (B) the execution of the Transaction Documents

to which CDH is a party, and (C) the transactions contemplated under the relevant Transaction Documents to which CDH is a party;

- (ix) a certified true copy of the directors' resolutions and shareholder's resolutions of the Corporate Guarantor, approving, among other things, (A) the grant of the Corporate Guarantee in favour of the New Investor, (B) the execution of the Transaction Documents to which the Corporate Guarantor is a party, and (C) the transactions contemplated under the relevant Transaction Documents to which the Corporate Guarantor is a party;
  - (x) the initial deposit documents described in Clause 4.1.1 of the New Share Charge, which shall have been duly executed;
  - (xi) a legal opinion issued by a Hong Kong legal counsel acceptable to the New Investor dated as of the Closing Date and addressed to the New Investor, in such form and substance satisfactory to the New Investor;
  - (xii) a legal opinion issued by a Cayman Islands legal counsel acceptable to the New Investor dated as of the Closing Date and addressed to the New Investor, in such form and substance satisfactory to the New Investor; and
  - (xiii) a legal opinion issued by a British Virgin Islands legal counsel acceptable to the New Investor dated as of the Closing Date and addressed to the New Investor, in such form and substance satisfactory to the New Investor.
- (b) At the Closing, the Initial Investor shall deliver or cause to be delivered executed counterparts of each Transaction Document to which the Initial Investor is a party.
  - (c) At the Closing, the New Investor shall deliver or cause to be delivered executed counterparts of each Transaction Document to which the New Investor is a party.

#### **4. Representations and Warranties**

- 4.1** The Company represents and warrants to the Investor that each of the representations and warranties (the "**Warranties**") as set forth in Schedule 1 is true, accurate, complete and not misleading as of the date of this Agreement and (except for the Warranties expressed to be given on a specific date) each of the Warranties will continue to be true, accurate, complete and not misleading on each day up to and including the date on which all the Notes have been fully redeemed or repaid and all obligations of each Obligor under the Transaction Documents have been fully performed and discharged to the satisfaction of the Investor as if repeated on each such day by reference to the facts and circumstances subsisting at that date and on the basis that any



reference in the Warranties, whether express or implied, to the date of this Agreement is substituted by a reference to that date.

- 4.2 Each of the Warranties shall be construed as a separate and independent Warranty and, except where expressly provided to the contrary, shall not be limited or restricted by reference to or inference from the terms of any other Warranty or any other terms of this Agreement.
- 4.3 The Company shall procure that no act shall be performed or omission shall be allowed by it, either by itself or by any Group Member, which would result in any of the Warranties being breached or misleading at any time.
- 4.4 The Company accepts that the Investor is entering into this Agreement in reliance upon representations in the terms of the Warranties with the intention of inducing the Investor to enter into this Agreement and, accordingly, the Investor has been induced to enter into this Agreement relying on each of the Warranties.
- 4.5 The Company undertakes to immediately disclose in writing to the Investor anything which is or may constitute a breach of or be inconsistent with any of the Warranties.
- 4.6 No information relating to the Group of which the Investor or any of its Representatives has knowledge (actual or constructive) shall prejudice any claim made by the Investor under the Warranties, or operate to reduce any amount recoverable.

## 5. **Conditions Precedent**

- 5.1 The obligation of the Investor to complete the Note Exchange is subject to the fulfillment of each of the following conditions (any or all of such conditions may be waived in writing by the New Investor at its sole discretion) at or prior to the Closing:
  - (a) **Delivery of Controlling Shareholder Shares.** 2,889,580,226 Shares (representing approximately 42.697% of the issued share capital of the Company as of the date of this Agreement) owned by CDH, free of any Liens (other than those created under the Existing Transaction Documents and the Transaction Documents), shall have been credited to the CDH Securities Account to be held subject to and in accordance with the terms of the Account Documentation and the Supplemental Deed and to the satisfaction of the New Investor.
  - (b) **Representations and Warranties.** The Warranties shall be true, correct, accurate, complete and not misleading when made, and shall continue to be true, correct, accurate, complete and not misleading up to the Closing Date with the same force and effect as if they had been repeated throughout the period from the date hereof through and including the Closing Date, or as of another date if any representations and warranties are made with respect to such other date.

- (c) **Approvals.** Each Obligor shall have obtained all Approvals necessary for consummation of the transactions contemplated by the Transaction Documents on or prior to the Closing.
- (d) **Net Asset Value.** The net asset value of the Company shall not be less than RMB800,000,000 (based on the latest published annual or interim financial statements of the Company).
- (e) **Execution of the Transaction Documents.** The Obligors shall have delivered to the New Investor a copy of each of the Transaction Documents, which shall have been duly executed by the parties thereto (other than the Initial Investor and the New Investor).
- (f) **Resolutions.** The delivery to the New Investor of a copy of the resolutions described in Clauses 3.2(a)(vii) to 3.2(a)(ix) certified as true by a director or the company secretary of the relevant company.
- (g) **No Suspension.** The current listing of the Shares not having been cancelled or withdrawn, and the trading in the Shares has not been suspended from the date hereof to and including the Closing Date for any reason. The New Investor being satisfied that neither the HKSE nor the SFC has indicated that it will or may qualify, object to, suspend, cancel or withdraw such listing and/or dealings in the Shares. Without prejudice to the generality of the foregoing, no circumstances existing based on which the SFC could exercise its powers under Section 8 of the Securities and Futures (Stock Market Listing) Rules (Cap. 571V of the Laws of Hong Kong).
- (h) **HKSE Requirements.** All requirements, if any, imposed by the HKSE, in connection with the contemplated transactions under the Transaction Documents, have been complied with in full.
- (i) **Performance.** The Company shall have performed and complied with all covenants, agreements, obligations and conditions contained in the Transaction Documents that are required to be performed or complied with by it on or before the Closing.
- (j) **Proceedings and Documents.** All corporate and other proceedings in connection with the transactions contemplated hereby and under the other Transaction Documents on the Closing and all documents and instruments incidental to such transactions shall be satisfactory in substance and form to the New Investor, and the New Investor shall have received all copies of such documents as it may request.
- (k) **Compliance Certificate.** At the Closing, the Company shall have delivered to the New Investor the certificate described in Clause 3.2(a)(v).
- (l) **Certificate of Good Standing.** The New Investor shall have received originals or certified true copies of (i) a certificate of good standing in respect of the Company issued by the Registry of Companies in the

Cayman Islands in customary form and (ii) a certificate of good standing in respect of CDH issued by the Registry of Corporate Affairs in the British Virgin Islands in customary form, in each case dated no earlier than one month prior to the Closing Date.

- (m) **Certificate of Incumbency.** The New Investor shall have received the original or certified true copy of a certificate of incumbency issued by the registered agent of CDH in the British Virgin Islands in customary form, dated no earlier than one month prior to the Closing Date.
- (n) **Certificate of Continuing Registration.** The New Investor shall have received a certificate of continuing registration for the Corporate Guarantor issued by the Hong Kong Companies Registry, dated no earlier than one month prior to the Closing Date.
- (o) **Legal Opinions.** The New Investor shall have received the legal opinions described in Clauses 3.2(a)(xi) to 3.2(a)(xiii).
- (p) **No Prohibition.** There shall have been no Governmental Authority or other Person that has:
  - (i) requested any information in connection with or instituted or threatened any action or investigation to restrain, prohibit or otherwise challenge the Note Exchange, the issue of the Notes or the other transactions contemplated by the Transaction Documents;
  - (ii) threatened to take any action as a result of or in anticipation of the Note Exchange, the issue of the Notes or the other transactions contemplated by the Transaction Documents; or
  - (iii) proposed or enacted any applicable Laws which would prohibit, restrict or delay the Note Exchange, the issue of the Notes or the other transactions contemplated by the Transaction Documents.
- (q) **No Change.** There shall not have occurred (i) any material adverse change, or any development involving a prospective material adverse change, in national or international monetary, financial, political or economic conditions or currency exchange rates or foreign exchange controls, (ii) a general moratorium on commercial banking activities in Hong Kong, the Cayman Islands or the British Virgin Islands by any Governmental Authority, or (iii) an outbreak or escalation of hostilities or act of terrorism in Hong Kong of the PRC.
- (r) **No Material Adverse Change.** There shall not, since the date of this Agreement, have been any adverse change to the financial condition, results of operations, assets, regulatory status, business and prospects of the Group or the financial markets or economic conditions in general that has had or could reasonably be expected to have a Material Adverse Effect.

- (s) **No Event of Default.** No event that would (had the Notes already been issued) constitute an Event of Default has occurred.
- (t) **Investor’s Investment Committee Approval.** The Initial Investor and the New Investor shall have obtained from the investment committee of their parent company or Affiliate the approval to enter into the Transaction Documents and the consummation of the transactions proposed therein and such approval has not been revoked.
- (u) **Due Diligence.** The New Investor, in its sole opinion, is satisfied with the results of the due diligence in relation to the Obligors and the Group including business and operation, deal structure, financial, tax, shareholders and related party transactions, know your customer and anti-money laundering, regulatory and legal aspects of each Obligor and each other Group Member.
- (v) **CDH Shareholding.** The number of Shares legally and beneficially owned by CDH shall not be less than 42.697% of the total issued and outstanding Shares of the Company on a Fully-Diluted Basis. CDH shall hold all Shares free from all Liens save for those created under the Existing Transaction Documents and the Transaction Documents.
- (w) **Change of Control.** No Change of Control has occurred.
- (x) **Settlement of Legal Fees.** The Company shall have paid or otherwise settled in full all legal fees and disbursements incurred by the Initial Investor and the New Investor for the preparation, negotiation, execution, delivery and/or performance of this Agreement and the other Transaction Documents.
- (y) **Settlement of Administrative Fee, Premium and Extension Fee.** The Company shall have fully paid to the Initial Investor and/or the New Investor the administrative fee, the premium and the extension fee as set forth in Clauses 2.2 to 2.4.
- (z) **Share Charge.** The Shares charged to the New Investor under the New Share Charge represent not less than 42.697% of the total issued and outstanding Shares of the Company on a Fully-Diluted Basis.
- (aa) **Total Equity.** The total equity attributable to shareholders of the Company shall not be less than RMB800,000,000 (based on the latest published annual or interim financial statements of the Company).

**5.2** The Company undertakes to notify the New Investor in writing of anything that will or may prevent any of the conditions set forth in Clause 5.1 (other than Clauses 5.1(t) and 5.1(u)) from being satisfied on or before 31 October 2019 (the “**Long Stop Date**”) promptly upon it coming to the Company’s attention.

**5.3** The Company shall procure the fulfillment of all the conditions set forth in Clause 5.1 (other than Clause 5.1(t) and 5.1(u)) as soon as possible after the date of this Agreement and in any event no later than the Long Stop Date. The

Company shall produce to the New Investor evidence of fulfillment of each such condition (where applicable) promptly after each such fulfillment.

- 5.4 During the period prior to the cancellation of the Outstanding Convertible Notes, the relationship between the Initial Investor, the Company and CDH in relation to their respective obligations shall continue to be governed by the terms of each of the Existing Transaction Documents, and until Closing nothing contained herein shall impair or be treated as impairing any right, power or remedy of the Initial Investor under the Existing Transaction Documents nor shall it be construed to be a waiver or relinquishment of any such right, power or remedy.

## 6. **Conduct of Business Pending Closing**

The Company undertakes to the Investor that prior to Closing the business of each Group Member shall be operated in the Ordinary Course of Business and none of them shall do or omit to do any act or thing (in either case whether or not in the Ordinary Course of Business) which is material. In particular (but without limitation to the foregoing), the Company shall, and shall procure that the Group Members will, prior to Closing,

- (a) comply with the provisions under Condition 8 of the Notes Terms and Conditions as if the Notes had been issued; and
- (b) refrain from declaring, paying or making any dividends or other distributions.

## 7. **Covenants; Other Agreements**

### 7.1 **Announcement**

As soon as reasonably practicable after the execution of this Agreement, the Company shall release the Announcement in accordance with the requirements of the Listing Rules. The Company shall provide an advanced draft of the Announcement to the New Investor for its review and comment before its publication.

### 7.2 **Confidentiality**

#### (a) **Disclosure of Terms**

Subject to Clause 7.1, each Party acknowledges that the terms and conditions of this Agreement and the other Transaction Documents, any term sheet or memorandum of understanding entered into pursuant to the transactions contemplated hereby, and all schedules, annexure, exhibits and amendments hereto and thereto, the transactions contemplated hereby and thereby, including their existence, and all information furnished by any Party or its Representatives to any other Party hereof or the Representatives of such Party (collectively, the “**Confidential Information**”), shall be considered confidential information and shall not be disclosed by any Party to any third party except in accordance with the provisions set forth below.

(b) **Press Releases**

Subject to Clause 7.1, the Company shall not make any announcement disclosing either the Investor's investment in the Company hereunder, any of the Confidential Information or the name of the Investor (or any part or any derivations thereof) in a press release, public announcement, conference, professional or trade publication, mass marketing materials or other public disclosure without obtaining in each instance the prior written consent of the Investor. The Investor may request to review and edit the portions of any such announcement that discusses, refers to or otherwise describes the Investor.

(c) **Permitted Disclosures**

Notwithstanding anything in the foregoing to the contrary, and subject to applicable Laws:

(i) the Company may disclose (A) the Confidential Information to its Affiliates and their respective Representatives who need to know such information strictly in relation to the performance of this Agreement and any other Transaction Documents, in each case only where such Persons are informed of the confidential nature of the Confidential Information and are under appropriate non-disclosure obligations substantially similar to those set forth in this Clause 7.2, and (B) the Confidential Information of another Party to any Person to which disclosure is approved in writing by that Party. Any Party may also provide disclosure in order to comply with applicable Laws and/or the Listing Rules as set forth in Clause 7.2(d) below.

(ii) the Investor (and its fund manager, its sub-investment manager and adviser (if appointed) and Affiliates) may disclose the Investor's investment in the Company to third parties or to the public at its sole discretion.

(iii) the Investor shall have the right to disclose:

(A) the Confidential Information to its Affiliates, its fund manager, and its or their respective Representatives, advisors (including accountants, legal counsel, consultants and advisors), creditors and investors (including limited partners, shareholders and potential investors), and in each case only where such Persons are informed of the confidential nature of the Confidential Information or are under appropriate non-disclosure obligations substantially similar to those set forth in this Clause 7.2;

(B) any information for fund and inter-fund reporting purposes;

- (C) any information as required by Law, Governmental Authorities, legal process and/or exchanges, subject to the provision in Clause 7.2(d) below;
- (D) any information to bona fide prospective purchasers/investors of the Notes or other security or other interests in the Company, and/or
- (E) any information contained in press releases or public announcements of the Company pursuant to Clause 7.2(b) above.

(d) **Legally Compelled Disclosure**

In the event that any Party is requested or becomes legally compelled and/or as required under applicable Laws (including without limitation, pursuant to any applicable Tax, securities, or other Laws of any jurisdiction and/or the Listing Rules) to disclose any Confidential Information, such Party (the “**Disclosing Party**”) shall to the extent permitted by Law provide the other Party with prompt written notice of that fact and shall consult with the other Party regarding such disclosure. At the request of the other Party, the Disclosing Party shall, to the extent reasonably possible and with the cooperation and reasonable efforts of the other Party, seek a protective order, confidential treatment or other appropriate remedy. In any event, the Disclosing Party shall furnish only that portion of the information that is legally required and/or as required under applicable Laws and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such information.

(e) **Other Exceptions**

Notwithstanding any other provision of this Clause 7.2, the confidentiality obligations of the Parties under this Clause 7.2 shall not apply to: (i) information which a restricted party learns from a third party having the right to make the disclosure, provided the restricted party complies with any restrictions imposed by the third party; (ii) information which is rightfully in the restricted party’s possession prior to the time of disclosure by the protected party and not acquired by the restricted party under a confidentiality obligation; (iii) information which was in the public domain or otherwise known to the restricted party before it is furnished to it by another party hereto or, after it is furnished to that restricted party, enters the public domain without breach by that restricted party of this Clause 7.2; or (iv) information which a restricted party develops independently without reference to the Confidential Information.

(f) **Other Information**

The provisions of this Clause 7 shall terminate and supersede the provisions of any term sheet, letter of intent, memorandum of understanding, confidentiality and non-disclosure agreement, or any other agreement previously executed by any of the Parties hereto with respect to the transactions contemplated hereby.

### **7.3 Compliance with Laws**

The Company shall, and shall procure each Group Member to, comply in all material respects with all applicable Laws. Without prejudicing the generality of the foregoing sentence, after the Closing and upon the written request by the Investor, the Company shall, and shall procure each Group Member to, rectify any non-compliance with applicable Laws.

### **7.4 Disclosure Requirement**

- (a) The Company undertakes, and shall procure each other Obligor, (i) to comply with all notification, reporting and filing requirements imposed on it by any Governmental Authority; and (ii) to obtain Approvals from all Governmental Authorities (including the SFC and HKSE) for the transactions contemplated by the Transaction Documents.
- (b) In the event that Dr. Peng Telecom & Media Group Co., Ltd. (鹏博士电信传媒集团股份有限公司) (listed on the Shanghai Stock Exchange with stock code 600804), being the shareholder of the Corporate Guarantor, is required to comply with notification, reporting and filing announcement requirements imposed on it under the Listing Rules of Shanghai Stock Exchange in connection with the Corporate Guarantee and the transaction contemplated thereunder and fails to comply with such notification, reporting and filing announcement requirements, such failure shall not constitute an Event of Default.

### **7.5 Licensing and Approvals**

From the date hereof up to and including the date on which all the Notes have been fully redeemed or repaid and all the obligations of the Obligors under the Transaction Documents have been fully performed and discharged (the “**Effective Period**”), the Company shall, and shall procure each Group Member to:

- (a) obtain, in accordance with the applicable Law, all material Approvals necessary for conducting its business and operations; and
- (b) maintain at all times the validity of, and comply with all legal and regulatory requirements with respect to, the Approvals that it has obtained for the conduct of its business and operations (if applicable) for performing its obligations under the Transaction Documents, and to ensure the legality, validity, enforceability and admissibility in evidence in proceedings of any Transaction Document.

### **7.6 Closing**



The Company shall work expeditiously with the Investor in good faith towards the Closing and will not, directly or indirectly, do any act or thing which is intended or might reasonably be expected to prevent or delay the Closing.

#### **7.7 No Promotion**

During the Effective Period, the Company shall not, and the Company shall procure each Group Member not to, without the prior written consent of the Investor, in each instance, (a) use in advertising, publicity, or otherwise the name of the Investor or its Affiliates, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by the Investor or its Affiliates, or (b) represent, directly or indirectly, that any product or any service provided by any Group Member has been approved or endorsed by the Investor or its Affiliate.

#### **7.8 FATCA**

- (a) The Company may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and the Company 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) The Company 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 Investor to whom it is making the payment.

#### **7.9 Anti-Bribery, Anti-Corruption, Anti-Money Laundering**

The Company shall, and shall procure that each Group Member and each of their respective Representatives to:

- (a) comply and remain in compliance with all applicable anti-bribery, anti-corruption (including those prohibiting the bribery of Public Officials) and anti-money laundering Laws;
- (b) not authorise, offer, be a party to, make any payments or provide anything of value directly or indirectly to any Public Officials;
- (c) not use, commit to have the intention of using the payments received, or to be received, by them from the Investor for any purpose that may constitute a violation of any applicable Laws;
- (d) in respect of the Group, establish and maintain an anti-money laundering program in accordance with all applicable Law; and
- (e) promptly notify the Investor if any Representative of any Group Member is or becomes a Public Official.

## **7.10 Compliance with Obligations**

During the Effective Period, the Company covenants and agrees with the Investor that it will, and will procure each Group Member to, comply with its obligations, covenants, agreements and undertakings under each Contract (including, for the avoidance of doubt, the Transaction Documents) (whether currently in effect or to be entered into hereafter) to which it or such other Group Member is a party, except where the failure to do so (other than in respect of the Transaction Documents) could not be reasonably expected to result in claims against the Group Members that exceed RMB10,000,000 in each incident.

## **7.11 Currency Indemnity**

If any sum due from any Obligor under any Transaction Document or any order or judgment given or made in relation to such Transaction Document has to be converted from the currency (the “**first currency**”) in which the same is payable under such Transaction Document or under such order or judgment into another currency (the “**second currency**”) for the purpose of (a) making or filing a claim or proof against the relevant Obligor (b) obtaining an order or judgment in any court or other tribunal or (c) enforcing any order or judgment given or made in relation to such Transaction Document, the Company shall indemnify and hold harmless the Investor from and against any loss it suffers or incurs as a result of any discrepancy between (i) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (ii) the rate or rates of exchange at which the Investor may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgment, claim or proof.

## **7.12 Use of Proceeds**

The Company shall use the proceeds from the issue of the Notes solely for the expansion of the Group’s retail distribution of automotive parts and accessories and the Group’s wholesale business, as well as the repayment of existing Indebtedness, including payment of fees and expenses in connection with the transactions contemplated under the Transaction Documents. No part of the proceeds will be used for the subscription and/or acquisition of securities listed on any stock exchange. The Investor shall have the right (but not the obligation) to monitor the use of proceeds of the issuance of the Notes.

## **8. Miscellaneous**

### **8.1 Termination; Survival**

- (a) If the closing conditions set forth in Clause 5.1 are not fulfilled or waived by the New Investor on or before the Long Stop Date, either of the Initial Investor or the New Investor may, at its option, without prejudice to its rights hereunder and under applicable Laws:

- (i) defer the Closing to a later date;
  - (ii) proceed to the Closing in respect of the Note Exchange and the issue of the Notes so far as practicable but subject to such conditions as the Initial Investor or the New Investor may determine at its sole discretion; or
  - (iii) terminate this Agreement in accordance with this Clause 8.1.
- (b) The Warranties and any covenants and agreements of the Company contained in or made pursuant to the Transaction Documents shall survive after the Closing and shall be repeated daily during the Effective Period, and such Warranties, covenants and agreements shall in no way be affected by any due diligence or investigation of the subject matter thereof made by or on behalf of the Initial Investor or the New Investor and any facts which are known to the Initial Investor or the New Investor at the time of this Agreement.
- (c) Subject to Clause 8.1(b), if this Agreement is terminated pursuant to Clause 8.1(a) above, this Agreement shall forthwith become null and void, and there shall be no liability or obligation on the part of the Company or the Investor (or any of their respective Representatives or Affiliates) under the Transaction Documents or in connection with the transactions contemplated hereby, except that such termination shall not relieve any breaching party from liability hereunder from breach of any representation or warranty contained herein or any breach of any covenant or agreement contained herein.

## **8.2 Successors and Assigns**

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties whose rights or obligations hereunder are affected by such terms and conditions. This Agreement, and the rights hereunder, shall not be assigned, and the obligations hereunder shall not be transferred, without the mutual written consent of the Parties; provided, however, the Investor may at any time, without the consent of any other Party, assign its rights and transfer its obligations hereunder to a transferee of the Notes. The Investor shall procure that the transferee of the Notes to execute a Deed of Adherence in the form attached hereto as Exhibit 2 upon the completion of such transfer. Except as expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any party other than the Parties or their respective successors and assigns any rights, remedies, obligations, or Liabilities under or by reason of this Agreement.

## **8.3 Indemnity**

- (a) The Company hereby agrees to indemnify and hold harmless the Investor, the Investor's Affiliates, and their respective Representatives and assigns, on demand from and against any and all Indemnifiable Losses suffered by the Investor, the Investor's Affiliates, and their

respective Representatives and assigns, as a result of, or based upon or arising from an Event of Default or any breach or non-performance of any of the certificates, representations, warranties, covenants, undertakings or agreements made or given by the Company in or pursuant to this Agreement or any of the other Transaction Documents.

- (b) Any Person seeking indemnification with respect to any Indemnifiable Loss (an “**Indemnified Party**”) shall give written notice to the Person required to provide indemnity hereunder (the “**Indemnifying Party**”).
- (c) If any claim, demand or Liability is asserted by any third party against any Indemnified Party, the Indemnifying Party shall upon the written request of the Indemnified Party, defend any actions or proceedings brought against the Indemnified Party in respect of matters embraced by the indemnity under this Clause 8.3. If, after a request to defend any action or proceeding, the Indemnifying Party neglects to defend the Indemnified Party, a recovery against the Indemnified Party suffered by it in good faith shall be conclusive in its favour against the Indemnifying Party.
- (d) This Clause 8.3 shall not be deemed to preclude or otherwise limit in any way the exercise of any other rights or pursuit of other remedies for the breach or non-performance of any of the certificates, representations, warranties, covenants, undertakings or agreements made or given by the Company in or pursuant to this Agreement or any of the other Transaction Documents.

**8.4 Governing Law.** This Agreement, including any non-contractual obligations arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the Laws of Hong Kong without regard to any conflict of laws principles which may exclude the Laws of Hong Kong.

#### **8.5 Dispute Resolution**

- (a) Each Party agrees that any legal action or proceeding arising out of or relating to this Agreement (including any non-contractual disputes or claims) may be brought in the courts of Hong Kong and irrevocably submits to the non-exclusive jurisdiction of such courts, provided that the Company agrees that it may only commence proceedings arising out of or relating to this Agreement in the courts of Hong Kong.
- (b) Nothing herein shall limit the right of the Investor to commence any legal action against the Company or its property in any other jurisdiction or to serve process in any manner permitted by Law, and the taking of proceedings in any jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.
- (c) The Company irrevocably and unconditionally waives any objection which it may now or hereafter have to the choice of Hong Kong as the venue of any legal action arising out of or relating to this Agreement

and any claim that any such legal action has been brought in an inconvenient or inappropriate forum. The Company also agrees that a final judgment against it in any such legal action shall be final and conclusive and may be enforced in any other jurisdiction, and that a certified or otherwise duly authenticated copy of the judgment shall be conclusive evidence of the fact and amount of its indebtedness.

- (d) The Company consents generally in respect of any proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any Governmental Order which may be made or given in such proceedings.
- (e) To the extent that the Company may now or hereafter be entitled, in any jurisdiction in which proceedings may at any time be commenced with respect to this Agreement, to claim for itself or its assets any immunity (sovereign or otherwise) from suit, jurisdiction of any court, attachment prior to judgment, attachment in aid of execution of a judgment, execution of a judgment or from set off, banker's lien, counterclaim or any other legal process or remedy with respect to its obligations under this Agreement and/or to the extent that in any such jurisdiction there may be attributed to the Company, any such immunity (whether or not claimed), the Company hereby, to the fullest extent permitted by applicable Law, irrevocably agrees not to claim and waives any such immunity.
- (f) The Company irrevocably appoints New Focus Autolife Holdings Limited (Hong Kong Company Registration No. 1528836), whose address is 3/F New York House, 60 Connaught Road Central, Hong Kong, as its process agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Hong Kong. If for any reason the process agent named above (or its successor) no longer serves as process agent of the Company for this purpose, the Company shall promptly appoint a successor agent and notify the New Investor thereof. Failing such appointment within 15 days after the date of cessation of services as a process agent, the New Investor may appoint a substitute process agent for the Company. The Company agrees that any such legal process is sufficiently served on it if delivered to such process agent for service at its registered office for the time being in Hong Kong whether or not such process agent gives notice thereof to the Company. Nothing herein affects the right to serve process in any other manner permitted by Law.

## **8.6 Notices**

- (a) Any notice required or permitted pursuant to this Agreement shall be given in writing and shall be given either personally or by sending it by next-day or second-day courier service, fax, email or similar means to the address, fax number or email address of the relevant Party as provided in Sub-clause (c) below (or at such other address as such

Party may designate by five (5) days' advance written notice to the other Parties to this Agreement given in accordance with this Clause 8.6).

- (b) Any notice, demand or other communication so addressed to the relevant Party shall be deemed to have been delivered (a) if delivered by hand, at the time of delivery; (b) if sent by pre-paid post, on the fourth (4<sup>th</sup>) Business Day after the time of posting; (c) if given or made by fax, immediately after it has been despatched with a confirmation that all pages have been transmitted; and (d) if sent by e-mail, immediately after it has been despatched from the sender's outbox, except where despatch is not on a Business Day in the cases of (c) and (d). If a communication would otherwise be deemed to have been delivered outside normal business hours (after 5:30 p.m. on a Business Day) in the time zone of the territory of the recipient under the preceding provisions of this Clause 8.6, it shall be deemed to have been delivered at 9:30 a.m. on the next Business Day in the territory of the recipient. In proving service of a communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a pre-paid letter or that the facsimile transmission or email was despatched and a confirmatory transmission report or other acknowledgment of good receipt was received.
- (c) The contact information for service of a notice in connection with this Agreement are:

The Company:

Name: New Focus Auto Tech Holdings Limited

Address: 5/F, 180 Hennessy Road  
Wan Chai  
Hong Kong

With a copy to: Room 1907, 19/F, Tower 1 Raffles City Changning,  
1133 Changning Road, Changning District, Shanghai,  
the PRC.

Fax number: +86 21 6405 6816

Email: gavin\_liu@nfa360.com

Attention: Gavin Liu

The Initial Investor:

Name: High Inspiring Limited

Address: 12/F, CCB Tower, 3 Connaught Road Central, Central,  
Hong Kong

Fax number: +852 2140 6088

Email : stevenxia@ccbintl.com / patrickchen@ccbintl.com

Attention: Steven Xia / Patrick Chen

The New Investor:

Name: CCBI Solar Energy (Holding) Limited

Address: 12/F, CCB Tower, 3 Connaught Road Central, Central,  
Hong Kong

Fax number: +852 2140 6088

Email : stevenxia@ccbintl.com / patrickchen@ccbintl.com

Attention: Steven Xia / Patrick Chen

## **8.7 Fees and Expenses**

- (a) The Company shall pay all of its own Taxes, costs and expenses incurred in connection with the negotiation, execution, delivery and performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby.
- (b) Notwithstanding anything to the contrary herein, the Company shall pay or reimburse the Investor the costs and expenses incurred by the Investor for the purposes of preparing, negotiating, executing, delivering and performing the Transaction Documents (including any amendments thereof) and related professional work (including but not limited to fees and expenses of the Investor's counsels and other out-of-pocket costs and administration expenses) up to a maximum amount of US\$62,020 (such expenses and costs, the "**Reimbursed Expenses**"), whether or not any transaction contemplated by the Transaction Documents is consummated.
- (c) A notification by the New Investor on the amount of the Reimbursed Expenses shall (absent any manifest error) be final, conclusive and binding on the Company.

## **8.8 Tax and Payments**

- (a) All payments by the Company under this Agreement shall be made in U.S. dollars in immediately available funds free and clear of any withholdings or deductions for any present or future Taxes, imposts, levies, duties or other charges. In the event that the Company is required to make any such deduction or withholding from any amount paid, the Company shall pay to the Investor such additional amount as shall be necessary so that the Investor continues to receive a net amount equal to the full amount which the Investor would have received if such withholding or deduction had not been made.

- (b) All payments by the Company under this Agreement shall be received by the Investor not later than 4:00 p.m. (Hong Kong time) on a due date by remittance to such U.S. dollar bank account in Hong Kong or elsewhere as the Investor may notify the Company from time to time or, if the Investor so requests, by cashiers order or other cleared funds.
- 8.9 Finder's Fee.** The Company represents and warrants that it neither is nor will be obligated for any finder's fee or commission in connection with the transaction contemplated hereunder.
- 8.10 Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable Law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.
- 8.11 Amendments and Waivers.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of each Party; provided that each Party may waive any of its rights hereunder without the consent of any other Parties. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each of the Parties.
- 8.12 No Waiver.** Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof will not be deemed a waiver of such term, covenant, or condition, nor will any waiver or relinquishment of, or failure to insist upon strict compliance with, any right, power or remedy hereunder at any one or more times be deemed a waiver or relinquishment of such right, power or remedy at any other time or times.
- 8.13 Rights Cumulative.** Each and all of the various rights, powers and remedies of a Party will be considered to be cumulative with and in addition to any other rights, powers and remedies which such Party may have at law or in equity in the event of the breach of any of the terms of this Agreement. The exercise or partial exercise of any right, power or remedy will neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such Party.
- 8.14 Delays or Omissions.** No delay or omission to exercise any right, power or remedy accruing to any Party under this Agreement, upon any breach or default of any other Party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting Party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party of any breach or default under this Agreement, or any waiver on the part of any Party of any provisions or conditions of this Agreement, must be in writing and shall



be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by Law or otherwise afforded to any Party, shall be cumulative and not alternative.

- 8.15 No Presumption.** The Parties agree and acknowledge that any applicable Law that would require interpretation of any claimed ambiguities in this Agreement against the Party that drafted it has no application and is expressly waived. If any claim is made by a Party relating to any conflict, omission or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by or at the request of any Party or its counsel.
- 8.16 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and e-mailed copies of signatures shall be deemed to be originals for purposes of the effectiveness of this Agreement.
- 8.17 No Commitment for Additional Financing.** The Company acknowledges and agrees that the Investor has not made any representation, undertaking, commitment or agreement to provide or assist the Company or its Affiliates in obtaining any financing, investment or other assistance, other than the Note Exchange contemplated hereby and subject to the conditions set forth herein and therein. In addition, the Company acknowledges and agrees that (a) no statements, whether written or oral, made by the Investor or its Representatives prior to, on or after the date of this Agreement shall create an obligation, commitment or agreement to provide or assist the Company or any of its Affiliates in obtaining any financing or investment, (b) the Company shall not rely on any such statement by the Investor or its Representatives and (c) an obligation, commitment or agreement to provide or assist the Company or its Affiliates in obtaining any financing or investment may only be created by a written agreement, signed by the Investor and the Company or its Affiliates, as appropriate, setting forth the terms and conditions of such financing or investment and stating that the parties intend for such writing to be a binding obligation or agreement. The Investor shall have the right, in its sole and absolute discretion, to refuse or decline to participate in any other financing of or investment in the Company or its Affiliates, and shall have no obligation to assist or cooperate with the Company or any of its Affiliates in obtaining any financing, investment or other assistance.
- 8.18 Entire Agreement.** This Agreement and the other Transaction Documents, together with all schedules, exhibits and annexures hereto and thereto, constitute the entire agreement among the Parties with respect to the subject matter hereof and thereof, and no Party shall be liable or bound to any other Party in any manner by any warranties, representations, or covenants except as specifically set forth herein or therein. For the avoidance of doubt, the Transaction Documents shall be deemed to terminate and supersede the provisions of any term sheet, letter of intent, memorandum of understanding, confidentiality and non-disclosure agreement, or any other agreement executed between the Investor and the Company prior to the date of this

Agreement in respect of the subject matter contemplated hereby and under the other Transaction Documents, none of which agreements shall continue.

- 8.19 No Negotiation.** During the period from the date hereof until (a) the date of termination of this Agreement pursuant to Clause 8.1 or (b) the Closing Date (whichever is earlier) (the “**No Negotiation Period**”), other than discussions with the Investor regarding the transactions contemplated hereby, the Company shall not, directly or indirectly, through any Representatives or otherwise, make, request, discuss, solicit, initiate or encourage submission of any proposal or offer from any Person (including any of its Representatives) relating to any offering of debt securities (other than the Notes) that would be similar to the transactions contemplated hereunder (each, a “**Transaction Proposal**”). The Company shall immediately cease and cause to be terminated all ongoing contacts or negotiations, if any, with respect to any Transaction Proposal. During the No Negotiation Period, the Company shall promptly notify the Investor of any Transaction Proposal, or any inquiry or contact with any Person with respect thereto, is made and shall promptly provide the Investor with such information regarding such Transaction Proposal, inquiry or contact as the Investor may request.
- 8.20 Conflict with Memorandum and Articles of Association.** Subject to the Listing Rules, in the event of any conflict between the provisions of this Agreement and the provisions of the Memorandum and Articles, as between the Parties, the provisions of this Agreement shall prevail. The Company agrees to take such steps and, without limitation to the generality of the foregoing, shall procure that the Memorandum and Articles be amended in such manner as the Investor may request to remove any such conflict and give effect to the provisions of this Agreement.
- 8.21 Signing and Binding.** Notwithstanding that any Party does not validly execute this Agreement, this Agreement shall be binding, effective and enforceable to and among all those Parties duly executing this Agreement, in which case, the “Parties” or “Party” used in this Agreement shall refer to those Parties duly executing the Agreement.
- 8.22 Independent Legal Advice.** The Company agrees and acknowledges that (a) it was afforded sufficient opportunity to obtain independent legal advice regarding this Agreement and the transactions contemplated under the other Transaction Documents; and (b) it fully understands all of the terms, conditions, restrictions and provisions set forth in this Agreement and the other Transaction Documents and the obligations and liabilities thereof, and that each such term, condition, restriction and provision is fair and reasonable with respect to the subject matter thereof.

## SCHEDULE 1

### WARRANTIES

#### 1. General

- (i) The Company is duly incorporated, validly existing and in good standing under the Laws of the Cayman Islands.
- (ii) CDH is duly incorporated, validly existing and in good standing under the Laws of the British Virgin Islands.
- (iii) The Corporate Guarantor is duly incorporated and validly existing under the Laws of Hong Kong.
- (iv) The Group Members collectively have all requisite legal and corporate power and authority to carry on the Business as now conducted, and are duly authorised and qualified to transact business in each jurisdiction in which they operate.
- (v) The obligations of the Company and CDH under the Transaction Documents shall at all times constitute direct, unconditional, secured, unsubordinated and general obligations of and shall rank at least *pari passu* with all other present and future outstanding direct, unconditional, unsubordinated and unsecured obligations, issued, created or assumed by, the Company or CDH (as the case may be).
- (vi) The execution, delivery and performance of this Agreement and the other Transaction Documents by the Company, including the Note Exchange and the issuance of the Notes, do not and shall not violate in any respect any provision of:
  - (a) any Law or Governmental Order of any of the Cayman Islands, Hong Kong and any other applicable jurisdiction;
  - (b) the Laws and documents incorporating and constituting the Company; or
  - (c) any agreement of undertaking to which any Group Member is a party or which is binding upon it or any of its assets, and does not and shall not result in the creation or imposition of any Liens on any of its assets pursuant to the provisions of any such agreement or other undertaking.

#### 2. Capitalisation and Voting Rights

- (i) CDH legally and beneficially owns 2,889,580,226 Shares, which in aggregate represent approximately 42.697 per cent. of the total issued and outstanding share capital of the Company as at the date of this Agreement.
- (ii) All allotted, issued and outstanding Shares of the Company held by CDH have been duly and validly issued and fully paid and non-assessable, free and clear of any Liens (except for the Liens created in accordance with the Existing Transaction Documents and the Transaction Documents) and are free of

restrictions on transfer (other than payment of applicable stamp duty required under the laws of Hong Kong and subject to the terms under the Existing Transaction Documents and the Transaction Documents), have been issued in compliance with the requirements of all applicable Laws and were not issued in violation of any preemptive or similar right provided under the applicable Laws or any agreement to which the Company is a party.

- (iii) As of the date of this Agreement and the Closing Date, there are no outstanding options, rights, contracts, warrants, subscriptions, conversion rights or other agreements or commitments pursuant to which the Company may be required to purchase, redeem, issue or sell any Shares or other securities of the Company or in any way relating to the issue, voting or transfer of any Shares or other Equity Securities of the Company, other than those set out in the Existing Transaction Documents, the Transaction Documents and the share option scheme adopted by the Company pursuant to its shareholders' resolutions passed on 25 June 2014.

### **3. Authorisation**

Each of the Obligor has all requisite power and authority to execute and deliver the Transaction Documents to which it is a party and to carry out and perform its obligations thereunder. All action on the part of each of the Obligor (and, as applicable, its officers, directors and shareholders) necessary for the authorisation, execution and delivery of the Transaction Documents to which it is a party, the performance of all its obligations thereunder, and, the authorisation, issue (or reservation for issue), sale and delivery of the Notes, has been taken or will be taken prior to the Closing. This Agreement has been duly executed and delivered by the Company, and the other Transaction Documents, when executed and delivered by the relevant Obligor to which it is a party, shall be duly executed and delivered by the relevant Obligor. This Agreement and each of the other Transaction Documents are, or when executed and delivered by the parties thereto shall be, valid and legally binding obligations of each of the Obligor (to the extent it is a party), enforceable against each of them in accordance with their terms subject to bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization and similar laws of general applicability relating to or affecting creditors' rights generally and equitable principles of general applicability.

### **4. Valid Issue of the Notes**

All of the Notes, when issued and delivered to the New Investor in accordance with the terms of this Agreement, will be (i) duly and validly issued, fully paid and non-assessable, free from any Lien, (ii) free of restrictions on transfer and (iii) issued in compliance with the requirements of all applicable Laws and Contracts.

### **5. Consents**

- (i) Except for registration of the New Share Charge with the Registry of Corporate Affairs in the British Virgin Island and any other perfection requirements of the security interest set out in the Transaction Documents, no consent, approval, order or authorisation of, or registration, qualification, designation, declaration or filing with, any Governmental Authority or any

party to a Contract or any other third party is required on the part of each of the Obligors in connection with the valid execution, delivery and performance of this Agreement or any other Transaction Documents to which it is a party or the consummation of the transactions contemplated hereby and thereby including the Note Exchange and the offer, sale, issue or reservation for issue of the Notes.

- (ii) Without prejudice to the generality of the forgoing, specifically, in the event that Dr. Peng Telecom & Media Group Co., Ltd. (鹏博士电信传媒集团股份有限公司) (listed on the Shanghai Stock Exchange with stock code 600804), being the shareholder of the Corporate Guarantor, is required to comply with notification, reporting and filing announcement requirements imposed on it under the Listing Rules of Shanghai Stock Exchange in connection with the Corporate Guarantee and the transaction contemplated thereunder and fails to comply with such notification, reporting and filing announcement requirements, such failure will not in any way affect the validity, execution, performance and enforcement of the Corporate Guarantee.

## **6. Offering**

The offer, sale, transfer and issue of the Notes, as contemplated by the Transaction Documents, are exempt from the qualification, registration and prospectus delivery requirements of any applicable Laws.

## **7. Brokers and Advisors**

None of the Company and the other Group Members have any Contract with any broker, finder or similar agent, or financial advisor with respect to the transactions contemplated under the Transaction Documents. The Group Members have not incurred any liability for any brokerage fees, agents' fees, commissions or finder's fees in connection with any of the Transactions Documents or the consummation of the transactions contemplated therein.

## **8. Tax Matters**

- (i) Each Group Member has filed or caused to be filed, within the times and within the manner prescribed by applicable Law, all Tax Returns which are required to be filed by it, with respect to its business or otherwise. Such Tax Returns reflect accurately in all material respects all liability for all Tax of each Group Member for the periods covered thereby, and all amounts shown on such Tax Returns as due and payable have been timely paid. All Taxation and assessments (including interest and penalties) payable by, or due from any Group Member (whether in its own right or as transferee of the assets of, or successor to, any person) have been fully paid or adequately disclosed and fully provided for in the books and financial statements of such Group Member. No examination of any return of any Group Member is currently in progress, and no Group Member has received notice of any proposed audit or examination. There are no outstanding agreements or waivers extending the statutory period of limitation applicable to any Tax return or any assessment of Taxes of any Group Member.

- (ii) The Latest Financial Statements contain adequate provision or reserve for all Tax liable to be assessed on the Group or for which it may be accountable up to the Statement Date, including in particular (but without limitation) Tax of profits, gains, income and receipts, benefits and other items subject to Tax for any period ending on or before, and for any transaction or events occurring down to the Statement Date.
- (iii) No Group Member has, at any time:
  - (a) obtained or sought to obtain a Tax advantage through any fraud or evasion; or
  - (b) made or entered into any arrangement, undertaking or scheme which was at the time it was entered into a sham or fiscal nullity.

## **9. Constitutional Documents; Books and Records**

The Memorandum and Articles and the constitutional documents of the Company have been duly adopted and filed with the Registry of Companies in the Cayman Islands, are in the form previously provided to the Investor and are in full force and effect and have not been amended, varied or revoked in any respect as at the date of this Agreement and up to the Closing. Each Group Member maintains its books of accounts and records in compliance with applicable Laws and in the usual, regular and ordinary manner, on a basis consistent with prior practice, and which permits its financial statements (including the Latest Financial Statements) to be prepared in accordance with the relevant GAAP.

## **10. Financial Statements**

The Latest Financial Statements are complete and correct in all material respects and present a true and fair view of the financial condition and results of operations of the Group as of their respective dates on a consistent basis.

## **11. Changes**

Since the Statement Date and up to the Closing, except as contemplated by the Transaction Documents, there has not been:

- (i) any change in the assets, Liabilities, financial condition or operations of any Group Member from that reflected in the Latest Financial Statements, other than changes in the Ordinary Course of Business;
- (ii) any waiver by any Group Member of a right or of a debt owed to it;
- (iii) any incurrence of or commitment to incur any Indebtedness for money borrowed by any Group Member;
- (iv) any satisfaction or discharge of any Lien or payment of any obligation by any Group Member;
- (v) any Lien created by any Group Member with respect to any of its properties or assets, other than such Liens created in the Ordinary Course of Business;

(vi) any loan or advance to, guarantee for the benefit of, or investment in, any Person (including but not limited to any of the employees, officers or directors, or any members of their immediate families, of any Group Member), corporation, partnership, joint venture or other entity;

(vii) any declaration, setting aside or payment or other distribution in respect of any Group Member's Equity Securities, or any direct or indirect redemption, purchase or other acquisition of any such Equity Securities by such Group Member (including without limitation, any warrants, options or other rights to acquire capital stock or other Equity Securities);

(viii) any failure by the Group to carry on the Business in the Ordinary Course of Business;

(ix) any damage, destruction or loss, whether or not covered by insurance, adversely affecting the assets, properties, financial condition, operation or business of any Group Member;

(x) any charitable contributions or pledges by any Group Member;

(xi) any capital expenditures or commitments therefor by any Group Member, other than such capital expenditure or commitments made in the Ordinary Course of Business;

(xii) any other event or condition of any character which individually or in the aggregate might adversely affect the assets, properties, financial condition, operating results or business of any Group Member; and

(xiii) any agreement or commitment by any Group Member to do any of the acts described in this Paragraph 11,

that, in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

## **12. Litigation**

(i) Except as would not reasonably be expected to give rise to claims against the Group exceeding RMB10,000,000 individually, (a) there is no action, suit, or other court, regulatory or other proceeding pending or, to the knowledge of the Company after having made all due inquiries, threatened against or affecting any Group Member or any of its Representatives with respect to its businesses or proposed business activities, nor is any Group Member aware of any basis for any of the foregoing; (b) there is no investigation pending or, to the knowledge of the Company after having made all due inquiries, threatened against any Group Member; and (c) there is no judgment, decree or order of any court or Governmental Authority in effect and binding on any Group Member or any of their assets or properties.

(ii) Except as would not affect the ability of the Group to carry out the Business in the Ordinary Course of Business, no Governmental Authority has at any time challenged or questioned in writing the legal right of any Group Member to

conduct its business as presently being conducted or proposed to be conducted.

### 13. Liabilities

- (i) There is no outstanding Indebtedness of any Group Member exceeding RMB40,000,000 individually that has become payable or repayable by reason of any default by such Group Member.
- (ii) Other than as disclosed in the Latest Financial Statements, no Group Member has any material obligations of any nature (whether accrued, absolute, contingent or otherwise) classified as indebtedness under GAAP.

### 14. Anti-Corruption; Anti-Money Laundering; FATCA; Sanctions

#### (i) Anti-Corruption

No Group Member or any of their respective Representatives has, directly or indirectly, made or authorised (a) any contribution, payment or gift of funds or property to any official, employee or agent of any authority, or any candidate for public office, in Hong Kong, the PRC or any other jurisdiction, where either the payment or the purpose of such contribution, payment or gift was, is, or would be prohibited under any applicable Law, or (b) any bribe, rebate, payoff, influence payment, kickback or other unlawful payment in connection with the business activities of the relevant Group Member, and without prejudice to the foregoing, no Group Member or any of their respective Representatives has taken any action, directly or indirectly, that would result in a violation by such Persons of any applicable anti-bribery or anti-corruption Law enacted in any jurisdiction, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder, or the UK Bribery Act 2010. The Group has instituted and maintain policies and procedures designed to ensure compliance with applicable Laws relating to anti-bribery in the jurisdictions in which the Group Members conduct their business.

#### (ii) Anti-Money Laundering

The operations of each Group Member are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting and other requirements of anti-money laundering Laws of all jurisdictions which any Group Member conducts business (including without limitation the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615 of the Laws of Hong Kong)) (collectively, the “**Money Laundering Laws**”). No action, suit, proceedings, investigation or inquiry by or before any Governmental Authority involving any Group Member with respect to the Money Laundering Laws is pending or contemplated or threatened.

#### (iii) Foreign Account Tax Compliance Act

None of the provisions, rules, requirements or obligations (including but not limited to any withholding or disclosure obligation or requirements) under



FATCA is or will be applicable or binding on any payment, repayment, declaration, transfer or transmission of fund, assets, properties, business or undertaking, or any other action or transaction arising from the Transaction Documents or any other document relating to or in connection with any Transaction Document. No report, filing, disclosure, notification, consultation or any other action or thing is required under FATCA to be made or done by any party to any Transaction Documents or its Affiliates, or any directors, officers, agents, employees of such party or of their respective Affiliates (to the extent applicable).

(iv) Sanctions Laws and Regulations

- (a) No Group Member nor any of their respective Representatives, is currently subject to any of the Sanctions Laws and Regulations (as defined below) (as used herein, “**Sanctions Laws and Regulations**” means (i) any U.S. sanctions related to or administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (including, without limitation, the designation as a “specially designated national or blocked person” thereunder), (ii) any sanctions or requirements imposed by, or based upon the obligations or authorities set forth in, the U.S. Trading With the Enemy Act, the U.S. International Emergency Economic Powers Act, the U.S. United Nations Participation Act or the U.S. Syria Accountability and Lebanese Sovereignty Act, all as amended, or any of the foreign assets control regulations of the U.S. Department of the Treasury (including, without limitation, 31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto and (iii) any sanctions measures imposed by the United Nations Security Council or European Union.
- (b) There have been no transactions or connections between any Group Member, on the one hand, and any country, territory, Person subject to sanctions under any of the Sanctions Laws and Regulations or any Person in those countries or territories or which performs contracts in support of projects in or for the benefit of those countries or territories, on the other hand.
- (c) No Group Member will, directly or indirectly, use, lend, contribute or otherwise make available the proceeds from the transaction contemplated hereunder to any Person to fund any activities of or business with any Person, or in any country or territory, that is the subject of any Sanctions Laws and Regulations, or in any other manner that will result in a violation of any of the Sanctions Laws and Regulations.
- (d) None of the Note Exchange, the issue of the Notes, the execution, delivery and performance of this Agreement or any other Transaction Document, or the consummation of the transaction contemplated hereunder and thereby by the Company or any other Group Member will result in a violation of any of the Sanctions Laws and Regulations.

## **15. Compliance with Laws**

- (i) Each Group Member is in compliance in all material respects with all Laws that are applicable to it or to the current and planned conduct or operation of its business or the ownership or use of any of its assets or properties. Each Group Member has obtained all material Approvals necessary for the conduct of its business as currently conducted and is not in default of any such Approvals.
- (ii) No event has occurred and no circumstance exists that (with or without notice or lapse of time) (a) may constitute or result in a violation by any Group Member of, or a failure on the part of any Group Member to comply with, any Law in any material respect, or (b) may give rise to any obligation on the part of any Group Member to undertake, or to bear all or any portion of the cost of, any remedial action of any nature that may exceed RMB10,000,000 individually.
- (iii) No Group Member has received any notice from any Governmental Authority regarding (a) any actual, alleged, possible or potential violation of, or failure to comply with, any Law in any material respect, or (b) any actual, alleged, possible or potential obligation on the part of such Group Member to undertake, or to bear all or any portion of the cost of, any material remedial action of any nature.

## **16. Compliance with Listing Rules**

- (i) All statements of fact contained in the Public Information (other than those relating specifically to the Investor) are true and accurate in all material respects and not misleading. All statements of opinion, intention or expectation of the directors of the Company in relation to the Group contained therein when given were truly and honestly held and made after due and careful consideration. There is no other material fact or matter omitted therefrom the omission of which would make or have made any statement therein misleading or which is otherwise material in the context of the transactions contemplated by the Transaction Documents.
- (ii) The Company has complied in all material respects with all applicable rules, regulations and requirements of the HKSE (including all filing, notification and disclosure requirements under the Listing Rules and the Code on Corporate Governance Practices contained in Appendix 14 of the Listing Rules).

## **17. Compliance with Other Instruments**

None of the Group Members is in violation, breach or default of its constitutional documents in any material respects. The terms of the Transaction Documents and the execution, delivery and performance by each Group Member of and compliance with each of the Transaction Documents, and the consummation of the transactions contemplated hereby and thereby, will not result in any such violation, breach or default, or be in conflict with or constitute, with or without the passage of time or the

giving of notice or both, a default under (i) the constitutional documents of such Group Member, (ii) any Governmental Order, or (iii) any applicable Law.

## **18. Title; Leases**

Except as would not reasonably be expected to cause liabilities or loss to any Group Member of more than RMB10,000,000 individually, (i) each Group Member has good and marketable title to all tangible properties and assets reflected in its books and records, whether real, personal or mixed, purported to be owned such Group Member, free and clear of any Liens (other than those permitted under the Transaction Documents); (ii) with respect to the tangible properties and assets that are leased by any Group Member, each Group Member is in compliance in all respects with such leases and holds a valid leasehold interest free of any Liens (other than those permitted under the Transaction Documents); and (iii) each Group Member owns or leases all tangible properties and assets necessary to conduct in all respects their respective business and operations as presently conducted or planned to be conducted.

## **19. Intellectual Property Rights**

Except as would not reasonably be expected to cause liabilities or loss to any Group Member of more than RMB10,000,000 individually, the Group Members own or otherwise have the sufficient right or licence to use all Intellectual Property necessary for their business as currently conducted and planned to be conducted without any violation or infringement of the rights of others, free and clear of all Liens (other than those permitted under the Transaction Documents).

## **20. Disclosure**

- (i) The Obligors have made available to the Investor all the information regarding each Group Member as required by the Investor for deciding whether to enter into the transactions contemplated under the Transaction Documents.
- (ii) All factual information and materials provided by the Obligors to the Investor or their Representatives in relation to the transactions contemplated by the Transaction Documents, including, without limitation, information set forth in the Recitals and Annex 1, are complete, true and accurate in all material respects as at the date of this Agreement or as at the date (if any) on which it is stated.
- (iii) No representation or warranty of the Company contained in this Agreement, or any certificate furnished or to be furnished to the Investor at the Closing under this Agreement, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.
- (iv) There is no fact that the Obligors have not disclosed or otherwise made available to the Investor of which they are aware and that has had or would reasonably be expected to have, as of the date of such disclosure, a Material Adverse Effect.

**21. No Undisclosed Business**

The principal business of the Group has been and is the Business. No Group Member is engaged in any business activity that is not substantially related to the Business.

**22. Insolvency**

- (i) No Governmental Order has been made, no petition has been presented, no meeting has been convened to consider a resolution, and no resolution has been passed, in each case, for the winding up of any Obligor or any other Group Member. No Governmental Order has been made or petition presented or application made for such an order. This paragraph (i) shall not apply to any petition that is frivolous or vexatious in nature.
- (ii) No administrator has been appointed or notice given or filed or step taken or procedure commenced with a view to the appointment of an administrator in respect of any Obligor or any other Group Member. No receiver has been appointed in respect of any Obligor or any other Group Member or any of their respective assets. No unsatisfied judgment that exceeds RMB10,000,000 is outstanding against any Obligor or any other Group Member. No event analogous to any of the foregoing has occurred in relation to any Obligor or any other Group Member. Each of the Obligors and other Group Members is able to pay its debts as they fall due or does not have aggregate liabilities that are greater than its aggregate assets.

**23. Control by CDH**

CDH holds and will continue to hold all its Shares in the Company free from all Liens save for those created under the Existing Transaction Documents and the Transaction Documents. At all times during the Effective Period, CDH will (i) hold no less than 42.697% of the total issued and outstanding Shares of the Company on a Fully-Diluted Basis, (ii) maintain Control of the Company and (iii) remain the largest shareholder of the Company.

**24. Charged Shares**

The Shares charged to the New Investor under the New Share Charge represent not less than 42.697% of the total issued and outstanding Shares of the Company on a Fully-Diluted Basis.

**25. Total Equity**

The total equity attributable to shareholders of the Company is not less than RMB800,000,000 (based on the latest published annual or interim financial statements of the Company).

**26. No Breach of Shareholders Rights**

None of the transactions contemplated under any of the Transaction Documents is in breach of any anti-dilution rights, rights of first refusal, pre-emptive rights, put or call

rights or other similar rights of any shareholder of the Company or the other Group Member.

**27. Net Asset Value of the Company**

The net asset value of the Company is not less than RMB800,000,000 (based on the latest published annual or interim financial statements of the Company).

## ANNEX 1

### DETAILS OF THE COMPANY

(as at the date of this Agreement)

Company Name	:	New Focus Auto Tech Holdings Limited
Place of Incorporation	:	the Cayman Islands
Date of Incorporation	:	15 May 2002
Company Form	:	an exempted company incorporated with limited liability in the Cayman Islands
Company No.	:	117682
Authorised Share Capital	:	HK\$1,000,000,000 of HK\$0.1 each
Issued Share Capital	:	6,767,636,215 Shares
Directors	:	Mr. Zhang Jianxing (Acting Chairman) Mr. Tong Fei Mr. Hu Yuming Mr. Wang Zhenyu Mr. Lin Lei Mr. Zhang Xiaoya
Registered Office	:	Cricket Square Hutchins Drive P.O. Box 2681 Grand Cayman KY1-1111 Cayman Islands
Business	:	The Company is principally engaged in investment holding. The Group is principally engaged in the manufacturing and sale of electronic and power-related automotive parts and accessories; the provision of automobile wash, beauty, repair, maintenance and restyling services and retail distribution of merchandise goods through its service chain stores network; wholesale distribution of automobile accessories; and sale of automotive, automotive after-sales service and the distribution of automotive insurance products and automotive financial products.

**EXHIBIT 1-A**

**FORM OF NOTE CERTIFICATE NO. 1**

**NOTES CERTIFICATE**

Certificate No. 001

Principal Amount: US\$4,840,000

**NEW FOCUS AUTO TECH HOLDINGS LIMITED**  
(新焦点汽车技术控股有限公司)

(the “**Issuer**”)

(an exempted company incorporated in the Cayman Islands)

**Notes due 2020**

**THIS CERTIFICATE** (the “**Certificate**”) represents in aggregate, the principal amount of US\$4,840,000 notes due 2020 (the “**Notes**”) of the Issuer, issued pursuant to the Memorandum and Articles, a resolution of the board of directors of the Issuer passed on 26 September 2019, and the note exchange agreement dated 26 September 2019 entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) (as the same may be amended, supplemented or otherwise modified from time to time) (the “**Note Exchange Agreement**”).

**THIS IS TO CERTIFY** that CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司), whose registered office is at 12/F, CCB Tower, 3 Connaught Road Central, Central, Hong Kong is the registered holder of the Notes of the principal amount stated above. The Notes are issued subject to and with the benefit of the attached terms and conditions (the “**Conditions**”) which are deemed to be part of it. The Conditions are binding on both the holder of the Notes and the Issuer. The Issuer undertakes (both to the holder of the Notes and to any lawful transferee thereof pursuant to Condition 11) to perform its obligations in accordance with the Conditions.

The Notes are secured by a certain share charge as more particularly described in the Note Exchange Agreement and guaranteed by a corporate guarantee as more particularly described in the Note Exchange Agreement.

The Holder (as defined in the Conditions) is entitled to all of the benefits of the Notes and may enforce the agreements contained herein and exercise the remedies provided for hereby or otherwise available in respect hereof, all in accordance with the Conditions.

**Note:** The Notes cannot be transferred by delivery and are only transferable to the extent permitted by Condition 11. This Certificate must be delivered to the Issuer for cancellation and reissue of an appropriate certificate in the event of any such transfer.



Date:

**THE COMMON SEAL of**

**NEW FOCUS AUTO TECH  
HOLDINGS LIMITED**

was affixed to this Deed  
in the presence of:

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Common Seal

\_\_\_\_\_  
Signature of authorized person

\_\_\_\_\_  
Name of authorized person

\_\_\_\_\_  
Position

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

## TERMS AND CONDITIONS

### 1. Definitions and Interpretation.

1.1 Definitions. Unless defined hereunder or the context otherwise expressly requires, words and expressions used in the Conditions shall have the same meaning as given to them in the Note Exchange Agreement.

“**Administrative Fee**” means the administrative fee in an amount of US\$726,000 paid by the Issuer to the Holder in cash on 26 September 2019.

“**Bankruptcy Law**” has the meaning set forth in Condition 9.2(j) hereof.

“**Base Redemption Amount**” means, in respect of any principal amount of the Notes outstanding and to be redeemed by the Issuer pursuant to Condition 9, an amount equal to 100% of the principal amount stated in the Certificate.

“**Conditions**” means the terms and conditions attached to this Certificate (as amended from time to time), and “**Condition**” refers to the relative numbered paragraph of the Conditions.

“**Confidential Information**” has the meaning set forth in Condition 17.1 hereof.

“**Custodian**” has the meaning set forth in Condition 9.2(k) hereof.

“**Default**” means an Event of Default or any event or circumstance which would (with the expiry of any grace period, the giving of notice, the making of any determination or a combination thereof) be an Event of Default.

“**Default Interest**” has the meaning set forth in Condition 7 hereof.

“**Early Redemption Amount**” has the meaning set forth in Condition 9.3 hereof.

“**Early Redemption Principal Amount**” has the meaning set forth in Condition 9.3 hereof.

“**EOD Notice of Repayment**” has the meaning set forth in Condition 9.2 hereof.

“**EOD Redemption Amount**” means, upon early redemption of the Notes due to the occurrence of any Event of Default, the amount payable by the Issuer to the Holder in respect of the outstanding principal amount of the Notes on the date of such redemption, being the aggregate of:

- (a) the Base Redemption Amount;
- (b) interest accrued and outstanding under Condition 6;
- (c) a premium, which in the aggregate with the Base Redemption Amount, will provide the Holder with an IRR of 15% per annum on the Base Redemption

Amount, calculated from 2 September 2019 to the date on which Default Interest begins to accrue in relation to such Event of Default triggering the redemption under Condition 9.2, taking into account all interest paid on the Notes, any accrued and outstanding interest under subclause (b) above but excluding (i) any Default Interest paid or any Default Interest accrued and outstanding, and (ii) the Administrative Fee;

- (d) any Default Interest accrued and outstanding; and
- (e) any other payment accrued and outstanding to the Holder pursuant to the Transaction Documents.

“**Event of Default**” has the meaning set forth in Condition 9.2 hereof and “**Events of Default**” shall be construed accordingly.

“**Holder**” means any person who is the registered holder of any Notes then outstanding and “**Holders**” shall be construed accordingly.

“**IRR**” means an annual compounded, cumulative internal rate of return that produces a net present value of all cash flows (positive and negative) from an investment equal to zero.

“**Issuer**” mean New Focus Auto Tech Holdings Limited, an exempted company incorporated in the Cayman Islands with its principal place of business at 5/F, 180 Hennessy Road, Wan Chai, Hong Kong, and whose ordinary shares are listed on the Main Board of the HKSE with stock code 360.

“**Majority Holders**” has the meaning set forth in Condition 1.3 hereof.

“**Material Group Member**” means the Issuer and any other Group Member that has gross assets representing 5% or more of the total gross assets of the Group (calculated on a consolidated basis).

“**Maturity Date**” has the meaning set forth in Condition 5 hereof.

“**Optional Early Redemption Date**” has the meaning set forth in Condition 9.3 hereof.

“**Register**” has the meaning set forth in Condition 11.2 hereof.

“**Total Assets**” means the total consolidated gross assets of the Group (based on the latest published annual or interim financial statement of the Issuer).

“**Transfer Form**” has the meaning set forth in Condition 11.3 hereof.

1.2 The provisions of Clauses 1.2, 1.3 and 1.4 of the Note Exchange Agreement (where appropriate) shall apply to the Conditions as though they were set forth in full in the Conditions, except that references to “this Agreement” therein are to be construed as references to the Conditions.

1.3 Where under the Conditions any matter is expressed to require the consent, approval, waiver or determination of the Holders, such consent, approval, waiver or determination shall, except as otherwise stated, be deemed to be given or made if agreed to by holders of Notes representing more than 50% of the total principal amount of all the Notes outstanding at the relevant time, which must also include the agreement of CCBI Solar Energy (Holding) Limited for so long as it remains the holder of any of the Notes (the “**Majority Holders**”). Any consent, approval, waiver or determination given by any Holder or Holders not in compliance with the provisions of this Condition 1.3 shall not be valid and binding on the Issuer and other Holders.

1.4 A Default is continuing if it has not been remedied or waived in writing.

2. Form. The Notes are in registered form only. The Holder will be issued one or more Certificates in respect of its registered holding of the Notes. All Certificates shall be issued under the common seal of the Issuer.

3. Title. Title to the Notes will pass on registration by the Issuer of any transfer thereof in accordance with Condition 11. The Holder will (except as otherwise required by Law) be treated as the absolute owner of the Notes (whether or not overdue and regardless of any notice of ownership, trust or any interest in it or any writing on, or the theft or loss of, the Certificates issued in respect of them) for the purpose of receiving payment and for all other purposes.

4. Status

4.1 The Notes constitute direct and unconditional senior secured obligations of the Issuer and rank equally and without any preference amongst themselves. The payment obligations of the Issuer under the Notes will (subject to any obligations preferred by mandatory provisions of Law) rank at least *pari passu* with all other present and future direct, unconditional and unsubordinated obligations of the Issuer. No application will be made for a listing of the Notes on any stock exchange.

4.2 The payment obligations and the performance of all of the obligations of the Issuer under the Notes are secured by the New Share Charge. In the event of the occurrence of an Event of Default or in any other event where the New Share Charge becomes enforceable, the Holder may, and in accordance with the New Share Charge, enforce the security interest created under the New Share Charge (including, without limitation, by taking possession or disposing of or realising the Shares charged under the New Share Charge in addition to, or in lieu of taking such other action as may be permitted against the Issuer).

5. Maturity Date

5.1 The outstanding principal amount which is payable under the Notes pursuant to the Conditions shall be due and payable on 1 March 2020 (the “**Maturity Date**”), unless the maturity of the Notes is accelerated upon the occurrence of an Event of Default set forth in Condition 9.2 or upon the occurrence of a redemption event pursuant to Condition 9.3.

5.2 The Notes may not be repaid or otherwise redeemed other than in accordance with the Conditions. For the avoidance of doubt, the Issuer may not at its option repay or redeem the Notes prior to the Maturity Date, save as permitted under Condition 9.3 hereof.

## 6. Interest

6.1 Interest shall accrue on the Notes from and including the issue date of the Notes until and including the date on which the Notes are redeemed in accordance with the Conditions at the rate of 10% per annum on the outstanding principal amount of the Notes.

6.2 All the interest under this Condition 6 shall be due and payable in cash by the Issuer in arrears on the first day of each December, March, June and September, from and including the issue date of the Notes to and including the date on which the Notes are redeemed in accordance with the Conditions. Pre-paid interest will not be refundable in any event, including the occurrence of an EOD redemption under Condition 9.2.

6.3 All the interest under this Condition 6 shall be calculated on the basis of a 360-day year of twelve 30-day months and in case of an incomplete month, the actual number of days elapsed. The Issuer shall pay to the Holder all the interest under this Condition 6 in accordance with Condition 10.2.

## 7. Default Interest

If any Default occurs, (a) any amount which is not paid when due under the Notes or (b) any outstanding principal amount of the Notes (in the case of occurrence of any Default other than the failure by the Issuer to pay any amount which is due under the Notes) (as the case may be) shall bear additional interest (both before and after judgment and payable on demand) from and including the date of occurrence of the Default until the earlier of (i) the date on which the Notes are fully redeemed pursuant to the Conditions, and (ii) the date on which such Default ceases to occur (which includes but is not limited to the full settlement of any interest accrued and outstanding under this Condition 7), at the rate of 18% per annum (“**Default Interest**”).

## 8. Negative Pledge and Other Covenants

8.1 The Issuer covenants with the Holder from time to time and at all times while any of the Notes remains outstanding that, except as expressly permitted under the Transaction Documents or with the prior written consent of the Majority Holders, the Issuer will not, and will procure that no Group Member will:

- (a) cease to conduct or carry on the Business or engage in any business activity other than the Business;
- (b) amend the accounting policies previously adopted or change its fiscal year;
- (c) acquire any assets, property or undertaking of any nature, or set up or create any Affiliate (other than investments in the shares of the other Group Members or acquisitions of investments in cash and cash equivalents or acquisitions or investments

made in the Ordinary Course of Business) where the consideration for such acquisition will exceed RMB10,000,000 individually;

(d) (i) other than to other Group Members, borrow or raise any money or incur any Indebtedness (in whatever form or evidenced by whatever instrument) or give any guarantee, indemnity, surety or security in respect of any Indebtedness (in each case other than any Indebtedness existing on the date hereof and any refinancing thereof to the extent the amount of such refinancing Indebtedness does not exceed the amount so refinanced) if the principal amount of such Indebtedness incurred will exceed RMB40,000,000 individually or (ii) incur any Indebtedness that will cause the consolidated total liabilities of the Group to exceed 70% of its consolidated total assets at any time;

(e) enter into any contract or undertake any Liability, in each case in respect of any actual or contingent capital expenditure, where the amount of such capital expenditure will exceed RMB10,000,000 individually;

(f) repay any loans or Indebtedness (in whatever form or evidenced by whatever instrument) it owes to any Person (including its shareholders and directors) when an Event of Default has occurred and is continuing or would occur as a result thereof;

(g) lend any money or provide any Indebtedness (in whatever form or evidenced by whatever instrument) to any Person other than (i) trade credit made in the Ordinary Course of Business; and (ii) inter-Group loans and credit;

(h) terminate any agreement, arrangement or understanding or waive any right except for (i) terminations or waivers provided in the Ordinary Course of Business and (ii) terminations or waivers with respect to agreements, arrangements or understandings that do not exceed RMB10,000,000 individually;

(i) create or permit to arise any Lien securing any Indebtedness other than (i) Liens existing on the date hereof or securing any refinancing Indebtedness in an amount not to exceed the amount so refinanced and (ii) Liens with respect to obligations of the Group that do not exceed RMB40,000,000 (or its equivalent in other currencies) individually;

(j) dispose of the ownership, possession, custody or control of any corporate books or records;

(k) pass any resolution for the winding up of any Group Member, undertake any merger or restructuring concerning any Group Member, or apply for the appointment of a receiver, manager or judicial manager or like officer;

(l) take any action that reclassifies any outstanding Shares into any Equity Securities having preferences or priority as to dividends or assets senior to or on parity with the preference of the Notes;

(m) dispose of or dilute all or any part of its interest in any of its Material Group Members to the extent that such Material Group Member ceases to be a Group Member;

(n) compromise, settle, release, discharge or compound any civil, criminal, arbitration or other proceedings or any liability, claim, action, demand or dispute brought by any Group Member against any third party or waive any right in relation to any of the foregoing where the value so compromised, settled, released, discharged or compounded will exceed RMB10,000,000 individually;

(o) release, compromise or write off any amount recorded in the books of account of the Issuer as owing by any debtors of the Issuer (other than such release, compromise or write off in the Ordinary Course of Business) where the amount so released, compromised or written off will exceed RMB2,000,000 individually;

(p) make any payment to any related party or Affiliate other than (i) any inter-Group transactions; and (ii) any such payment made on arm's length basis when no Event of Default has occurred and is continuing or would occur as a result thereof;

(q) sell or dispose of any of its undertaking, goodwill or assets other than (i) any such sale or disposal in its Ordinary Course of Business; (ii) any sale or disposal of obsolete, worn-out or damaged assets or properties; (iii) any inter-Group sales or disposals; (iv) any sale or disposition of assets for fair market value; and (v) any sale or disposition permitted under other clauses of this Clause 8.1;

(r) sell, transfer, license, charge, encumber or otherwise dispose of any of its Intellectual Property except as would not reasonably be expected to affect the Group's ability, as a whole, to carry out the Business in the Ordinary Course of Business;

(s) amend or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of the Holders under the Notes and the other Transaction Documents;

(t) obtain or seek to obtain a Tax advantage through any fraud or evasion;

(u) make or enter into any arrangement, undertaking or scheme which was at the time it was entered into a sham or fiscal nullity;

(v) enter into any deed, agreement, assignment, instrument or documents whatsoever binding on it which may result in any breach of any of the terms and conditions of the Notes and the other Transaction Documents; or

(w) enter into any agreement or undertaking to do any of the above.

8.2 The Issuer undertakes (and with respect to Conditions 8.2(l) to 8.2(q) undertakes to procure the other Group Members) from time to time and at all times while any of the Notes remains outstanding:

- (a) to send to the Holder, a copy of all audited accounts, reports or other notices, statements or circulars issued, to the shareholders of the Issuer generally in their capacity as such at, or as soon as practicable after, the time of issue thereof;
- (b) to maintain a listing for all the issued Shares on the Main Board of the HKSE;
- (c) to pay the principal, any interest payable on the Notes and other amounts due and payable under the Notes (including without limitation the redemption amount payable under Condition 9) in the manner specified in the Conditions;
- (d) to perform and observe its obligations contained in the Conditions to the intent that the Conditions shall enure to the benefit of each and every Holder;
- (e) forthwith to give written notice to the Holder upon the occurrence of any condition or event that constitutes a Default or an Event of Default;
- (f) forthwith to give written notice to the Holder of any compliance and filing obligations that may be imposed on the Holder by any Governmental Authority in relation to any transactions contemplated under the Transaction Documents;
- (g) forthwith to give written notice to the Holder upon the occurrence of any of the following:
  - (i) the trading in the Shares on the Main Board of the HKSE is suspended;
  - (ii) the Issuer submits an application to the Main Board of the HKSE to delist the Issuer from the Main Board of the HKSE;
  - (iii) the Issuer's shareholders approve a resolution to delist the Issuer from the Main Board of the HKSE; or
  - (iv) the Issuer ceases to be listed on the Main Board of the HKSE;
- (h) forthwith to execute and deliver upon the request of the Majority Holders and at the Issuer's expense, such additional documents, instruments and agreements as the Majority Holders may determine to be necessary to carry out the intent or provisions of the Notes, the Certificate, the Conditions and the other Transaction Documents and the transactions contemplated hereunder and thereunder;
  - (i) to procure that at no time shall there be in issue Shares of different par values;
  - (j) to ensure that the total equity attributable to owners of the Issuer is not less than RMB800,000,000 at all times (as determined by the Majority Holders by reference to the Issuer's published annual or interim financial statements);



(k) to comply with and procure the compliance and fulfillment of all requirements and conditions imposed by the Main Board of the HKSE or by any other relevant authority (in Hong Kong or elsewhere), and to ensure the continued compliance and fulfillment thereof;

(l) to maintain its registration and good standing under the Laws of the Cayman Islands (in the case of the Issuer) or other applicable Laws (in the case of other Material Group Members);

(m) to comply with the requirements of all applicable Laws in all material respects, including all Laws applicable to the conduct or operation of its business or the ownership or use of any of its assets and property;

(n) to obtain, comply with and maintain in full force and effect all the Approvals necessary for conducting its business and operations, performing its obligations under the Transaction Documents, and ensuring the legality, validity, enforceability and admissibility in evidence in proceedings of the Transaction Documents;

(o) to file, within the times and within the manner prescribed by applicable Law, all Tax Returns which are required to be filed by it, with respect to its business or otherwise, which Tax Returns shall reflect accurately its liability for all Tax for the periods covered thereby;

(p) to notify the Holder of any appointment or change of auditors within three (3) days after the date of such appointment or change;

(q) forthwith to give written notice to the Holder of any borrowing, fund raising (including issuance of notes or debt securities) or incurrence of Indebtedness by any Group Member (in whatever form or evidenced by whatever instrument); and

(r) to ensure that the net asset value of the Issuer is not less than RMB800,000,000 at all times (as determined by the Majority Holders by reference to the Issuer's published annual or interim financial statements).

## 9. Repayment and Redemption

9.1 Repayment upon Maturity. Unless previously cancelled in accordance with the Conditions or unless the Holder has previously issued an EOD Notice of Repayment under Condition 9.2, the Issuer shall redeem on the Maturity Date the entire outstanding principal amount of the Notes in an amount equal to the aggregate of (i) the Base Redemption Amount, (ii) interest accrued and outstanding under Condition 6, (iii) any Default Interest accrued and outstanding, and (iv) any other payment accrued and outstanding to the Holder pursuant to the Transaction Documents.

9.2 EOD Redemption. Upon the occurrence of any of the following events (“**Event of Default**”), the Holder shall be entitled to require, by lodging a notice of repayment in the form prescribed in Appendix I hereof (the “**EOD Notice of Repayment**”) at the address specified in

Condition 15, the whole or any part of Notes registered in its name to be redeemed at the EOD Redemption Amount, which at the time of such EOD Notice of Repayment shall become immediately due and payable:

(a) any failure by the Issuer to pay the principal or any interest due and payable on the Notes or any other amount due and payable under the Notes on its due date in the manner specified in the Transaction Documents;

(b) any breach or default by any Obligor in the performance or observance of or compliance with any obligations, covenants, undertakings or other terms under any of the Transaction Documents;

(c) any representation, warranty, certification or statement made by or on behalf of any Obligor under any of the Transaction Documents shall have been incorrect, misleading or false;

(d) any of the Transaction Documents shall be held in any judicial proceedings to be unenforceable or invalid, or not perfected, or cease or fail for any reason to be in full force and effect or to create or constitute an interest with the priority and effect required under such Transaction Document;

(e) it becomes illegal under any applicable Law for any Obligor to perform or comply with any one or more of its obligations under the Notes or any other Transaction Documents or any enforceable final ruling is rendered by a competent court to the effect that any obligation under the Notes or any other Transaction Documents is illegal or invalid;

(f) (i) any Indebtedness (whether actual or contingent) of any Obligor or any other Group Member becomes (or becomes capable of being declared) due and payable prior to its stated maturity by reason of any actual or potential default, event of default or the like (howsoever described), or (ii) any such Indebtedness is not paid when due or, as the case may be, within any applicable grace period, or (iii) any Obligor or any other Group Member fails to pay when due any amount payable by it under any present or future guarantee for, or indemnity in respect of, any Indebtedness, provided that, in each case, the amount of the relevant Indebtedness exceeds RMB40,000,000 individually or its equivalent in any other currency or currencies;

(g) any Obligor or any other Group Member becomes insolvent or bankrupt or is unable to pay its debts as they fall due (within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong) or any other applicable Bankruptcy Laws);

(h) an encumbrancer takes possession or an administrative or other receiver or an administrator or other similar officer is appointed of any part of the assets or revenues of any Obligor or any other Group Member, provided that the value of the relevant assets or revenues exceeds RMB40,000,000 individually or its equivalent in any other currency or currencies;

(i) a distress, attachment, execution, seizure before judgment or other legal process is levied, enforced or sued out on or against any part of the assets or revenues of any Obligor or any other Material Group Member (excluding any of a frivolous or vexatious nature), provided that the value of the relevant assets or revenues exceeds RMB10,000,000 individually or its equivalent in any other currency or currencies;

(j) any case, proceeding or other action being commenced by or against any Obligor or any other Group Member: (i) under any Law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganisation or relief of debtors (collectively, “**Bankruptcy Law**”), seeking to have an order for relief entered with respect to it, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganisation, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other similar relief to it or its debts; or (ii) seeking appointment of a liquidator, administrator, administrative receiver, receiver, trustee, custodian, conservator or other similar official for it or for all or any part of its assets. This Condition 9.2(j) shall not apply to any case, proceeding or other action that is of a frivolous or vexatious nature;

(k) any Obligor or any other Group Member pursuant to or within the meaning of the applicable Bankruptcy Laws, (i) commences a voluntary case, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) consents to the appointment of a liquidator, administrator, administrative receiver, receiver, trustee, assignee, liquidator or similar official (a “**Custodian**”), (iv) initiates or consents to any proceedings relating to itself under any Law for a readjustment or deferment of its obligations or any part of them, or (v) makes or enters into a general assignment or an arrangement or composition with or for the benefit of its creditors;

(l) a moratorium is agreed or declared in respect of any Indebtedness of the any Obligor or any other Group Member, or any Governmental Authority takes any step with a view to seizing, compulsorily purchasing or expropriating all or a substantial part of any Obligor or any other Group Member;

(m) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against any Obligor or any other Group Member in an involuntary case, (ii) appoints a Custodian of any Obligor or any other Group Member, or (iii) orders the liquidation or provisional liquidation of any Obligor or any other Group Member;

(n) any one or more events or changes shall have occurred that have caused or constitute or are reasonably likely to cause or constitute, in the aggregate, a Material Adverse Effect;

(o) any material breach by any Group Member of any Law, including all Laws applicable to the conduct or operation of their business or the ownership or use of any of their assets or any material breach by any Group Member of the Listing Rules;

(p) any case, proceeding or other action being commenced against any Group Member in each case which is not of a frivolous or vexatious nature where the amount in dispute exceeds RMB10,000,000 individually;

(q) the Issuer or any other Material Group Member ceases to carry on or conduct the Business or engages in any business activity other than the Business;

(r) the trading in the Shares on the Main Board of the HKSE is suspended for any reason for more than two (2) consecutive Business Days or the current listing of the Shares is cancelled or withdrawn;

(s) the number of Shares legally and beneficially owned by CDH is less than 42.697% of the total issued and outstanding Shares of the Issuer on a Fully-Diluted Basis at any time;

(t) the number of Shares charged under the Share Charge represent less than 42.697 % of the total issued and outstanding Shares of the Issuer on a Fully-Diluted Basis;

(u) a Change of Control occurs;

(v) the Issuer fails to obtain the prior written consent of the Holder before any Group Member engages in the activities expressly prohibited in Conditions 8.1(c) to 8.1(e);

(w) CDH creates or permits to subsist or arise any Lien, other than any Lien created under the Transaction Documents, over any of the Shares it presently and may in the future own;

(x) the total equity attributable to owners of the Issuer is less than RMB800,000,000 (based on the latest published annual or interim financial statements of the Issuer);

(y) the net asset value of the Issuer is less than RMB800,000,000 (as determined by the Majority Holders by reference to the Issuer's published annual or interim financial statements); and

(z) either (i) an Event of Default (as defined in the terms and conditions attached to the Note Certificate No.2) occurs; or (ii) an Event of Default (as defined in the terms and conditions attached to the Note Certificate No.3) occurs.

9.3 Optional Early Redemption. Unless the Holder has previously issued an EOD Notice of Repayment under Condition 9.2, the Issuer may at any time redeem, by delivering a written notice of early redemption in the form prescribed in Appendix III hereof to the Holder at least five (5) Business Days prior to the proposed date of such early redemption (the “**Optional Early Redemption Date**”), the outstanding principal amount of the Notes in whole or in part (the principal amount to be redeemed, the “**Early Redemption Principal Amount**”) in an amount equal to the aggregate of:

- (a) the Early Redemption Principal Amount;
- (b) interest accrued and outstanding under Condition 6 on the Early Redemption Principal Amount;
- (c) Default Interest (where applicable) accrued and outstanding on the Early Redemption Principal Amount; and
- (d) any other payment accrued and outstanding to the Holder pursuant to these Conditions on the Early Redemption Principal Amount (together with the amount set forth in Conditions 9.3(a) to 9.3(c) above, collectively, the “**Early Redemption Amount**”);

provided that the Early Redemption Principal Amount for any redemption shall not be less than US\$2,420,000 or if the total principal amount of the Notes that remain outstanding is less than US\$2,420,000, the total outstanding principal amount of the Notes. The Issuer shall redeem the Early Redemption Principal Amount held by the Holder in an amount equal to the Early Redemption Amount on the Optional Early Redemption Date.

## 10. Tax and Payments

10.1 No Withholdings. All payments by the Issuer hereunder shall be made in U.S. dollars in immediately available funds free and clear of any withholdings or deductions for any present or future Taxes, imposts, levies, duties or other charges. In the event that the Issuer is required to make any such deduction or withholding from any amount paid, the Issuer shall pay to the Holder such additional amount as shall be necessary so that the Holder continues to receive a net amount equal to the full amount which the Holder would have received if such withholding or deduction had not been made.

10.2 Payments. All payments by the Issuer pursuant to the Conditions shall be received by the Holder not later than 4:00 p.m. (Hong Kong time) on the due date, by remittance to such U.S. dollar bank account in Hong Kong or elsewhere as the Holder may notify the Issuer from time to time but in any event at least two (2) Business Days prior to the due date or, if the Holder so requests, by cashiers order or other cleared funds. All payments on or in respect of the Notes or the indebtedness evidenced hereby shall be made to the Holder in immediately available and freely transferable U.S. dollars.

10.3 Due Date for Payment. If the due date for payment of any amount in respect of the Notes is not a Business Day, the Holder shall be entitled to payment on the next following Business Day in the same manner but shall not be entitled to be paid any interest in respect of any such delay. However, if the due date is the last day in that calendar month and that day is not a Business Day, the payment date shall be the immediately preceding Business Day.

## 11. Transfer and Certificates

11.1 Freely Transferrable. The Notes are freely transferrable (in whole or in part) by the Holder to any Person subject to compliance with all applicable Law. Any transfer of the

Notes may be in respect of the whole or any part of the outstanding principal amount of the Notes.

11.2 Notes Register. The Issuer shall maintain at Room 1907, 19/F, Tower 1 Raffles City Changning, 1133 Changning Road, Changning District, Shanghai, the PRC, a register (the “**Register**”) that provides a full and complete record of the name, address and other details of the Holder, particulars of the Notes held by it and particulars of all transfers of the Notes. The Holder or its representative may inspect the Register at any time during normal business hours or may require that the Issuer (at its expense) provides to the Holder either details of the Notes then outstanding or a certified true copy of the Register.

11.3 Form of Transfer. Subject to Condition 11.1, the Notes may be transferred in whole or in part by delivering the Certificate issued in respect of it, with a transfer form in the form prescribed in Appendix II hereof (the “**Transfer Form**”) duly completed and signed (and stamped if applicable), to the address referred to in Condition 14, whereupon the Issuer shall, within three (3) Business Days of such delivery, (a) enter such transfer of the Notes on the Register, and (b) issue one or more new Certificates which will be made available for collection at the address referred to in Condition 14 or, if so requested in the Transfer Form, be mailed by registered mail (free of charge to the Holder), to the address specified in the Transfer Form. No transfer of the Notes will be valid unless and until such transfer has been entered on the Register.

11.4 Cancellation of Certificate. Any Certificate delivered in respect of the Notes for the purposes of the transfer pursuant to Condition 11.3 will be cancelled forthwith upon issue of one or more new Certificates pursuant to Condition 11.3.

11.5 New Certificate for Partial Transfer. Where some but not all of the Notes in respect of which a Certificate is issued are to be transferred, a new Certificate in respect of the Notes not so transferred, will, within three (3) Business Days of delivery or surrender of the original Certificate to the Issuer be made available for collection at the address referred to in Condition 14 or, if so requested in the Transfer Form, be mailed by registered mail (free of charge to the Holder), to the address specified in the Transfer Form.

11.6 New Certificate upon Early Redemption. In the event that an early redemption occurs pursuant to Condition 9.3 and the principal amount of the Notes that is redeemed pursuant thereto is less than the outstanding principal amount of the Notes in respect of which a Certificate is issued, a new Certificate in respect of the Notes for the remaining outstanding principal amount after taking into account the redeemed principal amount will be mailed (free of charge to the Holder and at the risk of the Holder) to the address of the Holder as shown in the Register.

11.7 Costs. Registration of transfers of Notes will be effected without charge by or on behalf of the transferor. Any Tax, stamp duty, levy or other costs and expenses (including legal costs) which may be incurred by the transferor and the transferee in connection with any transfer of the Notes or any request therefor shall be borne by the Issuer and shall be paid by the Issuer to the transferor and/or the transferee upon demand. All costs and expenses associated with the preparation, issue and delivery of a new Certificate for the Notes pursuant to this Condition 11 shall be borne by the Issuer.

11.8 Certificates. Every Holder will be entitled to one or more Certificates in the form or substantially in the form of that shown in Exhibit 1 of the Note Exchange Agreement. All Certificates shall be issued under the common seal of the Issuer. Notwithstanding anything to the contrary herein, the Issuer shall comply with the provisions of the Certificates and the Conditions in all respects and the Notes shall be held subject to such provisions and Conditions which shall be binding upon the Issuer and the Holders and all persons claiming through or under them respectively.

11.9 Acknowledgement as to Covenants. The Issuer hereby acknowledges and covenants that the benefit of the covenants, obligations and conditions on the part of or binding upon it contained in the Notes and the Conditions shall enure to each and every Holder.

12. Enforcement of Rights. Save as expressly provided for in the Conditions, each Holder shall be entitled severally to enforce the covenants, obligations and conditions on the part of or binding upon the Issuer contained in the Notes and the Conditions against the Issuer insofar as each such Holder's Notes are concerned, without the need to join the allottee of any such Notes or any intervening or other Holder in the proceedings for such enforcement. Save as expressly provided for in the Notes and subject to the other Conditions, at any time after any payment in relation to any Notes has become due and payable or any obligation of the Issuer has not been performed in accordance with the Conditions, the Holder may, at its discretion and without further notice, take such proceedings as it may think fit to enforce payment of the amount due and payable to it in respect of the Notes held by it and to enforce the provisions of the Notes held by it and the Conditions.

13. Replacement Notes

13.1 Lost or Mutilated Certificate. If the Certificate for the Notes is lost or mutilated the Holder shall forthwith notify the Issuer and a replacement Certificate for the Notes shall be issued if the Holder provides the Issuer with:

- (a) the mutilated Certificate for the Notes; and
- (b) a declaration by the Holder or an officer of the Holder that the Notes had been lost or mutilated (as the case may be) or other evidence that the Certificate for the Notes had been lost or mutilated.

13.2 Cancellation. Any Certificate for the Notes replaced in accordance with this Condition shall forthwith be cancelled. All costs and expenses associated with the preparation, issue and delivery of a replacement Certificate for the Notes shall be borne by the Issuer.

14. Relevant Address in Hong Kong

The address of the Issuer for the deposit of a Transfer Form, for presentation and surrender of any Certificate and for all other purposes as specified in the Conditions will be:

5/F, 180 Hennessy Road, Wan Chai, Hong Kong

or such other address in Hong Kong as may be notified by the Issuer to the Holder in writing from time to time.

15. Notice

15.1 Any notice required or permitted pursuant to the Conditions shall be given in writing and shall be given either personally or by sending it by next-day or second-day courier service, fax, email or similar means to the contact information of the relevant party as provided in Condition 15.3 below (or at such other address as such party may designate by five (5) Business Days' advance written notice to the other parties given in accordance with this Condition 15).

15.2 Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered (a) if delivered by hand, at the time of delivery; (b) if sent by pre-paid post, on the fourth (4<sup>th</sup>) Business Day after the time of posting; (c) if given or made by fax, immediately after it has been despatched with a confirmation that all pages have been transmitted; and (d) if sent by email, immediately after it has been despatched from the sender's outbox, except where despatch is not on a Business Day in the cases of (c) and (d). If a communication would otherwise be deemed to have been delivered outside normal business hours (after 5:30 p.m. on a Business Day) in the time zone of the territory of the recipient, it shall be deemed to have been delivered at 9:30 a.m. on the next Business Day in the territory of the recipient. In proving service of a communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a pre-paid letter or that the facsimile transmission or email was despatched and a confirmatory transmission report or other acknowledgment of good receipt was received.

15.3 The contact information for service of a notice in connection with the Conditions.

To the Holder:

Address and Fax as shown in the Register

To the Issuer:

Address: 5/F, 180 Hennessy Road  
Wan Chai  
Hong Kong  
With a copy to: Room 1907, 19/F, Tower 1 Raffles City Changqing, 1133  
Changning Road, Changning District, Shanghai, the PRC  
Fax: +86 21 6140 8810  
Attn: Gavin Liu

16. Amendments. Any term of the Certificate or the Conditions may only be amended with the written consent of the Issuer and the Majority Holders, provided that a Holder may always waive any of its rights hereunder in writing without the written consent of the Majority Holders. Any amendment effected in accordance with this Condition 16 shall be binding upon the Issuer and the Holders.



## 17. Confidentiality

17.1 Each of the Issuer and each Holder acknowledges that the terms and conditions of the Notes, the Conditions and the other Transaction Documents, any term sheet or memorandum of understanding entered into pursuant to the transactions contemplated hereby, and all appendices and amendments hereto and thereto, the transactions contemplated hereby and thereby, including their existence, and all information furnished by any party or its Representatives to any other party hereof or any of the Representatives of such party (collectively, the “**Confidential Information**”), shall be considered confidential information and shall not be disclosed by any party to any third party except in accordance with the provisions set forth below.

17.2 Subject to the requirements of the Hong Kong Stock Exchange or any other applicable laws and regulations, no party shall make any announcement disclosing the Holder’s investment in the Issuer hereunder, any of the Confidential Information or the name of the Holder (or any part or any derivations thereof) in a press release, public announcement, conference, professional or trade publication, mass marketing materials or other public disclosure without obtaining in each instance the prior written consent of the other party. The Holder may request to review and edit the portions of any such announcement that discusses, refers to or otherwise describes the Holder.

17.3 Notwithstanding anything to the contrary contained herein, and subject to applicable Laws:

(a) the Issuer may disclose the Confidential Information (1) to its Affiliates and their respective Representatives who need to know such information strictly in relation to the performance of the Transaction Documents, in each case only where such Persons are informed of the confidential nature of the Confidential Information and are under appropriate non-disclosure obligations substantially similar to those set forth in this Condition 17; (2) as required by Law, Governmental Authorities, legal process, and/or exchanges; (3) contained in press releases or public announcements of the Issuer pursuant to Condition 17.2; or (4) to any Person to which disclosure is approved in writing by the Holder.

(b) each Holder (and its respective fund managers, sub-investment manager and adviser and Affiliates) may disclose the Holder’s investment in the Issuer to any Person.

(c) each Holder shall have the right to disclose:

(i) the Confidential Information to its Affiliates, its fund manager, and its or their respective Representatives, advisors (including accountants, legal counsel and consultants), investors (including limited partners, shareholders and potential investors), clients, insurers and creditors in each case only where such Persons are informed of the confidential nature of the Confidential Information and are under appropriate non-disclosure obligations substantially similar to those set forth in this Condition 17;

(ii) any information for fund and inter-fund reporting purposes;

(iii) any information as required by Law, Governmental Authorities, legal process, and/or exchanges;

(iv) any information to bona fide prospective purchasers/investors of the Notes or other security or other interests in the Issuer; and

(v) any information contained in press releases or public announcements of the Issuer pursuant to Condition 17.2.

17.4 In the event that the Issuer is requested or becomes legally compelled and/or as required under the Listing Rules (including without limitation, pursuant to any applicable Tax, securities, or other Laws of any jurisdiction and/or the Listing Rules) to disclose any Confidential Information, the Issuer (the “**Disclosing Party**”) shall to the extent permitted by Law provide the Holder with prompt written notice of that fact and shall consult with the Holder regarding such disclosure. At the request of the Holder, the Disclosing Party shall, to the extent reasonably possible and with the cooperation and reasonable efforts of the Holder, seek a protective order, confidential treatment or other appropriate remedy. In any event, the Disclosing Party shall furnish only that portion of the information that is legally required and/or as required under the Listing Rules and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such information.

17.5 Notwithstanding any other provision of this Condition 17, the confidentiality obligations of the parties hereto under this Condition 17 shall not apply to: (a) information which a restricted party learns from a third party having the right to make the disclosure, provided the restricted party complies with any restrictions imposed by the third party; (b) information which is rightfully in the restricted party’s possession prior to the time of disclosure by the protected party and not acquired by the restricted party under a confidentiality obligation; (c) information which was in the public domain or otherwise known to the restricted party before it is furnished to it by another party hereto or, after it is furnished to that restricted party, enters the public domain without breach by that restricted party of this Condition 17; or (d) information which a restricted party develops independently without reference to the Confidential Information.

18. Severability. If one or more provisions of the Conditions are held to be unenforceable under applicable Law, such provision shall be excluded from the Conditions and the balance of the Conditions shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

19. No Waiver. Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof will not be deemed a waiver of such term, covenant, or condition, nor will any waiver or relinquishment of, or failure to insist upon strict compliance with, any right, power or remedy hereunder at any one or more times be deemed a waiver or relinquishment of such right, power or remedy at any other time or times.

20. Rights Cumulative. Each and all of the various rights, powers and remedies of a party will be considered to be cumulative with and in addition to any other rights, powers and remedies which such party may have at law or in equity in the event of the breach of any of the terms of the Notes or any provisions of the Conditions. The exercise or partial exercise of any

right, power or remedy will neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such party.

21. Independent Legal Advice. The Issuer agrees and acknowledges that (a) it was afforded sufficient opportunity to obtain independent legal advice regarding the Notes and the transactions contemplated under the other Transaction Documents; and (b) it fully understands all of the terms, conditions, restrictions and provisions set forth in the Notes and the other Transaction Documents and the obligations and liabilities thereof, and that each such term, condition, restriction and provision is fair and reasonable with respect to the subject matter thereof.

22. No Presumption. The Issuer agrees and acknowledges that any applicable Law that would require interpretation of any claimed ambiguities in the Notes against the party that drafted it has no application and is expressly waived. If any claim is made by the Issuer relating to any conflict, omission or ambiguity in the provisions of the Notes, no presumption or burden of proof or persuasion will be implied because the Notes were prepared by or at the request of that party or its counsel.

23. Governing Law and Jurisdiction

23.1 The Notes and the Conditions, including any non-contractual obligations arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the Laws of Hong Kong without regard to any conflict of laws principles which may exclude the Laws of Hong Kong.

23.2 Each party agrees that any legal action or proceeding arising out of or relating to the Notes and the Conditions (including any non-contractual disputes or claims) may be brought in the courts of Hong Kong and irrevocably submits to the non-exclusive jurisdiction of such courts, provided that the Issuer agrees that it may only commence proceedings arising out of or relating to the Notes and the Conditions in the courts of Hong Kong.

23.3 This Condition 23 is for the benefit of the Holders only. Nothing herein shall limit the right of the Holders to commence any legal action against the Issuer and/or its property in any other jurisdiction or to serve process in any manner permitted by Law, and the taking of proceedings in any jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

23.4 The Issuer irrevocably and unconditionally waives any objection which it may now or hereafter have to the choice of Hong Kong as the venue of any legal action arising out of or relating to the Notes and the Conditions and any claim that any such legal action has been brought in an inconvenient or inappropriate forum. The Issuer also agrees that a final judgment against it in any such legal action shall be final and conclusive and may be enforced in any other jurisdiction, and that a certified or otherwise duly authenticated copy of the judgment shall be conclusive evidence of the fact and amount of its indebtedness.

23.5 The Issuer consents generally in respect of any proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making,

enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any Governmental Order which may be made or given in such proceedings.

- 23.6 To the extent that the Issuer may now or hereafter be entitled, in any jurisdiction in which proceedings may at any time be commenced with respect to the Notes and the Conditions, to claim for itself or its assets any immunity (sovereign or otherwise) from suit, jurisdiction of any court, attachment prior to judgment, attachment in aid of execution of a judgment, execution of a judgment or from set off, banker's lien, counterclaim or any other legal process or remedy with respect to its obligations under the Notes and the Conditions and/or to the extent that in any such jurisdiction there may be attributed to the Issuer, any such immunity (whether or not claimed), the Issuer hereby, to the fullest extent permitted by applicable Law, irrevocably agrees not to claim and waives any such immunity.
- 23.7 The Issuer irrevocably appoints New Focus Autolife Holdings Limited (Hong Kong Company Registration No. 1528836), whose address is 3/F New York House, 60 Connaught Road Central, Hong Kong, as its process agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Hong Kong. If for any reason the process agent named above (or its successor) no longer serves as process agent of the Issuer for this purpose, the Issuer shall promptly appoint a successor agent and notify the Holder thereof. Failing such appointment within 15 days after the date of cessation of services as a process agent, the Holder may appoint a substitute process agent for the Issuer. The Issuer agrees that any such legal process is sufficiently served on it if delivered to such process agent for service at its registered office for the time being in Hong Kong whether or not such process agent gives notice thereof to the Issuer. Nothing herein affects the right to serve process in any other manner permitted by Law.

**APPENDIX I**  
**FORM OF EOD NOTICE OF REPAYMENT**

**US\$4,840,000**  
**NOTES DUE 2020**  
(the “Notes”)

TO: **NEW FOCUS AUTO TECH HOLDINGS LIMITED**

(the “**Issuer**”)

Attention: The Directors

[Date]

Unless otherwise specified, capitalized terms used in this letter have the meanings set forth in the Note Exchange Agreement entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) in relation to the Notes dated 26 September 2019 (as the same may be amended, supplemented or otherwise modified from time to time) and the Conditions attached to the Certificate of the Notes.

We hereby give notice that an Event of Default has occurred.

We, being the registered holder(s) of the Notes represented by the attached Note Certificate, hereby give notice that we exercise our option to redeem such Notes pursuant to Condition 9.2 and require the Issuer to repay the EOD Redemption Amount, on [●] in accordance with the Conditions.

We require you to pay to us in the manner authorized below the moneys to which we are entitled pursuant to this EOD Notice of Repayment.

We authorize and request you to pay the said sum by wire transfer to the bank account(s) set forth below:

*[Insert bank account(s) details]*

Name of Holder:  
.....

Date:  
.....

Address:  
.....

Tel. No:  
.....

Fax No:  
.....

Signature:  
.....

**APPENDIX II**  
**FORM OF TRANSFER FORM**  
**INSTRUMENT OF TRANSFER**

**US\$4,840,000**  
**NOTES DUE 2020**  
(the “Notes”)

**NEW FOCUS AUTO TECH HOLDINGS LIMITED**  
on [•]

**FOR VALUE RECEIVED** [*Name of transferor*] hereby transfers to:

[*Name of transferee*], a company incorporated in [•] whose registered office is situated at [•]  
 (“**Transferee**”)

Unless otherwise specified, capitalized terms used in this letter have the meanings set forth in the Note Exchange Agreement entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) in relation to the Notes dated 26 September 2019 (as the same may be amended, supplemented or otherwise modified from time to time) and the Conditions attached to the Certificate of the Notes.

US\$[•] principal amount of the Notes in respect of which the attached Note Certificate(s) is/are issued, and all rights in respect thereof.

All payments in respect of the Notes hereby transferred are to be made by cashier order (unless otherwise instructed by the Transferee).

The address of the Transferee for the purposes of Condition 11 of the Notes Terms and Conditions in relation to the Notes is [that stated above] /  
[\_\_\_\_\_].

**Date:** \_\_\_\_\_

Signed by for and on behalf of  
[transferor]:

Signed by for and on behalf of  
[transferee]:

\_\_\_\_\_

\_\_\_\_\_

**APPENDIX III**  
**FORM OF NOTICE OF OPTIONAL EARLY REDEMPTION**

**US\$4,840,000**  
**NOTES DUE 2020**  
(the “Notes”)

TO: [Name of the Holder]  
  
(the “Holder”)  
  
Attention: The Directors

[Date]

Unless otherwise specified, capitalized terms used in this letter have the meanings set forth in the Note Exchange Agreement entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) in relation to the Notes dated 26 September 2019 (as the same may be amended, supplemented or otherwise modified from time to time) and the Conditions attached to the Certificate of the Notes.

We, being the Issuer, hereby give notice that we exercise our right to redeem US\$[●] principal amount of the Notes in accordance with Condition 9.3 of the Conditions.

The Optional Early Redemption Date is [●].

The redemption will be fully satisfied by payment of [*Early Redemption Amount*] to the Holder in accordance with the Conditions.

**NEW FOCUS AUTO TECH HOLDINGS  
LIMITED**

Date:

.....

.....

Address:

Tel. No:

.....

.....

Signature:

Fax No:

.....

**EXHIBIT 1-B**

**FORM OF NOTE CERTIFICATE NO. 2**



**NOTES CERTIFICATE**

Certificate No. 002

Principal Amount: US\$7,260,000

**NEW FOCUS AUTO TECH HOLDINGS LIMITED**  
(新焦点汽车技术控股有限公司)

(the “**Issuer**”)

(an exempted company incorporated in the Cayman Islands)

**Notes due 2020**

**THIS CERTIFICATE** (the “**Certificate**”) represents in aggregate, the principal amount of US\$7,260,000 notes due 2020 (the “**Notes**”) of the Issuer, issued pursuant to the Memorandum and Articles, a resolution of the board of directors of the Issuer passed on 26 September 2019, and the note exchange agreement dated 26 September 2019 entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) (as the same may be amended, supplemented or otherwise modified from time to time) (the “**Note Exchange Agreement**”).

**THIS IS TO CERTIFY** that CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司), whose registered office is at 12/F, CCB Tower, 3 Connaught Road Central, Central, Hong Kong is the registered holder of the Notes of the principal amount stated above. The Notes are issued subject to and with the benefit of the attached terms and conditions (the “**Conditions**”) which are deemed to be part of it. The Conditions are binding on both the holder of the Notes and the Issuer. The Issuer undertakes (both to the holder of the Notes and to any lawful transferee thereof pursuant to Condition 11) to perform its obligations in accordance with the Conditions.

The Notes are secured by a certain share charge as more particularly described in the Note Exchange Agreement and guaranteed by a corporate guarantee as more particularly described in the Note Exchange Agreement.

The Holder (as defined in the Conditions) is entitled to all of the benefits of the Notes and may enforce the agreements contained herein and exercise the remedies provided for hereby or otherwise available in respect hereof, all in accordance with the Conditions.

**Note:** The Notes cannot be transferred by delivery and are only transferable to the extent permitted by Condition 11. This Certificate must be delivered to the Issuer for cancellation and reissue of an appropriate certificate in the event of any such transfer.

Date:

**THE COMMON SEAL of**

**NEW FOCUS AUTO TECH  
HOLDINGS LIMITED**

was affixed to this Deed  
in the presence of:

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Common Seal

\_\_\_\_\_  
Signature of authorized person

\_\_\_\_\_  
Name of authorized person

\_\_\_\_\_  
Position

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

## TERMS AND CONDITIONS

### 1. Definitions and Interpretation.

1.1 Definitions. Unless defined hereunder or the context otherwise expressly requires, words and expressions used in the Conditions shall have the same meaning as given to them in the Note Exchange Agreement.

“**Administrative Fee**” means the administrative fee in an amount of US\$726,000 paid by the Issuer to the Holder in cash on 26 September 2019.

“**Bankruptcy Law**” has the meaning set forth in Condition 9.2(j) hereof.

“**Base Redemption Amount**” means, in respect of any principal amount of the Notes outstanding and to be redeemed by the Issuer pursuant to Condition 9, an amount equal to 100% of the principal amount stated in the Certificate.

“**Conditions**” means the terms and conditions attached to this Certificate (as amended from time to time), and “**Condition**” refers to the relative numbered paragraph of the Conditions.

“**Confidential Information**” has the meaning set forth in Condition 17.1 hereof.

“**Custodian**” has the meaning set forth in Condition 9.2(k) hereof.

“**Default**” means an Event of Default or any event or circumstance which would (with the expiry of any grace period, the giving of notice, the making of any determination or a combination thereof) be an Event of Default.

“**Default Interest**” has the meaning set forth in Condition 7 hereof.

“**Early Redemption Amount**” has the meaning set forth in Condition 9.3 hereof.

“**Early Redemption Principal Amount**” has the meaning set forth in Condition 9.3 hereof.

“**EOD Notice of Repayment**” has the meaning set forth in Condition 9.2 hereof.

“**EOD Redemption Amount**” means, upon early redemption of the Notes due to the occurrence of any Event of Default, the amount payable by the Issuer to the Holder in respect of the outstanding principal amount of the Notes on the date of such redemption, being the aggregate of:

- (a) the Base Redemption Amount;
- (b) interest accrued and outstanding under Condition 6;
- (c) a premium, which in the aggregate with the Base Redemption Amount, will provide the Holder with an IRR of 15% per annum on the Base Redemption

Amount, calculated from 2 September 2019 to the date on which Default Interest begins to accrue in relation to such Event of Default triggering the redemption under Condition 9.2, taking into account all interest paid on the Notes, any accrued and outstanding interest under subclause (b) above but excluding (i) any Default Interest paid or any Default Interest accrued and outstanding, and (ii) the Administrative Fee;

- (d) any Default Interest accrued and outstanding; and
- (e) any other payment accrued and outstanding to the Holder pursuant to the Transaction Documents.

**“Event of Default”** has the meaning set forth in Condition 9.2 hereof and **“Events of Default”** shall be construed accordingly.

**“Holder”** means any person who is the registered holder of any Notes then outstanding and **“Holders”** shall be construed accordingly.

**“IRR”** means an annual compounded, cumulative internal rate of return that produces a net present value of all cash flows (positive and negative) from an investment equal to zero.

**“Issuer”** mean New Focus Auto Tech Holdings Limited, an exempted company incorporated in the Cayman Islands with its principal place of business at 5/F, 180 Hennessy Road, Wan Chai, Hong Kong, and whose ordinary shares are listed on the Main Board of the HKSE with stock code 360.

**“Majority Holders”** has the meaning set forth in Condition 1.3 hereof.

**“Material Group Member”** means the Issuer and any other Group Member that has gross assets representing 5% or more of the total gross assets of the Group (calculated on a consolidated basis).

**“Maturity Date”** has the meaning set forth in Condition 5 hereof.

**“Optional Early Redemption Date”** has the meaning set forth in Condition 9.3 hereof.

**“Register”** has the meaning set forth in Condition 11.2 hereof.

**“Total Assets”** means the total consolidated gross assets of the Group (based on the latest published annual or interim financial statement of the Issuer).

**“Transfer Form”** has the meaning set forth in Condition 11.3 hereof.

1.2 The provisions of Clauses 1.2, 1.3 and 1.4 of the Note Exchange Agreement (where appropriate) shall apply to the Conditions as though they were set forth in full in the Conditions, except that references to “this Agreement” therein are to be construed as references to the Conditions.

1.3 Where under the Conditions any matter is expressed to require the consent, approval, waiver or determination of the Holders, such consent, approval, waiver or determination shall, except as otherwise stated, be deemed to be given or made if agreed to by holders of Notes representing more than 50% of the total principal amount of all the Notes outstanding at the relevant time, which must also include the agreement of CCBI Solar Energy (Holding) Limited for so long as it remains the holder of any of the Notes (the “**Majority Holders**”). Any consent, approval, waiver or determination given by any Holder or Holders not in compliance with the provisions of this Condition 1.3 shall not be valid and binding on the Issuer and other Holders.

1.4 A Default is continuing if it has not been remedied or waived in writing.

2. Form. The Notes are in registered form only. The Holder will be issued one or more Certificates in respect of its registered holding of the Notes. All Certificates shall be issued under the common seal of the Issuer.

3. Title. Title to the Notes will pass on registration by the Issuer of any transfer thereof in accordance with Condition 11. The Holder will (except as otherwise required by Law) be treated as the absolute owner of the Notes (whether or not overdue and regardless of any notice of ownership, trust or any interest in it or any writing on, or the theft or loss of, the Certificates issued in respect of them) for the purpose of receiving payment and for all other purposes.

4. Status

4.1 The Notes constitute direct and unconditional senior secured obligations of the Issuer and rank equally and without any preference amongst themselves. The payment obligations of the Issuer under the Notes will (subject to any obligations preferred by mandatory provisions of Law) rank at least *pari passu* with all other present and future direct, unconditional and unsubordinated obligations of the Issuer. No application will be made for a listing of the Notes on any stock exchange.

4.2 The payment obligations and the performance of all of the obligations of the Issuer under the Notes are secured by the New Share Charge. In the event of the occurrence of an Event of Default or in any other event where the New Share Charge becomes enforceable, the Holder may, and in accordance with the New Share Charge, enforce the security interest created under the New Share Charge (including, without limitation, by taking possession or disposing of or realising the Shares charged under the New Share Charge in addition to, or in lieu of taking such other action as may be permitted against the Issuer).

5. Maturity Date

5.1 The outstanding principal amount which is payable under the Notes pursuant to the Conditions shall be due and payable on 1 June 2020 (the “**Maturity Date**”), unless the maturity of the Notes is accelerated upon the occurrence of an Event of Default set forth in Condition 9.2 or upon the occurrence of a redemption event pursuant to Condition 9.3.

5.2 The Notes may not be repaid or otherwise redeemed other than in accordance with the Conditions. For the avoidance of doubt, the Issuer may not at its option repay or redeem the Notes prior to the Maturity Date, save as permitted under Condition 9.3 hereof.

## 6. Interest

6.1 Interest shall accrue on the Notes from and including the issue date of the Notes until and including the date on which the Notes are redeemed in accordance with the Conditions at the rate of 10% per annum on the outstanding principal amount of the Notes.

6.2 All the interest under this Condition 6 shall be due and payable in cash by the Issuer in arrears on the first day of each December, March, June and September, from and including the issue date of the Notes to and including the date on which the Notes are redeemed in accordance with the Conditions. Pre-paid interest will not be refundable in any event, including the occurrence of an EOD redemption under Condition 9.2.

6.3 All the interest under this Condition 6 shall be calculated on the basis of a 360-day year of twelve 30-day months and in case of an incomplete month, the actual number of days elapsed. The Issuer shall pay to the Holder all the interest under this Condition 6 in accordance with Condition 10.2.

## 7. Default Interest

If any Default occurs, (a) any amount which is not paid when due under the Notes or (b) any outstanding principal amount of the Notes (in the case of occurrence of any Default other than the failure by the Issuer to pay any amount which is due under the Notes) (as the case may be) shall bear additional interest (both before and after judgment and payable on demand) from and including the date of occurrence of the Default until the earlier of (i) the date on which the Notes are fully redeemed pursuant to the Conditions, and (ii) the date on which such Default ceases to occur (which includes but is not limited to the full settlement of any interest accrued and outstanding under this Condition 7), at the rate of 18% per annum (“**Default Interest**”).

## 8. Negative Pledge and Other Covenants

8.1 The Issuer covenants with the Holder from time to time and at all times while any of the Notes remains outstanding that, except as expressly permitted under the Transaction Documents or with the prior written consent of the Majority Holders, the Issuer will not, and will procure that no Group Member will:

- (a) cease to conduct or carry on the Business or engage in any business activity other than the Business;
- (b) amend the accounting policies previously adopted or change its fiscal year;
- (c) acquire any assets, property or undertaking of any nature, or set up or create any Affiliate (other than investments in the shares of the other Group Members or acquisitions of investments in cash and cash equivalents or acquisitions or investments

made in the Ordinary Course of Business) where the consideration for such acquisition will exceed RMB10,000,000 individually;

(d) (i) other than to other Group Members, borrow or raise any money or incur any Indebtedness (in whatever form or evidenced by whatever instrument) or give any guarantee, indemnity, surety or security in respect of any Indebtedness (in each case other than any Indebtedness existing on the date hereof and any refinancing thereof to the extent the amount of such refinancing Indebtedness does not exceed the amount so refinanced) if the principal amount of such Indebtedness incurred will exceed RMB40,000,000 individually or (ii) incur any Indebtedness that will cause the consolidated total liabilities of the Group to exceed 70% of its consolidated total assets at any time;

(e) enter into any contract or undertake any Liability, in each case in respect of any actual or contingent capital expenditure, where the amount of such capital expenditure will exceed RMB10,000,000 individually;

(f) repay any loans or Indebtedness (in whatever form or evidenced by whatever instrument) it owes to any Person (including its shareholders and directors) when an Event of Default has occurred and is continuing or would occur as a result thereof;

(g) lend any money or provide any Indebtedness (in whatever form or evidenced by whatever instrument) to any Person other than (i) trade credit made in the Ordinary Course of Business; and (ii) inter-Group loans and credit;

(h) terminate any agreement, arrangement or understanding or waive any right except for (i) terminations or waivers provided in the Ordinary Course of Business and (ii) terminations or waivers with respect to agreements, arrangements or understandings that do not exceed RMB10,000,000 individually;

(i) create or permit to arise any Lien securing any Indebtedness other than (i) Liens existing on the date hereof or securing any refinancing Indebtedness in an amount not to exceed the amount so refinanced and (ii) Liens with respect to obligations of the Group that do not exceed RMB40,000,000 (or its equivalent in other currencies) individually;

(j) dispose of the ownership, possession, custody or control of any corporate books or records;

(k) pass any resolution for the winding up of any Group Member, undertake any merger or restructuring concerning any Group Member, or apply for the appointment of a receiver, manager or judicial manager or like officer;

(l) take any action that reclassifies any outstanding Shares into any Equity Securities having preferences or priority as to dividends or assets senior to or on parity with the preference of the Notes;

(m) dispose of or dilute all or any part of its interest in any of its Material Group Members to the extent that such Material Group Member ceases to be a Group Member;

(n) compromise, settle, release, discharge or compound any civil, criminal, arbitration or other proceedings or any liability, claim, action, demand or dispute brought by any Group Member against any third party or waive any right in relation to any of the foregoing where the value so compromised, settled, released, discharged or compounded will exceed RMB10,000,000 individually;

(o) release, compromise or write off any amount recorded in the books of account of the Issuer as owing by any debtors of the Issuer (other than such release, compromise or write off in the Ordinary Course of Business) where the amount so released, compromised or written off will exceed RMB2,000,000 individually;

(p) make any payment to any related party or Affiliate other than (i) any inter-Group transactions; and (ii) any such payment made on arm's length basis when no Event of Default has occurred and is continuing or would occur as a result thereof;

(q) sell or dispose of any of its undertaking, goodwill or assets other than (i) any such sale or disposal in its Ordinary Course of Business; (ii) any sale or disposal of obsolete, worn-out or damaged assets or properties; (iii) any inter-Group sales or disposals; (iv) any sale or disposition of assets for fair market value; and (v) any sale or disposition permitted under other clauses of this Clause 8.1;

(r) sell, transfer, license, charge, encumber or otherwise dispose of any of its Intellectual Property except as would not reasonably be expected to affect the Group's ability, as a whole, to carry out the Business in the Ordinary Course of Business;

(s) amend or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of the Holders under the Notes and the other Transaction Documents;

(t) obtain or seek to obtain a Tax advantage through any fraud or evasion;

(u) make or enter into any arrangement, undertaking or scheme which was at the time it was entered into a sham or fiscal nullity;

(v) enter into any deed, agreement, assignment, instrument or documents whatsoever binding on it which may result in any breach of any of the terms and conditions of the Notes and the other Transaction Documents; or

(w) enter into any agreement or undertaking to do any of the above.

8.2 The Issuer undertakes (and with respect to Conditions 8.2(l) to 8.2(q) undertakes to procure the other Group Members) from time to time and at all times while any of the Notes remains outstanding:



- (a) to send to the Holder, a copy of all audited accounts, reports or other notices, statements or circulars issued, to the shareholders of the Issuer generally in their capacity as such at, or as soon as practicable after, the time of issue thereof;
- (b) to maintain a listing for all the issued Shares on the Main Board of the HKSE;
- (c) to pay the principal, any interest payable on the Notes and other amounts due and payable under the Notes (including without limitation the redemption amount payable under Condition 9) in the manner specified in the Conditions;
- (d) to perform and observe its obligations contained in the Conditions to the intent that the Conditions shall enure to the benefit of each and every Holder;
- (e) forthwith to give written notice to the Holder upon the occurrence of any condition or event that constitutes a Default or an Event of Default;
- (f) forthwith to give written notice to the Holder of any compliance and filing obligations that may be imposed on the Holder by any Governmental Authority in relation to any transactions contemplated under the Transaction Documents;
- (g) forthwith to give written notice to the Holder upon the occurrence of any of the following:
  - (i) the trading in the Shares on the Main Board of the HKSE is suspended;
  - (ii) the Issuer submits an application to the Main Board of the HKSE to delist the Issuer from the Main Board of the HKSE;
  - (iii) the Issuer's shareholders approve a resolution to delist the Issuer from the Main Board of the HKSE; or
  - (iv) the Issuer ceases to be listed on the Main Board of the HKSE;
- (h) forthwith to execute and deliver upon the request of the Majority Holders and at the Issuer's expense, such additional documents, instruments and agreements as the Majority Holders may determine to be necessary to carry out the intent or provisions of the Notes, the Certificate, the Conditions and the other Transaction Documents and the transactions contemplated hereunder and thereunder;
  - (i) to procure that at no time shall there be in issue Shares of different par values;
  - (j) to ensure that the total equity attributable to owners of the Issuer is not less than RMB800,000,000 at all times (as determined by the Majority Holders by reference to the Issuer's published annual or interim financial statements);

(k) to comply with and procure the compliance and fulfillment of all requirements and conditions imposed by the Main Board of the HKSE or by any other relevant authority (in Hong Kong or elsewhere), and to ensure the continued compliance and fulfillment thereof;

(l) to maintain its registration and good standing under the Laws of the Cayman Islands (in the case of the Issuer) or other applicable Laws (in the case of other Material Group Members);

(m) to comply with the requirements of all applicable Laws in all material respects, including all Laws applicable to the conduct or operation of its business or the ownership or use of any of its assets and property;

(n) to obtain, comply with and maintain in full force and effect all the Approvals necessary for conducting its business and operations, performing its obligations under the Transaction Documents, and ensuring the legality, validity, enforceability and admissibility in evidence in proceedings of the Transaction Documents;

(o) to file, within the times and within the manner prescribed by applicable Law, all Tax Returns which are required to be filed by it, with respect to its business or otherwise, which Tax Returns shall reflect accurately its liability for all Tax for the periods covered thereby;

(p) to notify the Holder of any appointment or change of auditors within three (3) days after the date of such appointment or change;

(q) forthwith to give written notice to the Holder of any borrowing, fund raising (including issuance of notes or debt securities) or incurrence of Indebtedness by any Group Member (in whatever form or evidenced by whatever instrument); and

(r) to ensure that the net asset value of the Issuer is not less than RMB800,000,000 at all times (as determined by the Majority Holders by reference to the Issuer's published annual or interim financial statements).

## 9. Repayment and Redemption

9.1 Repayment upon Maturity. Unless previously cancelled in accordance with the Conditions or unless the Holder has previously issued an EOD Notice of Repayment under Condition 9.2, the Issuer shall redeem on the Maturity Date the entire outstanding principal amount of the Notes in an amount equal to the aggregate of (i) the Base Redemption Amount, (ii) interest accrued and outstanding under Condition 6, (iii) any Default Interest accrued and outstanding, and (iv) any other payment accrued and outstanding to the Holder pursuant to the Transaction Documents.

9.2 EOD Redemption. Upon the occurrence of any of the following events (“**Event of Default**”), the Holder shall be entitled to require, by lodging a notice of repayment in the form prescribed in Appendix I hereof (the “**EOD Notice of Repayment**”) at the address specified in

Condition 15, the whole or any part of Notes registered in its name to be redeemed at the EOD Redemption Amount, which at the time of such EOD Notice of Repayment shall become immediately due and payable:

(a) any failure by the Issuer to pay the principal or any interest due and payable on the Notes or any other amount due and payable under the Notes on its due date in the manner specified in the Transaction Documents;

(b) any breach or default by any Obligor in the performance or observance of or compliance with any obligations, covenants, undertakings or other terms under any of the Transaction Documents;

(c) any representation, warranty, certification or statement made by or on behalf of any Obligor under any of the Transaction Documents shall have been incorrect, misleading or false;

(d) any of the Transaction Documents shall be held in any judicial proceedings to be unenforceable or invalid, or not perfected, or cease or fail for any reason to be in full force and effect or to create or constitute an interest with the priority and effect required under such Transaction Document;

(e) it becomes illegal under any applicable Law for any Obligor to perform or comply with any one or more of its obligations under the Notes or any other Transaction Documents or any enforceable final ruling is rendered by a competent court to the effect that any obligation under the Notes or any other Transaction Documents is illegal or invalid;

(f) (i) any Indebtedness (whether actual or contingent) of any Obligor or any other Group Member becomes (or becomes capable of being declared) due and payable prior to its stated maturity by reason of any actual or potential default, event of default or the like (howsoever described), or (ii) any such Indebtedness is not paid when due or, as the case may be, within any applicable grace period, or (iii) any Obligor or any other Group Member fails to pay when due any amount payable by it under any present or future guarantee for, or indemnity in respect of, any Indebtedness, provided that, in each case, the amount of the relevant Indebtedness exceeds RMB40,000,000 individually or its equivalent in any other currency or currencies;

(g) any Obligor or any other Group Member becomes insolvent or bankrupt or is unable to pay its debts as they fall due (within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong) or any other applicable Bankruptcy Laws);

(h) an encumbrancer takes possession or an administrative or other receiver or an administrator or other similar officer is appointed of any part of the assets or revenues of any Obligor or any other Group Member, provided that the value of the relevant assets or revenues exceeds RMB40,000,000 individually or its equivalent in any other currency or currencies;

(i) a distress, attachment, execution, seizure before judgment or other legal process is levied, enforced or sued out on or against any part of the assets or revenues of any Obligor or any other Material Group Member (excluding any of a frivolous or vexatious nature), provided that the value of the relevant assets or revenues exceeds RMB10,000,000 individually or its equivalent in any other currency or currencies;

(j) any case, proceeding or other action being commenced by or against any Obligor or any other Group Member: (i) under any Law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganisation or relief of debtors (collectively, “**Bankruptcy Law**”), seeking to have an order for relief entered with respect to it, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganisation, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other similar relief to it or its debts; or (ii) seeking appointment of a liquidator, administrator, administrative receiver, receiver, trustee, custodian, conservator or other similar official for it or for all or any part of its assets. This Condition 9.2(j) shall not apply to any case, proceeding or other action that is of a frivolous or vexatious nature;

(k) any Obligor or any other Group Member pursuant to or within the meaning of the applicable Bankruptcy Laws, (i) commences a voluntary case, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) consents to the appointment of a liquidator, administrator, administrative receiver, receiver, trustee, assignee, liquidator or similar official (a “**Custodian**”), (iv) initiates or consents to any proceedings relating to itself under any Law for a readjustment or deferment of its obligations or any part of them, or (v) makes or enters into a general assignment or an arrangement or composition with or for the benefit of its creditors;

(l) a moratorium is agreed or declared in respect of any Indebtedness of the any Obligor or any other Group Member, or any Governmental Authority takes any step with a view to seizing, compulsorily purchasing or expropriating all or a substantial part of any Obligor or any other Group Member;

(m) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against any Obligor or any other Group Member in an involuntary case, (ii) appoints a Custodian of any Obligor or any other Group Member, or (iii) orders the liquidation or provisional liquidation of any Obligor or any other Group Member;

(n) any one or more events or changes shall have occurred that have caused or constitute or are reasonably likely to cause or constitute, in the aggregate, a Material Adverse Effect;

(o) any material breach by any Group Member of any Law, including all Laws applicable to the conduct or operation of their business or the ownership or use of any of their assets or any material breach by any Group Member of the Listing Rules;

(p) any case, proceeding or other action being commenced against any Group Member in each case which is not of a frivolous or vexatious nature where the amount in dispute exceeds RMB10,000,000 individually;

(q) the Issuer or any other Material Group Member ceases to carry on or conduct the Business or engages in any business activity other than the Business;

(r) the trading in the Shares on the Main Board of the HKSE is suspended for any reason for more than two (2) consecutive Business Days or the current listing of the Shares is cancelled or withdrawn;

(s) the number of Shares legally and beneficially owned by CDH is less than 42.697% of the total issued and outstanding Shares of the Issuer on a Fully-Diluted Basis at any time;

(t) the number of Shares charged under the Share Charge represent less than 42.697 % of the total issued and outstanding Shares of the Issuer on a Fully-Diluted Basis;

(u) a Change of Control occurs;

(v) the Issuer fails to obtain the prior written consent of the Holder before any Group Member engages in the activities expressly prohibited in Conditions 8.1(c) to 8.1(e);

(w) CDH creates or permits to subsist or arise any Lien, other than any Lien created under the Transaction Documents, over any of the Shares it presently and may in the future own;

(x) the total equity attributable to owners of the Issuer is less than RMB800,000,000 (based on the latest published annual or interim financial statements of the Issuer);

(y) the net asset value of the Issuer is less than RMB800,000,000 (as determined by the Majority Holders by reference to the Issuer's published annual or interim financial statements); and

(z) either (i) an Event of Default (as defined in the terms and conditions attached to the Note Certificate No.1) occurs; or (ii) an Event of Default (as defined in the terms and conditions attached to the Note Certificate No.3) occurs.

9.3 Optional Early Redemption. Unless the Holder has previously issued an EOD Notice of Repayment under Condition 9.2, the Issuer may at any time redeem, by delivering a written notice of early redemption in the form prescribed in Appendix III hereof to the Holder at least five (5) Business Days prior to the proposed date of such early redemption (the “**Optional Early Redemption Date**”), the outstanding principal amount of the Notes in whole or in part (the principal amount to be redeemed, the “**Early Redemption Principal Amount**”) in an amount equal to the aggregate of:

- (a) the Early Redemption Principal Amount;
- (b) interest accrued and outstanding under Condition 6 on the Early Redemption Principal Amount;
- (c) Default Interest (where applicable) accrued and outstanding on the Early Redemption Principal Amount; and
- (d) any other payment accrued and outstanding to the Holder pursuant to these Conditions on the Early Redemption Principal Amount (together with the amount set forth in Conditions 9.3(a) to 9.3(c) above, collectively, the “**Early Redemption Amount**”);

provided that the Early Redemption Principal Amount for any redemption shall not be less than US\$2,420,000 or if the total principal amount of the Notes that remain outstanding is less than US\$2,420,000, the total outstanding principal amount of the Notes. The Issuer shall redeem the Early Redemption Principal Amount held by the Holder in an amount equal to the Early Redemption Amount on the Optional Early Redemption Date.

## 10. Tax and Payments

10.1 No Withholdings. All payments by the Issuer hereunder shall be made in U.S. dollars in immediately available funds free and clear of any withholdings or deductions for any present or future Taxes, imposts, levies, duties or other charges. In the event that the Issuer is required to make any such deduction or withholding from any amount paid, the Issuer shall pay to the Holder such additional amount as shall be necessary so that the Holder continues to receive a net amount equal to the full amount which the Holder would have received if such withholding or deduction had not been made.

10.2 Payments. All payments by the Issuer pursuant to the Conditions shall be received by the Holder not later than 4:00 p.m. (Hong Kong time) on the due date, by remittance to such U.S. dollar bank account in Hong Kong or elsewhere as the Holder may notify the Issuer from time to time but in any event at least two (2) Business Days prior to the due date or, if the Holder so requests, by cashiers order or other cleared funds. All payments on or in respect of the Notes or the indebtedness evidenced hereby shall be made to the Holder in immediately available and freely transferable U.S. dollars.

10.3 Due Date for Payment. If the due date for payment of any amount in respect of the Notes is not a Business Day, the Holder shall be entitled to payment on the next following Business Day in the same manner but shall not be entitled to be paid any interest in respect of any such delay. However, if the due date is the last day in that calendar month and that day is not a Business Day, the payment date shall be the immediately preceding Business Day.

## 11. Transfer and Certificates

11.1 Freely Transferrable. The Notes are freely transferrable (in whole or in part) by the Holder to any Person subject to compliance with all applicable Law. Any transfer of the

Notes may be in respect of the whole or any part of the outstanding principal amount of the Notes.

11.2 Notes Register. The Issuer shall maintain at Room 1907, 19/F, Tower 1 Raffles City Changning, 1133 Changning Road, Changning District, Shanghai, the PRC, a register (the “**Register**”) that provides a full and complete record of the name, address and other details of the Holder, particulars of the Notes held by it and particulars of all transfers of the Notes. The Holder or its representative may inspect the Register at any time during normal business hours or may require that the Issuer (at its expense) provides to the Holder either details of the Notes then outstanding or a certified true copy of the Register.

11.3 Form of Transfer. Subject to Condition 11.1, the Notes may be transferred in whole or in part by delivering the Certificate issued in respect of it, with a transfer form in the form prescribed in Appendix II hereof (the “**Transfer Form**”) duly completed and signed (and stamped if applicable), to the address referred to in Condition 14, whereupon the Issuer shall, within three (3) Business Days of such delivery, (a) enter such transfer of the Notes on the Register, and (b) issue one or more new Certificates which will be made available for collection at the address referred to in Condition 14 or, if so requested in the Transfer Form, be mailed by registered mail (free of charge to the Holder), to the address specified in the Transfer Form. No transfer of the Notes will be valid unless and until such transfer has been entered on the Register.

11.4 Cancellation of Certificate. Any Certificate delivered in respect of the Notes for the purposes of the transfer pursuant to Condition 11.3 will be cancelled forthwith upon issue of one or more new Certificates pursuant to Condition 11.3.

11.5 New Certificate for Partial Transfer. Where some but not all of the Notes in respect of which a Certificate is issued are to be transferred, a new Certificate in respect of the Notes not so transferred, will, within three (3) Business Days of delivery or surrender of the original Certificate to the Issuer be made available for collection at the address referred to in Condition 14 or, if so requested in the Transfer Form, be mailed by registered mail (free of charge to the Holder), to the address specified in the Transfer Form.

11.6 New Certificate upon Early Redemption. In the event that an early redemption occurs pursuant to Condition 9.3 and the principal amount of the Notes that is redeemed pursuant thereto is less than the outstanding principal amount of the Notes in respect of which a Certificate is issued, a new Certificate in respect of the Notes for the remaining outstanding principal amount after taking into account the redeemed principal amount will be mailed (free of charge to the Holder and at the risk of the Holder) to the address of the Holder as shown in the Register.

11.7 Costs. Registration of transfers of Notes will be effected without charge by or on behalf of the transferor. Any Tax, stamp duty, levy or other costs and expenses (including legal costs) which may be incurred by the transferor and the transferee in connection with any transfer of the Notes or any request therefor shall be borne by the Issuer and shall be paid by the Issuer to the transferor and/or the transferee upon demand. All costs and expenses associated with the preparation, issue and delivery of a new Certificate for the Notes pursuant to this Condition 11 shall be borne by the Issuer.

11.8 Certificates. Every Holder will be entitled to one or more Certificates in the form or substantially in the form of that shown in Exhibit 1 of the Note Exchange Agreement. All Certificates shall be issued under the common seal of the Issuer. Notwithstanding anything to the contrary herein, the Issuer shall comply with the provisions of the Certificates and the Conditions in all respects and the Notes shall be held subject to such provisions and Conditions which shall be binding upon the Issuer and the Holders and all persons claiming through or under them respectively.

11.9 Acknowledgement as to Covenants. The Issuer hereby acknowledges and covenants that the benefit of the covenants, obligations and conditions on the part of or binding upon it contained in the Notes and the Conditions shall enure to each and every Holder.

12. Enforcement of Rights. Save as expressly provided for in the Conditions, each Holder shall be entitled severally to enforce the covenants, obligations and conditions on the part of or binding upon the Issuer contained in the Notes and the Conditions against the Issuer insofar as each such Holder's Notes are concerned, without the need to join the allottee of any such Notes or any intervening or other Holder in the proceedings for such enforcement. Save as expressly provided for in the Notes and subject to the other Conditions, at any time after any payment in relation to any Notes has become due and payable or any obligation of the Issuer has not been performed in accordance with the Conditions, the Holder may, at its discretion and without further notice, take such proceedings as it may think fit to enforce payment of the amount due and payable to it in respect of the Notes held by it and to enforce the provisions of the Notes held by it and the Conditions.

13. Replacement Notes

13.1 Lost or Mutilated Certificate. If the Certificate for the Notes is lost or mutilated the Holder shall forthwith notify the Issuer and a replacement Certificate for the Notes shall be issued if the Holder provides the Issuer with:

- (a) the mutilated Certificate for the Notes; and
- (b) a declaration by the Holder or an officer of the Holder that the Notes had been lost or mutilated (as the case may be) or other evidence that the Certificate for the Notes had been lost or mutilated.

13.2 Cancellation. Any Certificate for the Notes replaced in accordance with this Condition shall forthwith be cancelled. All costs and expenses associated with the preparation, issue and delivery of a replacement Certificate for the Notes shall be borne by the Issuer.

14. Relevant Address in Hong Kong

The address of the Issuer for the deposit of a Transfer Form, for presentation and surrender of any Certificate and for all other purposes as specified in the Conditions will be:

5/F, 180 Hennessy Road, Wan Chai, Hong Kong



or such other address in Hong Kong as may be notified by the Issuer to the Holder in writing from time to time.

15. Notice

15.1 Any notice required or permitted pursuant to the Conditions shall be given in writing and shall be given either personally or by sending it by next-day or second-day courier service, fax, email or similar means to the contact information of the relevant party as provided in Condition 15.3 below (or at such other address as such party may designate by five (5) Business Days' advance written notice to the other parties given in accordance with this Condition 15).

15.2 Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered (a) if delivered by hand, at the time of delivery; (b) if sent by pre-paid post, on the fourth (4<sup>th</sup>) Business Day after the time of posting; (c) if given or made by fax, immediately after it has been despatched with a confirmation that all pages have been transmitted; and (d) if sent by email, immediately after it has been despatched from the sender's outbox, except where despatch is not on a Business Day in the cases of (c) and (d). If a communication would otherwise be deemed to have been delivered outside normal business hours (after 5:30 p.m. on a Business Day) in the time zone of the territory of the recipient, it shall be deemed to have been delivered at 9:30 a.m. on the next Business Day in the territory of the recipient. In proving service of a communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a pre-paid letter or that the facsimile transmission or email was despatched and a confirmatory transmission report or other acknowledgment of good receipt was received.

15.3 The contact information for service of a notice in connection with the Conditions.

To the Holder:

Address and Fax as shown in the Register

To the Issuer:

Address: 5/F, 180 Hennessy Road  
Wan Chai  
Hong Kong  
With a copy to: Room 1907, 19/F, Tower 1 Raffles City Changqing, 1133  
Changning Road, Changning District, Shanghai, the PRC  
Fax: +86 21 6140 8810  
Attn: Gavin Liu

16. Amendments. Any term of the Certificate or the Conditions may only be amended with the written consent of the Issuer and the Majority Holders, provided that a Holder may always waive any of its rights hereunder in writing without the written consent of the Majority Holders. Any amendment effected in accordance with this Condition 16 shall be binding upon the Issuer and the Holders.

## 17. Confidentiality

17.1 Each of the Issuer and each Holder acknowledges that the terms and conditions of the Notes, the Conditions and the other Transaction Documents, any term sheet or memorandum of understanding entered into pursuant to the transactions contemplated hereby, and all appendices and amendments hereto and thereto, the transactions contemplated hereby and thereby, including their existence, and all information furnished by any party or its Representatives to any other party hereof or any of the Representatives of such party (collectively, the “**Confidential Information**”), shall be considered confidential information and shall not be disclosed by any party to any third party except in accordance with the provisions set forth below.

17.2 Subject to the requirements of the Hong Kong Stock Exchange or any other applicable laws and regulations, no party shall make any announcement disclosing the Holder’s investment in the Issuer hereunder, any of the Confidential Information or the name of the Holder (or any part or any derivations thereof) in a press release, public announcement, conference, professional or trade publication, mass marketing materials or other public disclosure without obtaining in each instance the prior written consent of the other party. The Holder may request to review and edit the portions of any such announcement that discusses, refers to or otherwise describes the Holder.

17.3 Notwithstanding anything to the contrary contained herein, and subject to applicable Laws:

(a) the Issuer may disclose the Confidential Information (1) to its Affiliates and their respective Representatives who need to know such information strictly in relation to the performance of the Transaction Documents, in each case only where such Persons are informed of the confidential nature of the Confidential Information and are under appropriate non-disclosure obligations substantially similar to those set forth in this Condition 17; (2) as required by Law, Governmental Authorities, legal process, and/or exchanges; (3) contained in press releases or public announcements of the Issuer pursuant to Condition 17.2; or (4) to any Person to which disclosure is approved in writing by the Holder.

(b) each Holder (and its respective fund managers, sub-investment manager and adviser and Affiliates) may disclose the Holder’s investment in the Issuer to any Person.

(c) each Holder shall have the right to disclose:

(i) the Confidential Information to its Affiliates, its fund manager, and its or their respective Representatives, advisors (including accountants, legal counsel and consultants), investors (including limited partners, shareholders and potential investors), clients, insurers and creditors in each case only where such Persons are informed of the confidential nature of the Confidential Information and are under appropriate non-disclosure obligations substantially similar to those set forth in this Condition 17;

(ii) any information for fund and inter-fund reporting purposes;

(iii) any information as required by Law, Governmental Authorities, legal process, and/or exchanges;

(iv) any information to bona fide prospective purchasers/investors of the Notes or other security or other interests in the Issuer; and

(v) any information contained in press releases or public announcements of the Issuer pursuant to Condition 17.2.

17.4 In the event that the Issuer is requested or becomes legally compelled and/or as required under the Listing Rules (including without limitation, pursuant to any applicable Tax, securities, or other Laws of any jurisdiction and/or the Listing Rules) to disclose any Confidential Information, the Issuer (the “**Disclosing Party**”) shall to the extent permitted by Law provide the Holder with prompt written notice of that fact and shall consult with the Holder regarding such disclosure. At the request of the Holder, the Disclosing Party shall, to the extent reasonably possible and with the cooperation and reasonable efforts of the Holder, seek a protective order, confidential treatment or other appropriate remedy. In any event, the Disclosing Party shall furnish only that portion of the information that is legally required and/or as required under the Listing Rules and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such information.

17.5 Notwithstanding any other provision of this Condition 17, the confidentiality obligations of the parties hereto under this Condition 17 shall not apply to: (a) information which a restricted party learns from a third party having the right to make the disclosure, provided the restricted party complies with any restrictions imposed by the third party; (b) information which is rightfully in the restricted party’s possession prior to the time of disclosure by the protected party and not acquired by the restricted party under a confidentiality obligation; (c) information which was in the public domain or otherwise known to the restricted party before it is furnished to it by another party hereto or, after it is furnished to that restricted party, enters the public domain without breach by that restricted party of this Condition 17; or (d) information which a restricted party develops independently without reference to the Confidential Information.

18. Severability. If one or more provisions of the Conditions are held to be unenforceable under applicable Law, such provision shall be excluded from the Conditions and the balance of the Conditions shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

19. No Waiver. Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof will not be deemed a waiver of such term, covenant, or condition, nor will any waiver or relinquishment of, or failure to insist upon strict compliance with, any right, power or remedy hereunder at any one or more times be deemed a waiver or relinquishment of such right, power or remedy at any other time or times.

20. Rights Cumulative. Each and all of the various rights, powers and remedies of a party will be considered to be cumulative with and in addition to any other rights, powers and remedies which such party may have at law or in equity in the event of the breach of any of the terms of the Notes or any provisions of the Conditions. The exercise or partial exercise of any

right, power or remedy will neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such party.

21. Independent Legal Advice. The Issuer agrees and acknowledges that (a) it was afforded sufficient opportunity to obtain independent legal advice regarding the Notes and the transactions contemplated under the other Transaction Documents; and (b) it fully understands all of the terms, conditions, restrictions and provisions set forth in the Notes and the other Transaction Documents and the obligations and liabilities thereof, and that each such term, condition, restriction and provision is fair and reasonable with respect to the subject matter thereof.

22. No Presumption. The Issuer agrees and acknowledges that any applicable Law that would require interpretation of any claimed ambiguities in the Notes against the party that drafted it has no application and is expressly waived. If any claim is made by the Issuer relating to any conflict, omission or ambiguity in the provisions of the Notes, no presumption or burden of proof or persuasion will be implied because the Notes were prepared by or at the request of that party or its counsel.

23. Governing Law and Jurisdiction

23.1 The Notes and the Conditions, including any non-contractual obligations arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the Laws of Hong Kong without regard to any conflict of laws principles which may exclude the Laws of Hong Kong.

23.2 Each party agrees that any legal action or proceeding arising out of or relating to the Notes and the Conditions (including any non-contractual disputes or claims) may be brought in the courts of Hong Kong and irrevocably submits to the non-exclusive jurisdiction of such courts, provided that the Issuer agrees that it may only commence proceedings arising out of or relating to the Notes and the Conditions in the courts of Hong Kong.

23.3 This Condition 23 is for the benefit of the Holders only. Nothing herein shall limit the right of the Holders to commence any legal action against the Issuer and/or its property in any other jurisdiction or to serve process in any manner permitted by Law, and the taking of proceedings in any jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

23.4 The Issuer irrevocably and unconditionally waives any objection which it may now or hereafter have to the choice of Hong Kong as the venue of any legal action arising out of or relating to the Notes and the Conditions and any claim that any such legal action has been brought in an inconvenient or inappropriate forum. The Issuer also agrees that a final judgment against it in any such legal action shall be final and conclusive and may be enforced in any other jurisdiction, and that a certified or otherwise duly authenticated copy of the judgment shall be conclusive evidence of the fact and amount of its indebtedness.

23.5 The Issuer consents generally in respect of any proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making,

enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any Governmental Order which may be made or given in such proceedings.

- 23.6 To the extent that the Issuer may now or hereafter be entitled, in any jurisdiction in which proceedings may at any time be commenced with respect to the Notes and the Conditions, to claim for itself or its assets any immunity (sovereign or otherwise) from suit, jurisdiction of any court, attachment prior to judgment, attachment in aid of execution of a judgment, execution of a judgment or from set off, banker's lien, counterclaim or any other legal process or remedy with respect to its obligations under the Notes and the Conditions and/or to the extent that in any such jurisdiction there may be attributed to the Issuer, any such immunity (whether or not claimed), the Issuer hereby, to the fullest extent permitted by applicable Law, irrevocably agrees not to claim and waives any such immunity.
- 23.7 The Issuer irrevocably appoints New Focus Autolife Holdings Limited (Hong Kong Company Registration No. 1528836), whose address is 3/F New York House, 60 Connaught Road Central, Hong Kong, as its process agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Hong Kong. If for any reason the process agent named above (or its successor) no longer serves as process agent of the Issuer for this purpose, the Issuer shall promptly appoint a successor agent and notify the Holder thereof. Failing such appointment within 15 days after the date of cessation of services as a process agent, the Holder may appoint a substitute process agent for the Issuer. The Issuer agrees that any such legal process is sufficiently served on it if delivered to such process agent for service at its registered office for the time being in Hong Kong whether or not such process agent gives notice thereof to the Issuer. Nothing herein affects the right to serve process in any other manner permitted by Law.

**APPENDIX I**  
**FORM OF EOD NOTICE OF REPAYMENT**

**US\$7,260,000**  
**NOTES DUE 2020**  
(the “Notes”)

TO: **NEW FOCUS AUTO TECH HOLDINGS LIMITED**

(the “**Issuer**”)

Attention: The Directors

[Date]

Unless otherwise specified, capitalized terms used in this letter have the meanings set forth in the Note Exchange Agreement entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) in relation to the Notes dated 26 September 2019 (as the same may be amended, supplemented or otherwise modified from time to time) and the Conditions attached to the Certificate of the Notes.

We hereby give notice that an Event of Default has occurred.

We, being the registered holder(s) of the Notes represented by the attached Note Certificate, hereby give notice that we exercise our option to redeem such Notes pursuant to Condition 9.2 and require the Issuer to repay the EOD Redemption Amount, on [●] in accordance with the Conditions.

We require you to pay to us in the manner authorized below the moneys to which we are entitled pursuant to this EOD Notice of Repayment.

We authorize and request you to pay the said sum by wire transfer to the bank account(s) set forth below:

*[Insert bank account(s) details]*

Name of Holder:  
.....

Date:  
.....

Address:  
.....

Tel. No:  
.....

Fax No:  
.....

Signature:  
.....

**APPENDIX II**  
**FORM OF TRANSFER FORM**  
**INSTRUMENT OF TRANSFER**

**US\$7,260,000**  
**NOTES DUE 2020**  
(the “Notes”)

**NEW FOCUS AUTO TECH HOLDINGS LIMITED**  
on [•]

**FOR VALUE RECEIVED** [*Name of transferor*] hereby transfers to:

[*Name of transferee*], a company incorporated in [•] whose registered office is situated at [•]  
 (“**Transferee**”)

Unless otherwise specified, capitalized terms used in this letter have the meanings set forth in the Note Exchange Agreement entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) in relation to the Notes dated 26 September 2019 (as the same may be amended, supplemented or otherwise modified from time to time) and the Conditions attached to the Certificate of the Notes.

US\$[•] principal amount of the Notes in respect of which the attached Note Certificate(s) is/are issued, and all rights in respect thereof.

All payments in respect of the Notes hereby transferred are to be made by cashier order (unless otherwise instructed by the Transferee).

The address of the Transferee for the purposes of Condition 11 of the Notes Terms and Conditions in relation to the Notes is [that stated above] /  
[\_\_\_\_\_].

**Date:** \_\_\_\_\_

Signed by for and on behalf of  
[transferor]:

Signed by for and on behalf of  
[transferee]:

\_\_\_\_\_

\_\_\_\_\_

**APPENDIX III**  
**FORM OF NOTICE OF OPTIONAL EARLY REDEMPTION**

**US\$7,260,000**  
**NOTES DUE 2020**  
(the “Notes”)

TO: [Name of the Holder]  
  
(the “Holder”)  
  
Attention: The Directors

[Date]

Unless otherwise specified, capitalized terms used in this letter have the meanings set forth in the Note Exchange Agreement entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) in relation to the Notes dated 26 September 2019 (as the same may be amended, supplemented or otherwise modified from time to time) and the Conditions attached to the Certificate of the Notes.

We, being the Issuer, hereby give notice that we exercise our right to redeem US\$[●] principal amount of the Notes in accordance with Condition 9.3 of the Conditions.

The Optional Early Redemption Date is [●].

The redemption will be fully satisfied by payment of [*Early Redemption Amount*] to the Holder in accordance with the Conditions.

**NEW FOCUS AUTO TECH HOLDINGS  
LIMITED**

Date:

.....

.....

Address:

Tel. No:

.....

.....

Signature:

Fax No:

.....



**EXHIBIT 1-C**

**FORM OF NOTE CERTIFICATE NO. 3**

**NOTES CERTIFICATE**

Certificate No. 003

Principal Amount: US\$12,100,000

**NEW FOCUS AUTO TECH HOLDINGS LIMITED**  
(新焦点汽车技术控股有限公司)

(the “**Issuer**”)

(an exempted company incorporated in the Cayman Islands)

**Notes due 2020**

**THIS CERTIFICATE** (the “**Certificate**”) represents in aggregate, the principal amount of US\$12,100,000 notes due 2020 (the “**Notes**”) of the Issuer, issued pursuant to the Memorandum and Articles, a resolution of the board of directors of the Issuer passed on 26 September 2019, and the note exchange agreement dated 26 September 2019 entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) (as the same may be amended, supplemented or otherwise modified from time to time) (the “**Note Exchange Agreement**”).

**THIS IS TO CERTIFY** that CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司), whose registered office is at 12/F, CCB Tower, 3 Connaught Road Central, Central, Hong Kong is the registered holder of the Notes of the principal amount stated above. The Notes are issued subject to and with the benefit of the attached terms and conditions (the “**Conditions**”) which are deemed to be part of it. The Conditions are binding on both the holder of the Notes and the Issuer. The Issuer undertakes (both to the holder of the Notes and to any lawful transferee thereof pursuant to Condition 11) to perform its obligations in accordance with the Conditions.

The Notes are secured by a certain share charge as more particularly described in the Note Exchange Agreement and guaranteed by a corporate guarantee as more particularly described in the Note Exchange Agreement.

The Holder (as defined in the Conditions) is entitled to all of the benefits of the Notes and may enforce the agreements contained herein and exercise the remedies provided for hereby or otherwise available in respect hereof, all in accordance with the Conditions.

**Note:** The Notes cannot be transferred by delivery and are only transferable to the extent permitted by Condition 11. This Certificate must be delivered to the Issuer for cancellation and reissue of an appropriate certificate in the event of any such transfer.

Date:

**THE COMMON SEAL of** )

**NEW FOCUS AUTO TECH** )  
**HOLDINGS LIMITED** )

Common Seal

was affixed to this Deed )  
in the presence of: )  
)  
)  
)

\_\_\_\_\_  
Signature of authorized person

\_\_\_\_\_  
Name of authorized person

\_\_\_\_\_  
Position

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

## TERMS AND CONDITIONS

### 1. Definitions and Interpretation.

1.1 Definitions. Unless defined hereunder or the context otherwise expressly requires, words and expressions used in the Conditions shall have the same meaning as given to them in the Note Exchange Agreement.

“**Administrative Fee**” means the administrative fee in an amount of US\$726,000 paid by the Issuer to the Holder in cash on 26 September 2019.

“**Bankruptcy Law**” has the meaning set forth in Condition 9.2(j) hereof.

“**Base Redemption Amount**” means, in respect of any principal amount of the Notes outstanding and to be redeemed by the Issuer pursuant to Condition 9, an amount equal to 100% of the principal amount stated in the Certificate.

“**Conditions**” means the terms and conditions attached to this Certificate (as amended from time to time), and “**Condition**” refers to the relative numbered paragraph of the Conditions.

“**Confidential Information**” has the meaning set forth in Condition 17.1 hereof.

“**Custodian**” has the meaning set forth in Condition 9.2(k) hereof.

“**Default**” means an Event of Default or any event or circumstance which would (with the expiry of any grace period, the giving of notice, the making of any determination or a combination thereof) be an Event of Default.

“**Default Interest**” has the meaning set forth in Condition 7 hereof.

“**Early Redemption Amount**” has the meaning set forth in Condition 9.3 hereof.

“**Early Redemption Principal Amount**” has the meaning set forth in Condition 9.3 hereof.

“**EOD Notice of Repayment**” has the meaning set forth in Condition 9.2 hereof.

“**EOD Redemption Amount**” means, upon early redemption of the Notes due to the occurrence of any Event of Default, the amount payable by the Issuer to the Holder in respect of the outstanding principal amount of the Notes on the date of such redemption, being the aggregate of:

- (a) the Base Redemption Amount;
- (b) interest accrued and outstanding under Condition 6;
- (c) a premium, which in the aggregate with the Base Redemption Amount, will provide the Holder with an IRR of 15% per annum on the Base Redemption

Amount, calculated from 2 September 2019 to the date on which Default Interest begins to accrue in relation to such Event of Default triggering the redemption under Condition 9.2, taking into account all interest paid on the Notes, any accrued and outstanding interest under subclause (b) above but excluding (i) any Default Interest paid or any Default Interest accrued and outstanding, and (ii) the Administrative Fee;

- (d) any Default Interest accrued and outstanding; and
- (e) any other payment accrued and outstanding to the Holder pursuant to the Transaction Documents.

**“Event of Default”** has the meaning set forth in Condition 9.2 hereof and **“Events of Default”** shall be construed accordingly.

**“Holder”** means any person who is the registered holder of any Notes then outstanding and **“Holders”** shall be construed accordingly.

**“IRR”** means an annual compounded, cumulative internal rate of return that produces a net present value of all cash flows (positive and negative) from an investment equal to zero.

**“Issuer”** mean New Focus Auto Tech Holdings Limited, an exempted company incorporated in the Cayman Islands with its principal place of business at 5/F, 180 Hennessy Road, Wan Chai, Hong Kong, and whose ordinary shares are listed on the Main Board of the HKSE with stock code 360.

**“Majority Holders”** has the meaning set forth in Condition 1.3 hereof.

**“Material Group Member”** means the Issuer and any other Group Member that has gross assets representing 5% or more of the total gross assets of the Group (calculated on a consolidated basis).

**“Maturity Date”** has the meaning set forth in Condition 5 hereof.

**“Optional Early Redemption Date”** has the meaning set forth in Condition 9.3 hereof.

**“Register”** has the meaning set forth in Condition 11.2 hereof.

**“Total Assets”** means the total consolidated gross assets of the Group (based on the latest published annual or interim financial statement of the Issuer).

**“Transfer Form”** has the meaning set forth in Condition 11.3 hereof.

1.2 The provisions of Clauses 1.2, 1.3 and 1.4 of the Note Exchange Agreement (where appropriate) shall apply to the Conditions as though they were set forth in full in the Conditions, except that references to “this Agreement” therein are to be construed as references to the Conditions.

1.3 Where under the Conditions any matter is expressed to require the consent, approval, waiver or determination of the Holders, such consent, approval, waiver or determination shall, except as otherwise stated, be deemed to be given or made if agreed to by holders of Notes representing more than 50% of the total principal amount of all the Notes outstanding at the relevant time, which must also include the agreement of CCBI Solar Energy (Holding) Limited for so long as it remains the holder of any of the Notes (the “**Majority Holders**”). Any consent, approval, waiver or determination given by any Holder or Holders not in compliance with the provisions of this Condition 1.3 shall not be valid and binding on the Issuer and other Holders.

1.4 A Default is continuing if it has not been remedied or waived in writing.

2. Form. The Notes are in registered form only. The Holder will be issued one or more Certificates in respect of its registered holding of the Notes. All Certificates shall be issued under the common seal of the Issuer.

3. Title. Title to the Notes will pass on registration by the Issuer of any transfer thereof in accordance with Condition 11. The Holder will (except as otherwise required by Law) be treated as the absolute owner of the Notes (whether or not overdue and regardless of any notice of ownership, trust or any interest in it or any writing on, or the theft or loss of, the Certificates issued in respect of them) for the purpose of receiving payment and for all other purposes.

4. Status

4.1 The Notes constitute direct and unconditional senior secured obligations of the Issuer and rank equally and without any preference amongst themselves. The payment obligations of the Issuer under the Notes will (subject to any obligations preferred by mandatory provisions of Law) rank at least *pari passu* with all other present and future direct, unconditional and unsubordinated obligations of the Issuer. No application will be made for a listing of the Notes on any stock exchange.

4.2 The payment obligations and the performance of all of the obligations of the Issuer under the Notes are secured by the New Share Charge. In the event of the occurrence of an Event of Default or in any other event where the New Share Charge becomes enforceable, the Holder may, and in accordance with the New Share Charge, enforce the security interest created under the New Share Charge (including, without limitation, by taking possession or disposing of or realising the Shares charged under the New Share Charge in addition to, or in lieu of taking such other action as may be permitted against the Issuer).

5. Maturity Date

5.1 The outstanding principal amount which is payable under the Notes pursuant to the Conditions shall be due and payable on 1 September 2020 (the “**Maturity Date**”), unless the maturity of the Notes is accelerated upon the occurrence of an Event of Default set forth in Condition 9.2 or upon the occurrence of a redemption event pursuant to Condition 9.3.

5.2 The Notes may not be repaid or otherwise redeemed other than in accordance with the Conditions. For the avoidance of doubt, the Issuer may not at its option repay or redeem the Notes prior to the Maturity Date, save as permitted under Condition 9.3 hereof.

6. Interest

6.1 Interest shall accrue on the Notes from and including the issue date of the Notes until and including the date on which the Notes are redeemed in accordance with the Conditions at the rate of 10% per annum on the outstanding principal amount of the Notes.

6.2 All the interest under this Condition 6 shall be due and payable in cash by the Issuer in arrears on the first day of each December, March, June and September, from and including the issue date of the Notes to and including the date on which the Notes are redeemed in accordance with the Conditions. Pre-paid interest will not be refundable in any event, including the occurrence of an EOD redemption under Condition 9.2.

6.3 All the interest under this Condition 6 shall be calculated on the basis of a 360-day year of twelve 30-day months and in case of an incomplete month, the actual number of days elapsed. The Issuer shall pay to the Holder all the interest under this Condition 6 in accordance with Condition 10.2.

7. Default Interest

If any Default occurs, (a) any amount which is not paid when due under the Notes or (b) any outstanding principal amount of the Notes (in the case of occurrence of any Default other than the failure by the Issuer to pay any amount which is due under the Notes) (as the case may be) shall bear additional interest (both before and after judgment and payable on demand) from and including the date of occurrence of the Default until the earlier of (i) the date on which the Notes are fully redeemed pursuant to the Conditions, and (ii) the date on which such Default ceases to occur (which includes but is not limited to the full settlement of any interest accrued and outstanding under this Condition 7), at the rate of 18% per annum (“**Default Interest**”).

8. Negative Pledge and Other Covenants

8.1 The Issuer covenants with the Holder from time to time and at all times while any of the Notes remains outstanding that, except as expressly permitted under the Transaction Documents or with the prior written consent of the Majority Holders, the Issuer will not, and will procure that no Group Member will:

- (a) cease to conduct or carry on the Business or engage in any business activity other than the Business;
- (b) amend the accounting policies previously adopted or change its fiscal year;
- (c) acquire any assets, property or undertaking of any nature, or set up or create any Affiliate (other than investments in the shares of the other Group Members or acquisitions of investments in cash and cash equivalents or acquisitions or investments

made in the Ordinary Course of Business) where the consideration for such acquisition will exceed RMB10,000,000 individually;

(d) (i) other than to other Group Members, borrow or raise any money or incur any Indebtedness (in whatever form or evidenced by whatever instrument) or give any guarantee, indemnity, surety or security in respect of any Indebtedness (in each case other than any Indebtedness existing on the date hereof and any refinancing thereof to the extent the amount of such refinancing Indebtedness does not exceed the amount so refinanced) if the principal amount of such Indebtedness incurred will exceed RMB40,000,000 individually or (ii) incur any Indebtedness that will cause the consolidated total liabilities of the Group to exceed 70% of its consolidated total assets at any time;

(e) enter into any contract or undertake any Liability, in each case in respect of any actual or contingent capital expenditure, where the amount of such capital expenditure will exceed RMB10,000,000 individually;

(f) repay any loans or Indebtedness (in whatever form or evidenced by whatever instrument) it owes to any Person (including its shareholders and directors) when an Event of Default has occurred and is continuing or would occur as a result thereof;

(g) lend any money or provide any Indebtedness (in whatever form or evidenced by whatever instrument) to any Person other than (i) trade credit made in the Ordinary Course of Business; and (ii) inter-Group loans and credit;

(h) terminate any agreement, arrangement or understanding or waive any right except for (i) terminations or waivers provided in the Ordinary Course of Business and (ii) terminations or waivers with respect to agreements, arrangements or understandings that do not exceed RMB10,000,000 individually;

(i) create or permit to arise any Lien securing any Indebtedness other than (i) Liens existing on the date hereof or securing any refinancing Indebtedness in an amount not to exceed the amount so refinanced and (ii) Liens with respect to obligations of the Group that do not exceed RMB40,000,000 (or its equivalent in other currencies) individually;

(j) dispose of the ownership, possession, custody or control of any corporate books or records;

(k) pass any resolution for the winding up of any Group Member, undertake any merger or restructuring concerning any Group Member, or apply for the appointment of a receiver, manager or judicial manager or like officer;

(l) take any action that reclassifies any outstanding Shares into any Equity Securities having preferences or priority as to dividends or assets senior to or on parity with the preference of the Notes;



(m) dispose of or dilute all or any part of its interest in any of its Material Group Members to the extent that such Material Group Member ceases to be a Group Member;

(n) compromise, settle, release, discharge or compound any civil, criminal, arbitration or other proceedings or any liability, claim, action, demand or dispute brought by any Group Member against any third party or waive any right in relation to any of the foregoing where the value so compromised, settled, released, discharged or compounded will exceed RMB10,000,000 individually;

(o) release, compromise or write off any amount recorded in the books of account of the Issuer as owing by any debtors of the Issuer (other than such release, compromise or write off in the Ordinary Course of Business) where the amount so released, compromised or written off will exceed RMB2,000,000 individually;

(p) make any payment to any related party or Affiliate other than (i) any inter-Group transactions; and (ii) any such payment made on arm's length basis when no Event of Default has occurred and is continuing or would occur as a result thereof;

(q) sell or dispose of any of its undertaking, goodwill or assets other than (i) any such sale or disposal in its Ordinary Course of Business; (ii) any sale or disposal of obsolete, worn-out or damaged assets or properties; (iii) any inter-Group sales or disposals; (iv) any sale or disposition of assets for fair market value; and (v) any sale or disposition permitted under other clauses of this Clause 8.1;

(r) sell, transfer, license, charge, encumber or otherwise dispose of any of its Intellectual Property except as would not reasonably be expected to affect the Group's ability, as a whole, to carry out the Business in the Ordinary Course of Business;

(s) amend or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of the Holders under the Notes and the other Transaction Documents;

(t) obtain or seek to obtain a Tax advantage through any fraud or evasion;

(u) make or enter into any arrangement, undertaking or scheme which was at the time it was entered into a sham or fiscal nullity;

(v) enter into any deed, agreement, assignment, instrument or documents whatsoever binding on it which may result in any breach of any of the terms and conditions of the Notes and the other Transaction Documents; or

(w) enter into any agreement or undertaking to do any of the above.

8.2 The Issuer undertakes (and with respect to Conditions 8.2(l) to 8.2(q) undertakes to procure the other Group Members) from time to time and at all times while any of the Notes remains outstanding:

- (a) to send to the Holder, a copy of all audited accounts, reports or other notices, statements or circulars issued, to the shareholders of the Issuer generally in their capacity as such at, or as soon as practicable after, the time of issue thereof;
- (b) to maintain a listing for all the issued Shares on the Main Board of the HKSE;
- (c) to pay the principal, any interest payable on the Notes and other amounts due and payable under the Notes (including without limitation the redemption amount payable under Condition 9) in the manner specified in the Conditions;
- (d) to perform and observe its obligations contained in the Conditions to the intent that the Conditions shall enure to the benefit of each and every Holder;
- (e) forthwith to give written notice to the Holder upon the occurrence of any condition or event that constitutes a Default or an Event of Default;
- (f) forthwith to give written notice to the Holder of any compliance and filing obligations that may be imposed on the Holder by any Governmental Authority in relation to any transactions contemplated under the Transaction Documents;
- (g) forthwith to give written notice to the Holder upon the occurrence of any of the following:
  - (i) the trading in the Shares on the Main Board of the HKSE is suspended;
  - (ii) the Issuer submits an application to the Main Board of the HKSE to delist the Issuer from the Main Board of the HKSE;
  - (iii) the Issuer's shareholders approve a resolution to delist the Issuer from the Main Board of the HKSE; or
  - (iv) the Issuer ceases to be listed on the Main Board of the HKSE;
- (h) forthwith to execute and deliver upon the request of the Majority Holders and at the Issuer's expense, such additional documents, instruments and agreements as the Majority Holders may determine to be necessary to carry out the intent or provisions of the Notes, the Certificate, the Conditions and the other Transaction Documents and the transactions contemplated hereunder and thereunder;
  - (i) to procure that at no time shall there be in issue Shares of different par values;
  - (j) to ensure that the total equity attributable to owners of the Issuer is not less than RMB800,000,000 at all times (as determined by the Majority Holders by reference to the Issuer's published annual or interim financial statements);

(k) to comply with and procure the compliance and fulfillment of all requirements and conditions imposed by the Main Board of the HKSE or by any other relevant authority (in Hong Kong or elsewhere), and to ensure the continued compliance and fulfillment thereof;

(l) to maintain its registration and good standing under the Laws of the Cayman Islands (in the case of the Issuer) or other applicable Laws (in the case of other Material Group Members);

(m) to comply with the requirements of all applicable Laws in all material respects, including all Laws applicable to the conduct or operation of its business or the ownership or use of any of its assets and property;

(n) to obtain, comply with and maintain in full force and effect all the Approvals necessary for conducting its business and operations, performing its obligations under the Transaction Documents, and ensuring the legality, validity, enforceability and admissibility in evidence in proceedings of the Transaction Documents;

(o) to file, within the times and within the manner prescribed by applicable Law, all Tax Returns which are required to be filed by it, with respect to its business or otherwise, which Tax Returns shall reflect accurately its liability for all Tax for the periods covered thereby;

(p) to notify the Holder of any appointment or change of auditors within three (3) days after the date of such appointment or change;

(q) forthwith to give written notice to the Holder of any borrowing, fund raising (including issuance of notes or debt securities) or incurrence of Indebtedness by any Group Member (in whatever form or evidenced by whatever instrument); and

(r) to ensure that the net asset value of the Issuer is not less than RMB800,000,000 at all times (as determined by the Majority Holders by reference to the Issuer's published annual or interim financial statements).

## 9. Repayment and Redemption

9.1 Repayment upon Maturity. Unless previously cancelled in accordance with the Conditions or unless the Holder has previously issued an EOD Notice of Repayment under Condition 9.2, the Issuer shall redeem on the Maturity Date the entire outstanding principal amount of the Notes in an amount equal to the aggregate of (i) the Base Redemption Amount, (ii) interest accrued and outstanding under Condition 6, (iii) any Default Interest accrued and outstanding, and (iv) any other payment accrued and outstanding to the Holder pursuant to the Transaction Documents.

9.2 EOD Redemption. Upon the occurrence of any of the following events (“**Event of Default**”), the Holder shall be entitled to require, by lodging a notice of repayment in the form prescribed in Appendix I hereof (the “**EOD Notice of Repayment**”) at the address specified in

Condition 15, the whole or any part of Notes registered in its name to be redeemed at the EOD Redemption Amount, which at the time of such EOD Notice of Repayment shall become immediately due and payable:

(a) any failure by the Issuer to pay the principal or any interest due and payable on the Notes or any other amount due and payable under the Notes on its due date in the manner specified in the Transaction Documents;

(b) any breach or default by any Obligor in the performance or observance of or compliance with any obligations, covenants, undertakings or other terms under any of the Transaction Documents;

(c) any representation, warranty, certification or statement made by or on behalf of any Obligor under any of the Transaction Documents shall have been incorrect, misleading or false;

(d) any of the Transaction Documents shall be held in any judicial proceedings to be unenforceable or invalid, or not perfected, or cease or fail for any reason to be in full force and effect or to create or constitute an interest with the priority and effect required under such Transaction Document;

(e) it becomes illegal under any applicable Law for any Obligor to perform or comply with any one or more of its obligations under the Notes or any other Transaction Documents or any enforceable final ruling is rendered by a competent court to the effect that any obligation under the Notes or any other Transaction Documents is illegal or invalid;

(f) (i) any Indebtedness (whether actual or contingent) of any Obligor or any other Group Member becomes (or becomes capable of being declared) due and payable prior to its stated maturity by reason of any actual or potential default, event of default or the like (howsoever described), or (ii) any such Indebtedness is not paid when due or, as the case may be, within any applicable grace period, or (iii) any Obligor or any other Group Member fails to pay when due any amount payable by it under any present or future guarantee for, or indemnity in respect of, any Indebtedness, provided that, in each case, the amount of the relevant Indebtedness exceeds RMB40,000,000 individually or its equivalent in any other currency or currencies;

(g) any Obligor or any other Group Member becomes insolvent or bankrupt or is unable to pay its debts as they fall due (within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong) or any other applicable Bankruptcy Laws);

(h) an encumbrancer takes possession or an administrative or other receiver or an administrator or other similar officer is appointed of any part of the assets or revenues of any Obligor or any other Group Member, provided that the value of the relevant assets or revenues exceeds RMB40,000,000 individually or its equivalent in any other currency or currencies;

(i) a distress, attachment, execution, seizure before judgment or other legal process is levied, enforced or sued out on or against any part of the assets or revenues of any Obligor or any other Material Group Member (excluding any of a frivolous or vexatious nature), provided that the value of the relevant assets or revenues exceeds RMB10,000,000 individually or its equivalent in any other currency or currencies;

(j) any case, proceeding or other action being commenced by or against any Obligor or any other Group Member: (i) under any Law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganisation or relief of debtors (collectively, “**Bankruptcy Law**”), seeking to have an order for relief entered with respect to it, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganisation, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other similar relief to it or its debts; or (ii) seeking appointment of a liquidator, administrator, administrative receiver, receiver, trustee, custodian, conservator or other similar official for it or for all or any part of its assets. This Condition 9.2(j) shall not apply to any case, proceeding or other action that is of a frivolous or vexatious nature;

(k) any Obligor or any other Group Member pursuant to or within the meaning of the applicable Bankruptcy Laws, (i) commences a voluntary case, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) consents to the appointment of a liquidator, administrator, administrative receiver, receiver, trustee, assignee, liquidator or similar official (a “**Custodian**”), (iv) initiates or consents to any proceedings relating to itself under any Law for a readjustment or deferment of its obligations or any part of them, or (v) makes or enters into a general assignment or an arrangement or composition with or for the benefit of its creditors;

(l) a moratorium is agreed or declared in respect of any Indebtedness of the any Obligor or any other Group Member, or any Governmental Authority takes any step with a view to seizing, compulsorily purchasing or expropriating all or a substantial part of any Obligor or any other Group Member;

(m) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against any Obligor or any other Group Member in an involuntary case, (ii) appoints a Custodian of any Obligor or any other Group Member, or (iii) orders the liquidation or provisional liquidation of any Obligor or any other Group Member;

(n) any one or more events or changes shall have occurred that have caused or constitute or are reasonably likely to cause or constitute, in the aggregate, a Material Adverse Effect;

(o) any material breach by any Group Member of any Law, including all Laws applicable to the conduct or operation of their business or the ownership or use of any of their assets or any material breach by any Group Member of the Listing Rules;

(p) any case, proceeding or other action being commenced against any Group Member in each case which is not of a frivolous or vexatious nature where the amount in dispute exceeds RMB10,000,000 individually;

(q) the Issuer or any other Material Group Member ceases to carry on or conduct the Business or engages in any business activity other than the Business;

(r) the trading in the Shares on the Main Board of the HKSE is suspended for any reason for more than two (2) consecutive Business Days or the current listing of the Shares is cancelled or withdrawn;

(s) the number of Shares legally and beneficially owned by CDH is less than 42.697% of the total issued and outstanding Shares of the Issuer on a Fully-Diluted Basis at any time;

(t) the number of Shares charged under the Share Charge represent less than 42.697 % of the total issued and outstanding Shares of the Issuer on a Fully-Diluted Basis;

(u) a Change of Control occurs;

(v) the Issuer fails to obtain the prior written consent of the Holder before any Group Member engages in the activities expressly prohibited in Conditions 8.1(c) to 8.1(e);

(w) CDH creates or permits to subsist or arise any Lien, other than any Lien created under the Transaction Documents, over any of the Shares it presently and may in the future own;

(x) the total equity attributable to owners of the Issuer is less than RMB800,000,000 (based on the latest published annual or interim financial statements of the Issuer);

(y) the net asset value of the Issuer is less than RMB800,000,000 (as determined by the Majority Holders by reference to the Issuer's published annual or interim financial statements); and

(z) either (i) an Event of Default (as defined in the terms and conditions attached to the Note Certificate No.1) occurs; or (ii) an Event of Default (as defined in the terms and conditions attached to the Note Certificate No.2) occurs.

9.3 Optional Early Redemption. Unless the Holder has previously issued an EOD Notice of Repayment under Condition 9.2, the Issuer may at any time redeem, by delivering a written notice of early redemption in the form prescribed in Appendix III hereof to the Holder at least five (5) Business Days prior to the proposed date of such early redemption (the “**Optional Early Redemption Date**”), the outstanding principal amount of the Notes in whole or in part (the principal amount to be redeemed, the “**Early Redemption Principal Amount**”) in an amount equal to the aggregate of:

- (a) the Early Redemption Principal Amount;
- (b) interest accrued and outstanding under Condition 6 on the Early Redemption Principal Amount;
- (c) Default Interest (where applicable) accrued and outstanding on the Early Redemption Principal Amount; and
- (d) any other payment accrued and outstanding to the Holder pursuant to these Conditions on the Early Redemption Principal Amount (together with the amount set forth in Conditions 9.3(a) to 9.3(c) above, collectively, the “**Early Redemption Amount**”);

provided that the Early Redemption Principal Amount for any redemption shall not be less than US\$2,420,000 or if the total principal amount of the Notes that remain outstanding is less than US\$2,420,000, the total outstanding principal amount of the Notes. The Issuer shall redeem the Early Redemption Principal Amount held by the Holder in an amount equal to the Early Redemption Amount on the Optional Early Redemption Date.

## 10. Tax and Payments

10.1 No Withholdings. All payments by the Issuer hereunder shall be made in U.S. dollars in immediately available funds free and clear of any withholdings or deductions for any present or future Taxes, imposts, levies, duties or other charges. In the event that the Issuer is required to make any such deduction or withholding from any amount paid, the Issuer shall pay to the Holder such additional amount as shall be necessary so that the Holder continues to receive a net amount equal to the full amount which the Holder would have received if such withholding or deduction had not been made.

10.2 Payments. All payments by the Issuer pursuant to the Conditions shall be received by the Holder not later than 4:00 p.m. (Hong Kong time) on the due date, by remittance to such U.S. dollar bank account in Hong Kong or elsewhere as the Holder may notify the Issuer from time to time but in any event at least two (2) Business Days prior to the due date or, if the Holder so requests, by cashiers order or other cleared funds. All payments on or in respect of the Notes or the indebtedness evidenced hereby shall be made to the Holder in immediately available and freely transferable U.S. dollars.

10.3 Due Date for Payment. If the due date for payment of any amount in respect of the Notes is not a Business Day, the Holder shall be entitled to payment on the next following Business Day in the same manner but shall not be entitled to be paid any interest in respect of any such delay. However, if the due date is the last day in that calendar month and that day is not a Business Day, the payment date shall be the immediately preceding Business Day.

## 11. Transfer and Certificates

11.1 Freely Transferrable. The Notes are freely transferrable (in whole or in part) by the Holder to any Person subject to compliance with all applicable Law. Any transfer of the

Notes may be in respect of the whole or any part of the outstanding principal amount of the Notes.

11.2 Notes Register. The Issuer shall maintain at Room 1907, 19/F, Tower 1 Raffles City Changning, 1133 Changning Road, Changning District, Shanghai, the PRC, a register (the “**Register**”) that provides a full and complete record of the name, address and other details of the Holder, particulars of the Notes held by it and particulars of all transfers of the Notes. The Holder or its representative may inspect the Register at any time during normal business hours or may require that the Issuer (at its expense) provides to the Holder either details of the Notes then outstanding or a certified true copy of the Register.

11.3 Form of Transfer. Subject to Condition 11.1, the Notes may be transferred in whole or in part by delivering the Certificate issued in respect of it, with a transfer form in the form prescribed in Appendix II hereof (the “**Transfer Form**”) duly completed and signed (and stamped if applicable), to the address referred to in Condition 14, whereupon the Issuer shall, within three (3) Business Days of such delivery, (a) enter such transfer of the Notes on the Register, and (b) issue one or more new Certificates which will be made available for collection at the address referred to in Condition 14 or, if so requested in the Transfer Form, be mailed by registered mail (free of charge to the Holder), to the address specified in the Transfer Form. No transfer of the Notes will be valid unless and until such transfer has been entered on the Register.

11.4 Cancellation of Certificate. Any Certificate delivered in respect of the Notes for the purposes of the transfer pursuant to Condition 11.3 will be cancelled forthwith upon issue of one or more new Certificates pursuant to Condition 11.3.

11.5 New Certificate for Partial Transfer. Where some but not all of the Notes in respect of which a Certificate is issued are to be transferred, a new Certificate in respect of the Notes not so transferred, will, within three (3) Business Days of delivery or surrender of the original Certificate to the Issuer be made available for collection at the address referred to in Condition 14 or, if so requested in the Transfer Form, be mailed by registered mail (free of charge to the Holder), to the address specified in the Transfer Form.

11.6 New Certificate upon Early Redemption. In the event that an early redemption occurs pursuant to Condition 9.3 and the principal amount of the Notes that is redeemed pursuant thereto is less than the outstanding principal amount of the Notes in respect of which a Certificate is issued, a new Certificate in respect of the Notes for the remaining outstanding principal amount after taking into account the redeemed principal amount will be mailed (free of charge to the Holder and at the risk of the Holder) to the address of the Holder as shown in the Register.

11.7 Costs. Registration of transfers of Notes will be effected without charge by or on behalf of the transferor. Any Tax, stamp duty, levy or other costs and expenses (including legal costs) which may be incurred by the transferor and the transferee in connection with any transfer of the Notes or any request therefor shall be borne by the Issuer and shall be paid by the Issuer to the transferor and/or the transferee upon demand. All costs and expenses associated with the preparation, issue and delivery of a new Certificate for the Notes pursuant to this Condition 11 shall be borne by the Issuer.



11.8 Certificates. Every Holder will be entitled to one or more Certificates in the form or substantially in the form of that shown in Exhibit 1 of the Note Exchange Agreement. All Certificates shall be issued under the common seal of the Issuer. Notwithstanding anything to the contrary herein, the Issuer shall comply with the provisions of the Certificates and the Conditions in all respects and the Notes shall be held subject to such provisions and Conditions which shall be binding upon the Issuer and the Holders and all persons claiming through or under them respectively.

11.9 Acknowledgement as to Covenants. The Issuer hereby acknowledges and covenants that the benefit of the covenants, obligations and conditions on the part of or binding upon it contained in the Notes and the Conditions shall enure to each and every Holder.

12. Enforcement of Rights. Save as expressly provided for in the Conditions, each Holder shall be entitled severally to enforce the covenants, obligations and conditions on the part of or binding upon the Issuer contained in the Notes and the Conditions against the Issuer insofar as each such Holder's Notes are concerned, without the need to join the allottee of any such Notes or any intervening or other Holder in the proceedings for such enforcement. Save as expressly provided for in the Notes and subject to the other Conditions, at any time after any payment in relation to any Notes has become due and payable or any obligation of the Issuer has not been performed in accordance with the Conditions, the Holder may, at its discretion and without further notice, take such proceedings as it may think fit to enforce payment of the amount due and payable to it in respect of the Notes held by it and to enforce the provisions of the Notes held by it and the Conditions.

13. Replacement Notes

13.1 Lost or Mutilated Certificate. If the Certificate for the Notes is lost or mutilated the Holder shall forthwith notify the Issuer and a replacement Certificate for the Notes shall be issued if the Holder provides the Issuer with:

- (a) the mutilated Certificate for the Notes; and
- (b) a declaration by the Holder or an officer of the Holder that the Notes had been lost or mutilated (as the case may be) or other evidence that the Certificate for the Notes had been lost or mutilated.

13.2 Cancellation. Any Certificate for the Notes replaced in accordance with this Condition shall forthwith be cancelled. All costs and expenses associated with the preparation, issue and delivery of a replacement Certificate for the Notes shall be borne by the Issuer.

14. Relevant Address in Hong Kong

The address of the Issuer for the deposit of a Transfer Form, for presentation and surrender of any Certificate and for all other purposes as specified in the Conditions will be:

5/F, 180 Hennessy Road, Wan Chai, Hong Kong

or such other address in Hong Kong as may be notified by the Issuer to the Holder in writing from time to time.

## 15. Notice

15.1 Any notice required or permitted pursuant to the Conditions shall be given in writing and shall be given either personally or by sending it by next-day or second-day courier service, fax, email or similar means to the contact information of the relevant party as provided in Condition 15.3 below (or at such other address as such party may designate by five (5) Business Days' advance written notice to the other parties given in accordance with this Condition 15).

15.2 Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered (a) if delivered by hand, at the time of delivery; (b) if sent by pre-paid post, on the fourth (4<sup>th</sup>) Business Day after the time of posting; (c) if given or made by fax, immediately after it has been despatched with a confirmation that all pages have been transmitted; and (d) if sent by email, immediately after it has been despatched from the sender's outbox, except where despatch is not on a Business Day in the cases of (c) and (d). If a communication would otherwise be deemed to have been delivered outside normal business hours (after 5:30 p.m. on a Business Day) in the time zone of the territory of the recipient, it shall be deemed to have been delivered at 9:30 a.m. on the next Business Day in the territory of the recipient. In proving service of a communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a pre-paid letter or that the facsimile transmission or email was despatched and a confirmatory transmission report or other acknowledgment of good receipt was received.

15.3 The contact information for service of a notice in connection with the Conditions.

To the Holder:

Address and Fax as shown in the Register

To the Issuer:

Address: 5/F, 180 Hennessy Road  
Wan Chai  
Hong Kong  
With a copy to: Room 1907, 19/F, Tower 1 Raffles City Changqing, 1133  
Changning Road, Changning District, Shanghai, the PRC  
Fax: +86 21 6140 8810  
Attn: Gavin Liu

16. Amendments. Any term of the Certificate or the Conditions may only be amended with the written consent of the Issuer and the Majority Holders, provided that a Holder may always waive any of its rights hereunder in writing without the written consent of the Majority Holders. Any amendment effected in accordance with this Condition 16 shall be binding upon the Issuer and the Holders.

## 17. Confidentiality

17.1 Each of the Issuer and each Holder acknowledges that the terms and conditions of the Notes, the Conditions and the other Transaction Documents, any term sheet or memorandum of understanding entered into pursuant to the transactions contemplated hereby, and all appendices and amendments hereto and thereto, the transactions contemplated hereby and thereby, including their existence, and all information furnished by any party or its Representatives to any other party hereof or any of the Representatives of such party (collectively, the “**Confidential Information**”), shall be considered confidential information and shall not be disclosed by any party to any third party except in accordance with the provisions set forth below.

17.2 Subject to the requirements of the Hong Kong Stock Exchange or any other applicable laws and regulations, no party shall make any announcement disclosing the Holder’s investment in the Issuer hereunder, any of the Confidential Information or the name of the Holder (or any part or any derivations thereof) in a press release, public announcement, conference, professional or trade publication, mass marketing materials or other public disclosure without obtaining in each instance the prior written consent of the other party. The Holder may request to review and edit the portions of any such announcement that discusses, refers to or otherwise describes the Holder.

17.3 Notwithstanding anything to the contrary contained herein, and subject to applicable Laws:

(a) the Issuer may disclose the Confidential Information (1) to its Affiliates and their respective Representatives who need to know such information strictly in relation to the performance of the Transaction Documents, in each case only where such Persons are informed of the confidential nature of the Confidential Information and are under appropriate non-disclosure obligations substantially similar to those set forth in this Condition 17; (2) as required by Law, Governmental Authorities, legal process, and/or exchanges; (3) contained in press releases or public announcements of the Issuer pursuant to Condition 17.2; or (4) to any Person to which disclosure is approved in writing by the Holder.

(b) each Holder (and its respective fund managers, sub-investment manager and adviser and Affiliates) may disclose the Holder’s investment in the Issuer to any Person.

(c) each Holder shall have the right to disclose:

(i) the Confidential Information to its Affiliates, its fund manager, and its or their respective Representatives, advisors (including accountants, legal counsel and consultants), investors (including limited partners, shareholders and potential investors), clients, insurers and creditors in each case only where such Persons are informed of the confidential nature of the Confidential Information and are under appropriate non-disclosure obligations substantially similar to those set forth in this Condition 17;

(ii) any information for fund and inter-fund reporting purposes;

(iii) any information as required by Law, Governmental Authorities, legal process, and/or exchanges;

(iv) any information to bona fide prospective purchasers/investors of the Notes or other security or other interests in the Issuer; and

(v) any information contained in press releases or public announcements of the Issuer pursuant to Condition 17.2.

17.4 In the event that the Issuer is requested or becomes legally compelled and/or as required under the Listing Rules (including without limitation, pursuant to any applicable Tax, securities, or other Laws of any jurisdiction and/or the Listing Rules) to disclose any Confidential Information, the Issuer (the “**Disclosing Party**”) shall to the extent permitted by Law provide the Holder with prompt written notice of that fact and shall consult with the Holder regarding such disclosure. At the request of the Holder, the Disclosing Party shall, to the extent reasonably possible and with the cooperation and reasonable efforts of the Holder, seek a protective order, confidential treatment or other appropriate remedy. In any event, the Disclosing Party shall furnish only that portion of the information that is legally required and/or as required under the Listing Rules and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such information.

17.5 Notwithstanding any other provision of this Condition 17, the confidentiality obligations of the parties hereto under this Condition 17 shall not apply to: (a) information which a restricted party learns from a third party having the right to make the disclosure, provided the restricted party complies with any restrictions imposed by the third party; (b) information which is rightfully in the restricted party’s possession prior to the time of disclosure by the protected party and not acquired by the restricted party under a confidentiality obligation; (c) information which was in the public domain or otherwise known to the restricted party before it is furnished to it by another party hereto or, after it is furnished to that restricted party, enters the public domain without breach by that restricted party of this Condition 17; or (d) information which a restricted party develops independently without reference to the Confidential Information.

18. Severability. If one or more provisions of the Conditions are held to be unenforceable under applicable Law, such provision shall be excluded from the Conditions and the balance of the Conditions shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

19. No Waiver. Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof will not be deemed a waiver of such term, covenant, or condition, nor will any waiver or relinquishment of, or failure to insist upon strict compliance with, any right, power or remedy hereunder at any one or more times be deemed a waiver or relinquishment of such right, power or remedy at any other time or times.

20. Rights Cumulative. Each and all of the various rights, powers and remedies of a party will be considered to be cumulative with and in addition to any other rights, powers and remedies which such party may have at law or in equity in the event of the breach of any of the terms of the Notes or any provisions of the Conditions. The exercise or partial exercise of any

right, power or remedy will neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such party.

21. Independent Legal Advice. The Issuer agrees and acknowledges that (a) it was afforded sufficient opportunity to obtain independent legal advice regarding the Notes and the transactions contemplated under the other Transaction Documents; and (b) it fully understands all of the terms, conditions, restrictions and provisions set forth in the Notes and the other Transaction Documents and the obligations and liabilities thereof, and that each such term, condition, restriction and provision is fair and reasonable with respect to the subject matter thereof.

22. No Presumption. The Issuer agrees and acknowledges that any applicable Law that would require interpretation of any claimed ambiguities in the Notes against the party that drafted it has no application and is expressly waived. If any claim is made by the Issuer relating to any conflict, omission or ambiguity in the provisions of the Notes, no presumption or burden of proof or persuasion will be implied because the Notes were prepared by or at the request of that party or its counsel.

23. Governing Law and Jurisdiction

23.1 The Notes and the Conditions, including any non-contractual obligations arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the Laws of Hong Kong without regard to any conflict of laws principles which may exclude the Laws of Hong Kong.

23.2 Each party agrees that any legal action or proceeding arising out of or relating to the Notes and the Conditions (including any non-contractual disputes or claims) may be brought in the courts of Hong Kong and irrevocably submits to the non-exclusive jurisdiction of such courts, provided that the Issuer agrees that it may only commence proceedings arising out of or relating to the Notes and the Conditions in the courts of Hong Kong.

23.3 This Condition 23 is for the benefit of the Holders only. Nothing herein shall limit the right of the Holders to commence any legal action against the Issuer and/or its property in any other jurisdiction or to serve process in any manner permitted by Law, and the taking of proceedings in any jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

23.4 The Issuer irrevocably and unconditionally waives any objection which it may now or hereafter have to the choice of Hong Kong as the venue of any legal action arising out of or relating to the Notes and the Conditions and any claim that any such legal action has been brought in an inconvenient or inappropriate forum. The Issuer also agrees that a final judgment against it in any such legal action shall be final and conclusive and may be enforced in any other jurisdiction, and that a certified or otherwise duly authenticated copy of the judgment shall be conclusive evidence of the fact and amount of its indebtedness.

23.5 The Issuer consents generally in respect of any proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making,

enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any Governmental Order which may be made or given in such proceedings.

- 23.6 To the extent that the Issuer may now or hereafter be entitled, in any jurisdiction in which proceedings may at any time be commenced with respect to the Notes and the Conditions, to claim for itself or its assets any immunity (sovereign or otherwise) from suit, jurisdiction of any court, attachment prior to judgment, attachment in aid of execution of a judgment, execution of a judgment or from set off, banker's lien, counterclaim or any other legal process or remedy with respect to its obligations under the Notes and the Conditions and/or to the extent that in any such jurisdiction there may be attributed to the Issuer, any such immunity (whether or not claimed), the Issuer hereby, to the fullest extent permitted by applicable Law, irrevocably agrees not to claim and waives any such immunity.
- 23.7 The Issuer irrevocably appoints New Focus Autolife Holdings Limited (Hong Kong Company Registration No. 1528836), whose address is 3/F New York House, 60 Connaught Road Central, Hong Kong, as its process agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Hong Kong. If for any reason the process agent named above (or its successor) no longer serves as process agent of the Issuer for this purpose, the Issuer shall promptly appoint a successor agent and notify the Holder thereof. Failing such appointment within 15 days after the date of cessation of services as a process agent, the Holder may appoint a substitute process agent for the Issuer. The Issuer agrees that any such legal process is sufficiently served on it if delivered to such process agent for service at its registered office for the time being in Hong Kong whether or not such process agent gives notice thereof to the Issuer. Nothing herein affects the right to serve process in any other manner permitted by Law.

**APPENDIX I**  
**FORM OF EOD NOTICE OF REPAYMENT**

**US\$12,100,000**  
**NOTES DUE 2020**  
(the “Notes”)

TO: **NEW FOCUS AUTO TECH HOLDINGS LIMITED**

(the “**Issuer**”)

Attention: The Directors

[Date]

Unless otherwise specified, capitalized terms used in this letter have the meanings set forth in the Note Exchange Agreement entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) in relation to the Notes dated 26 September 2019 (as the same may be amended, supplemented or otherwise modified from time to time) and the Conditions attached to the Certificate of the Notes.

We hereby give notice that an Event of Default has occurred.

We, being the registered holder(s) of the Notes represented by the attached Note Certificate, hereby give notice that we exercise our option to redeem such Notes pursuant to Condition 9.2 and require the Issuer to repay the EOD Redemption Amount, on [●] in accordance with the Conditions.

We require you to pay to us in the manner authorized below the moneys to which we are entitled pursuant to this EOD Notice of Repayment.

We authorize and request you to pay the said sum by wire transfer to the bank account(s) set forth below:

*[Insert bank account(s) details]*

Name of Holder:  
.....

Date:  
.....

Address:  
.....

Tel. No:  
.....

Fax No:  
.....

Signature:  
.....

**APPENDIX II**  
**FORM OF TRANSFER FORM**  
**INSTRUMENT OF TRANSFER**

**US\$12,100,000**  
**NOTES DUE 2020**  
(the “Notes”)

**NEW FOCUS AUTO TECH HOLDINGS LIMITED**  
on [•]

**FOR VALUE RECEIVED** [*Name of transferor*] hereby transfers to:

[*Name of transferee*], a company incorporated in [•] whose registered office is situated at [•]  
 (“**Transferee**”)

Unless otherwise specified, capitalized terms used in this letter have the meanings set forth in the Note Exchange Agreement entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) in relation to the Notes dated 26 September 2019 (as the same may be amended, supplemented or otherwise modified from time to time) and the Conditions attached to the Certificate of the Notes.

US\$[•] principal amount of the Notes in respect of which the attached Note Certificate(s) is/are issued, and all rights in respect thereof.

All payments in respect of the Notes hereby transferred are to be made by cashier order (unless otherwise instructed by the Transferee).

The address of the Transferee for the purposes of Condition 11 of the Notes Terms and Conditions in relation to the Notes is [that stated above] /  
[\_\_\_\_\_].

**Date:** \_\_\_\_\_

Signed by for and on behalf of  
[transferor]:

Signed by for and on behalf of  
[transferee]:

\_\_\_\_\_

\_\_\_\_\_



**APPENDIX III**  
**FORM OF NOTICE OF OPTIONAL EARLY REDEMPTION**

**US\$12,100,000**  
**NOTES DUE 2020**  
(the “Notes”)

TO: [Name of the Holder]  
  
(the “Holder”)  
  
Attention: The Directors

[Date]

Unless otherwise specified, capitalized terms used in this letter have the meanings set forth in the Note Exchange Agreement entered into between the Issuer, High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) in relation to the Notes dated 26 September 2019 (as the same may be amended, supplemented or otherwise modified from time to time) and the Conditions attached to the Certificate of the Notes.

We, being the Issuer, hereby give notice that we exercise our right to redeem US\$[●] principal amount of the Notes in accordance with Condition 9.3 of the Conditions.

The Optional Early Redemption Date is [●].

The redemption will be fully satisfied by payment of [*Early Redemption Amount*] to the Holder in accordance with the Conditions.

**NEW FOCUS AUTO TECH HOLDINGS  
LIMITED**

Date:

.....

.....

Address:

Tel. No:

.....

.....

Signature:

Fax No:

.....

## EXHIBIT 2

### FORM OF DEED OF ADHERENCE

#### Deed of Adherence

**THIS DEED OF ADHERENCE** (this “**Deed**”) is made on [●] by [●] of [●] (the “**Covenantor**”)

SUPPLEMENTAL to a Note Exchange Agreement (the “**Agreement**”) dated 26 September 2019 and made between New Focus Auto Tech Holdings Limited (the “**Company**”), High Inspiring Limited and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司). Terms used in this Deed not defined herein shall have the same meaning as given to them in the Agreement.

#### **1. DEFINITIONS**

Words and expressions defined in the Agreement have the same meanings when used in this Deed.

#### **2. ACCESSION**

The Covenantor [will purchase]/[has purchased] Notes of principal amount of [●] from [●]. The Covenantor hereby agrees with each other person who is or who becomes a party to the Agreement in accordance with the terms thereof that with effect from the date hereof, it shall comply with and be bound by the terms of the Agreement as if it had originally been a Party as the Investor.

#### **3. NOTICE**

The Covenantor confirms that its address for notices for the purpose of Clause 8.6 (Notices) of the Agreement is as follows:

Address: [●]

Fax number: [●]

Email: [●]

Attention: [●]

#### **4. GOVERNING LAW**

This Deed (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this deed) shall be governed by and construed in accordance with Hong Kong law.

SEALED with the COMMON SEAL OF )  
[●] )  
and SIGNED by *[insert names and, if* )  
*desired, job title of signatories]* )

[seal]

\_\_\_\_\_  
Witnessed/Verified by

\_\_\_\_\_  
Name: [●]  
Title: [●]

Agreed and accepted by:

\_\_\_\_\_  
Name:  
Authorized Signatory of  
**NEW FOCUS AUTO TECH HOLDINGS LIMITED**

\_\_\_\_\_  
Name:  
Authorized Signatory of  
**HIGH INSPIRING LIMITED**

\_\_\_\_\_  
Name:  
Authorized Signatory of  
**CCBI SOLAR ENERGY (HOLDING) LIMITED**

## **Schedule**

[list current parties to the Note Exchange Agreement]

**EXHIBIT 3**

**FORM OF NEW SHARE CHARGE**

**DATED**                      **2019**

**CDH FAST TWO LIMITED**

as Chargor

and

**CCBI SOLAR ENERGY (HOLDING) LIMITED**

(建銀國際光電(控股)有限公司)

as Chargee

---

**DEED OF SHARE CHARGE**

---

PROSKAUER ROSE  
Suites 1701-1705, 17/F  
Two Exchange Square  
8 Connaught Place, Central  
Hong Kong

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**THIS DEED OF SHARE CHARGE** (this “**Deed**”) is made the            day of            2019

**BETWEEN**

- (1) **CDH FAST TWO LIMITED** (Company No. 1770358), a BVI business company incorporated under the laws of the British Virgin Islands with its registered office at Kingston Chambers, P.O. Box 173, Road Town, Tortola, British Virgin Islands (the “**Chargor**”);
- (2) **CCBI SOLAR ENERGY (HOLDING) LIMITED** (建銀國際光電(控股)有限公司) (Company Registration No. 1237094), a private company limited by shares incorporated under the laws of Hong Kong with its registered office at 12/F, CCB Tower, 3 Connaught Road Central, Central, Hong Kong and an indirectly wholly owned special purpose vehicle of CCB International (Holdings) Limited (the “**Chargee**”).

Each of the parties listed above referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

**WHEREAS**

- (A) The Chargee, High Inspiring Limited and the Listco (as defined below) entered into a note exchange agreement dated 26 September 2019 (the “**Note Exchange Agreement**”, as the same may be amended, supplemented or otherwise modified from time to time), pursuant to which the Listco has agreed, among others, to issue notes in the aggregate principal amount of US\$24,200,000 (the “**Notes**”) to the Chargee in exchange for the termination of all the outstanding convertible notes in the aggregate principal amount of US\$24,200,000 which were issued by the Listco to High Inspiring Limited pursuant to a convertible note purchase agreement dated 21 August 2017 (as the same may be amended, supplemented or otherwise modified from time to time) between the Listco and High Inspiring Limited (the “**Note Exchange**”).
- (B) It is a condition precedent to the Note Exchange under the Note Exchange Agreement that the Chargor enters into this Deed.
- (C) The board of directors of the Chargor is satisfied that entering into this Deed is for the purposes and to the benefit of the Chargor and its business.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed:

“**Accruing Property**” means all stock, shares, loan capital, bonds, investments, warrants, dividends, monies or other securities (whether or not marketable), rights or other property accruing, offered or issued pursuant to the Accruing Rights.

“**Accruing Rights**” means all allotments, accretions, offers, rights, benefits and advantages (including all voting rights) whatsoever at any time accruing, offered or

arising in respect of or incidental to any Charged Shares by way of conversion, redemption, bonus, preference, purchase, substitution, exchange or as a result of any exercise of any option, warrant, conversion right in respect of any Charged Shares from time to time deposited in the Securities Account or any other right, power or privilege in respect of dividend (in cash or in specie), distribution, interest or otherwise in respect of any Charged Shares from time to time deposited in the Securities Account.

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

“**Bankruptcy Laws**” means any domestic or foreign Law relating to bankruptcy, restructuring, composition, judicial management, moratorium, insolvency, liquidation, reorganisation, administration or relief of debtors.

“**BVI Act**” has the meaning given to it in Clause 5.5.1(i) (*Registration*).

“**BVI Business Day**” has the meaning given to it in Clause 5.5.1(iv) (*Registration*).

“**CCASS**” means the Central Clearing and Settlement System established and operated in Hong Kong by Hong Kong Securities Clearing Company Limited.

“**Chargee**” has the meaning given to it in the Preamble of this Deed.

“**Charged Assets**” means the Charged Shares and any Accruing Property.

“**Charged Shares**” means the Initially Charged Shares, any further Shares that may become subject to this Charge and shares of other companies (as approved by the Chargee from time to time) beneficially owned by the Chargor and held in the Securities Account and charged in favour of the Chargee in accordance with the terms and conditions of the Transaction Documents.

“**Charges**” means all or any of the Security created or expressed to be created by or pursuant to this Deed.

“**Chargor**” has the meaning given to it in the Preamble of this Deed.

“**Clearing Systems**” means CCASS and includes any depository, settlement system or custodian therefor and any other person whose business is or includes the provision of clearing and/or settlement services or the provision of security accounts or any nominee or depository for such person.

“**Companies Ordinance**” means the Companies Ordinance (Cap. 622) of the Laws of Hong Kong.

“**CPO**” means the Conveyancing and Property Ordinance (Cap. 219) of the Laws of Hong Kong.

“**Currency of Account**” means the currency in which the relevant indebtedness is denominated or, if different, is payable.

“**EOD Notice of Repayment**” has the meaning given to it in the Notes Terms and Conditions.

“**Event of Default**” has the meaning given to it in the Notes Terms and Conditions.

“**Initially Charged Shares**” means the number of Shares (the particulars of which are set out in Schedule 1 (*Particulars of Initially Charged Shares*) beneficially owned by the Chargor and held in the Securities Account as of the date of this Deed.

“**Liability**” means any present and future obligation or liability for the payment of money, whether in respect of principal, interest or otherwise, whether actual or contingent, whether owed jointly or severally and whether owed as principal or surety or in any other capacity, and “**Liabilities**” shall be construed accordingly.

“**Listco**” means New Focus Auto Tech Holdings Limited (新焦点汽车技术控股有限公司) (Company Number 117682), an exempted company incorporated with limited liability under the laws of the Cayman Islands with its principal place of business at 5/F, 180 Hennessy Road, Wan Chai, Hong Kong, and whose ordinary shares are listed on the Main Board of the HKSE with stock code 360.

“**Notes**” has the meaning given to it in Recital (A).

“**Note Exchange**” has the meaning given to it in Recital (A).

“**Note Exchange Agreement**” has the meaning given to it in Recital (A).

“**Obligors**” means collectively, the Listco, the Chargor and the Corporate Guarantor.

“**Ordinances**” means collectively, the CPO, the Companies Ordinance and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong).

“**Party**” and “**Parties**” have the meaning given to it in the Preamble of this Deed.

“**Perfection Requirements**” means the making of the appropriate registrations of, and the obtaining of any necessary Authorisations and taking of all other actions in respect of the Security constituted by this Deed, as contemplated by any legal opinion to be delivered pursuant to the Note Exchange Agreement.

“**Receiver**” means any receiver, manager, receiver and manager or other similar officer appointed in respect of the Charged Assets by the Chargee in respect of the Security hereby granted or any part thereof.

“**Register of Charges**” has the meaning given to it in Clause 5.5.1(i) (*Registration*).

“**Registrar of Corporate Affairs**” has the meaning given to it in Clause 5.5.1(iii) (*Registration*).

“**Safe-Keeping Agent**” means CCB International Securities Limited or such entity as approved from time to time by the Chargee to provide safe-keeping services in respect of the Charged Shares.

“**Secured Obligations**” means all present and future Liabilities of the Obligors to the Secured Parties (or any of them) under or in relation to any one or more of the Transaction Documents (including, without limitation, all Liabilities arising out of any extension, variation, modification, restatement or novation of any Transaction Documents whatsoever).

“**Secured Parties**” means collectively the Chargee and any successors, indorsees, transferees and assigns of the Chargee.

“**Securities Account**” means the account in the name of the Chargor opened with the Safe-Keeping Agent or sub-account (including any replacement account) established by a Clearing System or any other person for the holder of the account or sub-account which is more specifically set out in Schedule 2 for the recording of (i) deposit or withdrawal of any of the Charged Shares title to which is registered in a computer based system or certificate to which is deposited in a Clearing System, settlement system or central depositing system, which provides for the recording of the title to or the deposit and withdrawal of the certificate to such share and for the dealing in such share by way of book-entries, and for dealing in such Charged Shares by the holder of the account as may from time to time be re-designated or re-numbered, and (ii) receiving from time to time all dividends, interest and other moneys arising from the Charged Shares, or from settlement of Charged Shares charged under this Deed (if so permitted by the Chargee) as may be from time to time be re-designated or re-numbered.

“**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.

“**Security Enforcement Notice**” means a notice served by the Chargee on the Chargor, which is substantially in the form as set out in Schedule 8, following service on the Listco of, and which is in addition to, an EOD Notice of Repayment.

“**Security Period**” means the period beginning on the date of this Deed and ending on the date upon which the Chargee is satisfied that:

- (a) none of the Secured Parties is under any obligation (whether actual or contingent) to make advances or provide other financial accommodation to the Chargor under any of the Transaction Documents; and
- (b) the Secured Obligations have been unconditionally and irrevocably paid and discharged in full.

“**Shares**” means the ordinary shares in the capital of the Listco with a par value of HK\$0.1 each, and if there is a sub division, consolidation or reclassification of those shares, the shares resulting from it.

“**Specified Rights**” means all of the Chargor’s rights both present and future against any relevant Safe-Keeping Agent or the relevant Clearing System with respect to the Charged Shares, the Securities Account including any rights that the Chargor may have to require delivery to it of the Charged Shares or any securities equivalent to or representing the Charged Shares, all rights (whether contractual or otherwise) against, including rights to give instructions to, the relevant Safe-Keeping Agent with respect to the Charged Shares and the Securities Account and all claims for damages and rights to receive monies due or to become due for any reason whatsoever in connection with the Charged Shares and the Securities Account.

“**transfer**” or “**deposit**” includes (a) convey, deposit or otherwise vest the title to the Charged Assets in the person to whom the same are to be transferred; and (b) in relation to Charged Shares, convey, deposit, appropriate or otherwise transfer by electronic or

paper based book-entry systems to the credit balance of the Securities Account of a person to whom the same are to be conveyed, deposited, appropriated or otherwise transferred.

**“Winding-up”** means bankruptcy, restructuring, composition, winding-up, amalgamation, reconstruction, administration, judicial management, dissolution, liquidation, insolvency, merger or consolidation or any analogous procedure or step in any jurisdiction, and in the case of amalgamation, reconstruction, merger or consolidation, the entity involved is or becomes insolvent.

## 1.2 **Defined Terms**

Unless this Deed provides otherwise, a term which is defined (or expressed to be subject to a particular construction) in the Note Exchange Agreement shall have the same meaning (or be subject to the same construction) in this Deed.

## 1.3 **Construction**

1.3.1 Unless a contrary indication appears, any reference in this Deed to:

- (i) **“assets”** includes present and future properties, revenues and rights of every description;
- (ii) the **“Chargee”**, the **“Chargor”**, any **“Party”** or any **“Secured Party”** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (iii) a **“Transaction Document”** or any other agreement or instrument is to that Transaction Document or other agreement or instrument as amended or novated;
- (iv) **“indebtedness”** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money borrowed, whether present or future, actual or contingent, secured or unsecured or otherwise, and whether given as principal, surety or otherwise;
- (v) a **“person”** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (vi) 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 regulatory, self-regulatory or other authority or organization;
- (vii) a **“disposal”** means a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal or Lien, whether voluntary or involuntary, and **“dispose”** will be construed accordingly;

- (viii) in the context of the rights, powers, privileges, discretions and immunities conferred on the Chargee or a Receiver, references to “charge” or “mortgage” in any provision of the CPO shall, for the purposes of this Deed, be deemed to be references to this Deed and references to mortgaged land in any provision of the CPO shall, for the purposes of this Deed, be deemed to be references to the Charged Assets;
- (ix) references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and shall include references to any provisions of which they are re-enactments (whether with or without modification);
- (x) references to any document are to be construed as references to such document as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time; and
- (xi) the schedules to this Deed form part of it and shall have the same force and effect as if expressly set out in the body of this Deed.

1.3.2 Clause and schedule headings are for ease of reference only and shall be ignored in the interpretation of this Deed.

#### 1.4 **Continuing Event of Default**

An event which constitutes an Event of Default shall be regarded as continuing if it has not been remedied or waived in writing.

#### 1.5 **Third Party Rights**

Except as expressly provided herein, this Deed does not confer any rights on any person or party under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong), and no third-party consent is required for any variation (including any release or compromise of any liability under) or termination of this Deed.

#### 1.6 **Effect as a Deed**

This Deed is intended to take effect as a deed notwithstanding that the Chargee may have executed this Deed under hand only.

## 2. **SECURITY**

2.1 The Chargor, as legal and beneficial owner and as continuing security for the due and punctual payment and discharge of all Secured Obligations, charges in favour of the Chargee by way of first fixed charge all of the Chargor’s present and future rights and title to, and interest from time to time in, any and each of the following:

2.1.1 all its present and future Charged Assets;

2.1.2 the Securities Account;

- 2.1.3 all Accruing Property; and
- 2.1.4 all Accruing Rights.
- 2.2 The Chargor, as beneficial owner of the Charged Shares assigns, and agrees to assign, absolutely by way of security to the Chargee:
  - 2.2.1 all the Specified Rights; and
  - 2.2.2 all its rights, present and future relating to the Charged Assets.

### **3. RESTRICTIONS AND FURTHER ASSURANCE**

#### **3.1 Security**

Except for the Security created by this Deed, the Chargor shall not create or permit to subsist any Security over any Charged Assets or any Shares legally or beneficially owned by the Chargor.

#### **3.2 Disposal**

The Chargor shall not 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, or grant any option or warrant or other similar right with respect to, any Charged Assets.

#### **3.3 Maintenance of Security**

The Chargor will continue to own at least 42.84% of the issued share capital of the Listco on a Fully-Diluted Basis, and the Charged Shares will represent no less than 42,84% of the issued share capital of the Listco on a Fully-Diluted Basis.

#### **3.4 Further Assurance**

The Chargor shall promptly do whatever the Chargee requests as necessary:

- 3.4.1 to perfect or protect the Charges or the priority of the Charges; or
- 3.4.2 to facilitate the realisation of the Charged Assets pursuant to Clause 7.2 (*Exercise of Power of Sale*) or the exercise of any powers, authorities, discretions and rights vested in the Chargee,

including, without limitation, executing any transfer, charge, mortgage, assignment or assurance of the Charged Assets (whether to the Chargee or its nominees or otherwise), making any registration and giving any notice, order or direction to the extent requested.

## **4. CHARGED ASSETS**

### **4.1 Initial Deposit of Documents**

4.1.1 For the purpose of enabling the Chargee to exercise its rights under this Deed, the Chargor shall on the date of this Deed and, where Charged Shares are acquired by it after the date of this Deed, as soon as practicable after the date of such acquisition, and in any event within seven (7) Business Days thereof, deposit, or procure that there be deposited, with the Chargee:

- (i) (to the extent that any of the Charged Shares have not been deposited with or are withdrawn from a Clearing System) the certificates in respect of such Charged Shares;
- (ii) an executed but undated form of transfer and bought and sold notes in the form set out in Schedule 3;
- (iii) an executed letter of authorization in the form set out in Schedule 4;
- (iv) an executed but undated form of irrevocable appointment of proxy and power of attorney in the form set out in Schedule 5; and
- (v) such other documents as the Chargee may require from time to time for the purpose of perfecting its title to the Charged Assets or for the purpose of vesting the same in itself, its nominee or any purchaser or presenting the same for registration at any time or for any other purpose in connection with the Security created by this Deed.

4.1.2 Upon the accrual, offer, issue or receipt of any Accruing Property, the Chargor shall deposit or cause to be deposited with the Chargee or its nominee documents referred to in Clause 4.1.1 in respect of such Accruing Property.

4.1.3 Subject to Clause 4.2.1, if any Charged Assets held in uncertificated form in a Clearing System is withdrawn from the Clearing System, the Chargor shall, immediately deposit or cause to be deposited with the Chargee or its nominee documents referred to in Clause 4.1.1 in respect of such Charged Assets upon withdrawal.

### **4.2 Clearing Systems**

4.2.1 The Chargor shall not withdraw any Charged Assets or cause the same to be withdrawn from the Clearing System without the prior written consent of the Chargee.

4.2.2 The Chargor shall, when requested by the Chargee, instruct any Clearing System, settlement system, safe-keeping agent or similar person to transfer to the account of the Chargee (or its nominee) with such Clearing System (or as otherwise required by the Chargee) any Charged Assets then held by any such person for the account of the Chargor or its nominee.



#### **4.3 Voting before Charges Enforceable**

The Chargor shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Charged Shares as it sees fit provided that it does so for a purpose not prohibited by the terms of any Transaction Document.

#### **4.4 Voting after Charges Enforceable**

At any time after the Charges have become enforceable, but subject to service by the Chargee on the Chargor of a Security Enforcement Notice, the Chargee shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Charged Shares at such time and in such manner as it sees fit. In furtherance of this Clause 4.4, at any time after a Security Enforcement Notice has been served and during the continuance of an Event of Default, the Chargor shall at the request of the Chargee or a Receiver from time to time promptly execute and deliver to the Chargee a proxy and power of attorney substantially in the form set out in Schedule 5, or such other form of proxy as may be required to enable the Chargee to exercise the voting and other rights attached to any Charged Shares.

#### **4.5 Dividends before Charges Enforceable**

The Chargor is entitled to retain any dividends or any other distribution and, to the extent that legal title to the relevant Charged Shares is vested in the Chargee, the Chargee shall hold all dividends or any other distribution that may be received by it on trust for the Chargor and pay or transfer the same to the Chargor or as it may direct except where any such compliance by the Chargee would cause an Event of Default.

#### **4.6 Dividends after Charges Enforceable**

At any time after the Charges have become enforceable, but subject to service by the Chargee on the Chargor of a Security Enforcement Notice, the Chargor shall hold any dividend or any other distribution received by it on trust for the Secured Parties and pay or transfer the same forthwith to the Chargee or as the Chargee may direct.

#### **4.7 Securities Account**

4.7.1 The Chargor shall procure that the Safe-Keeping Agent and any person with whom it maintains any Securities Account shall at all times be authorised to execute all documents and that such persons shall do all such acts in relation to the transfer of the Charged Assets as agent of the Chargor in accordance with the terms of the Transaction Documents.

4.7.2 The Chargor undertakes to sign and deliver to the Safe-Keeping Agent on the date hereof or to:

- (i) any person holding any of the Charged Shares as the Chargee's nominee upon request by the Chargee; and
- (ii) any person with whom the Chargor maintains the Securities Account and such person who maintains any such Securities Account on the Chargor's behalf or for the Chargor's benefit upon request by the Chargee,

a letter of instruction in form set out Schedule 6 in respect of the Charged Assets and use its best endeavours to procure an acknowledgement of such notice in form set out in Schedule 7 to the Chargee from such person(s).

#### **4.8 Power of Attorney**

If, at any time after the Charges have become enforceable, but subject to service by the Chargee on the Chargor of a Security Enforcement Notice, any Charged Shares of the Chargor are not held in the Chargor's name, the Chargor shall promptly upon request deliver to the Chargee an irrevocable power of attorney, expressed to be given by way of security and executed as a deed (or in any other appropriate manner as the Chargee may specify) by the person in whose name those Charged Shares are held. That power of attorney shall appoint the Chargee as the attorney of the holder and shall be in such form as the Chargee requires.

### **5. GENERAL UNDERTAKINGS**

#### **5.1 Defence of Title**

The Chargor shall defend its and the Chargee's title or interest in and to all the Charged Assets against any and all Lien (other than the Charges created pursuant to this Deed), however arising, and any and all persons whomsoever.

#### **5.2 Authorisations**

The Chargor shall obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all Authorisations required in or by the Laws of the British Virgin Islands, of the Cayman Islands and of Hong Kong to enable it lawfully to enter into and perform its obligations under this Deed and to ensure the legality, validity, enforceability and admissibility in evidence in the British Virgin Islands, in the Cayman Islands and in Hong Kong of this Deed (in particular, Cayman Islands stamp duty will be payable if this Deed is executed in, brought to, or produced before a court of the Cayman Islands).

#### **5.3 No Action**

The Chargor shall not take any action which would cause any of the representations made in Clause 6 (*Representations and Warranties*) to be untrue or incorrect in any respect at any time during the Security Period.

#### **5.4 Representations Untrue**

The Chargor shall notify the Chargee of the occurrence of any event which results in (or may reasonably be expected to result in) any of the representations made in Clause 6 (*Representations and Warranties*) being untrue when made or when deemed to be repeated.

#### **5.5 Registration**

5.5.1 The Chargor shall:

- (i) on the date of this Deed, create and maintain a register of charges (the “**Register of Charges**”) of the Chargor in accordance with section 162 of the BVI Business Companies Act, 2004 (as amended) of the British Virgin Islands (the “**BVI Act**”) to the extent this has not already been done;
- (ii) promptly after the date of this Deed, enter particulars as required by the BVI Act of the security interests created pursuant to this Deed in the Register of Charges and provide the Chargee with a certified true copy of the updated Register of Charges;
- (iii) promptly after execution of this Deed, effect registration, or assist the Chargee in effecting registration, of this Deed with the Registrar of Corporate Affairs of the British Virgin Islands (the “**Registrar of Corporate Affairs**”) pursuant to section 163 of the BVI Act by making the required filing, or assisting the Chargee in making the required filing, in the approved form with the Registrar of Corporate Affairs and (if applicable) provide confirmation in writing to the Chargee within five (5) BVI Business Days after execution of this Deed that such filing has been made;
- (iv) promptly upon receipt, and in any event within 21 days of the date of this Deed, deliver or procure to be delivered to the Chargee, the certificate of registration of charge issued by the Registrar of Corporate Affairs and the filed stamped copy of the application containing the relevant particulars of charge;

for the purposes of this sub-clause 5.5.1, a “**BVI Business Day**” means a day on which government offices are ordinarily open for business in the British Virgin Islands;

- (v) as soon as practicable and in any event within five (5) Business Days after the Chargor becomes registered under Division 2 of Part 16 of the Companies Ordinance, file the NM1 Form – Statement of Particulars of Charge with the Companies Registry of Hong Kong regarding the charges created by this Deed and provide the Chargee with a copy of the filed NM1 Form; and
- (vi) promptly on receipt, deliver or procure to be delivered to the Chargee, the certificate of registration of charge issued by the Companies Registry of Hong Kong evidencing the registration of the charges created by this Deed.

5.5.2 The Chargor undertakes and agrees with the Chargee that the Chargor will procure that this Deed shall promptly be registered with the companies registry or registrar in any other applicable jurisdictions which are, in the opinion of the Chargee, to be so registered or be submitted for registration.

5.5.3 The Chargor undertakes and agrees with the Chargee that the Chargor will procure that this Deed be promptly recorded or noted in the registers of mortgages, charges or encumbrances and/or registers of shareholders of the Chargor which are, in the opinion of the Chargee, to be so recorded or noted.

## **6. REPRESENTATIONS AND WARRANTIES**

The Chargor makes the representations and warranties set out in Clauses 6.1 (*Binding Obligations*) to 6.15 (*Repetition*) and acknowledges that the Chargee has entered into this Deed in reliance on those representations and warranties.

### **6.1 Binding Obligations**

Subject to the Perfection Requirements, the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable subject to bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization and similar laws of general applicability relating to or affecting creditors' rights generally and equitable principles of general applicability.

### **6.2 Status, Validity and Admissibility in Evidence**

6.2.1 The Chargor is a company duly incorporated with limited liability, validly existing and in good standing under the Laws of the British Virgin Islands and solvent. The Chargor has full power, authority and legal right to own its property and assets and to carry on its businesses.

6.2.2 All Authorisations required:

- (i) to enable the Chargor to lawfully enter into, exercise its rights and comply with its obligations in this Deed and the transactions contemplated by it;
- (ii) to make this Deed admissible in evidence in the British Virgin Islands, the Cayman Islands and Hong Kong (in particular, Cayman Islands stamp duty will be payable if this Deed is executed in, brought to, or produced before a court of the Cayman Islands); and
- (iii) to enable it to create the Charges and to ensure that the Charges have and will have the priority and ranking which they are expressed to have,

have been obtained or effected and are in full force and effect save for the making of the appropriate registrations of this Deed.

6.2.3 The Chargor is not registered under Division 2 of Part 16 of the Companies Ordinance.

6.2.4 The Listco is duly incorporated and validly existing and in good standing under the Laws of the Cayman Islands. The Listco has full power, authority and legal right to own its property and assets and to carry on its businesses.

### **6.3 No Conflicts**

The Chargor's execution of this Deed and the exercise of its rights and performance of its obligations under this Deed do not and will not conflict with any of its constitutional documents, any applicable Law or any agreement, deed, mortgage, bond or other instrument to which it is a party or which is binding upon it or any of its assets nor, except as provided in the Transaction Documents, result in a requirement for the

creation of any Security over any of its assets.

#### **6.4 No Filing or Stamp or Other Taxes**

Except for the Perfection Requirements, it is not necessary, under the Laws of its jurisdiction of incorporation, that this Deed 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 this Deed or the transactions contemplated by this Deed with the exception of stamp duty payable under the Stamp Duty Ordinance (Cap. 117) of the Laws of Hong Kong in respect of the transfer of the Shares pursuant to this Deed.

#### **6.5 No Deductions or Withholdings**

The Chargor will not be required to make any deduction or withholding from any payment it may make under this Deed.

#### **6.6 Ranking**

Subject to any applicable reservations in legal opinions delivered pursuant to the Note Exchange Agreement and the Perfection Requirements, this Deed creates in favour of the Chargee the Security which it is expressed to create, with the ranking and priority it is expressed to have.

#### **6.7 Title**

The Chargor has good and valid title to the assets which are expressed to be subject to the Security created by or pursuant to this Deed, free from all Security (other than the Security created under the Transaction Documents).

#### **6.8 No Winding-up**

The Chargor has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against it for its Winding-up or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues and no other steps which are similar or which would have a similar effect have been taken in its jurisdiction of incorporation or elsewhere.

#### **6.9 Charged Shares Fully Paid etc.**

The particulars of the Initially Charged Shares set out in Schedule 1 (*Particulars of Initially Charged Shares*) are true and accurate, and the Charged Shares have been duly authorized, validly issued and fully paid or credited as fully paid, are listed and tradable on the Main Board of the HKSE and free from any Lien (other than Liens created under the Transaction Documents) and the terms of the memorandum and article of association of the Listco do not restrict or otherwise limit the Chargor's right to transfer or charge such Charged Shares. There are no moneys or liabilities outstanding or payable in respect of any of the Charged Shares.

## 6.10 Maintenance of Security

The Initially Charged Shares constitute 42.84% of the issued share capital of the Listco as of the date of this Deed and will constitute at least 42.84% of the issued share capital of the Listco on a Fully-Diluted Basis during the Security Period.

## 6.11 Share Capital

The Chargor is the largest shareholder of the Listco. Subject only to the Transaction Documents, the Chargor (i) holds all its Shares free from any Lien and (ii) has the power to control the composition of, or to appoint or remove, a majority of the Listco's board of directors.

## 6.12 Choice of Law

In any proceedings taken in its jurisdiction of incorporation in relation to this Deed, the choice of Hong Kong Law as the governing law of this Deed and any judgment obtained in Hong Kong will be recognised and enforced.

## 6.13 No Adverse Interests

Subject only to the Security created by this Deed, no person other than the Chargor has any legal or beneficial interest (or any right to claim any such interest) in the Charged Assets and the Chargor has not received notice of any such claim.

## 6.14 No Disposals

Subject only to the Security created by this Deed, the Chargor has not transferred, mortgaged, charged or otherwise disposed of (or agreed to transfer, mortgage, charge or otherwise dispose of), whether by way of security or otherwise, all or any of its right, title and interest in and to or the benefit of the Charged Assets or any part of it.

## 6.15 Repetition

The representations and warranties set out in Clauses 6.1 (*Binding Obligations*) to 6.14 (*No Disposals*) are made on the date of this Deed and are deemed to be repeated on each day during the Security Period with reference to the facts and circumstances then existing.

## 7. ENFORCEMENT

### 7.1 When Enforceable

The Charges shall become immediately enforceable if an Event of Default has occurred and the Chargee serves a Security Enforcement Notice on the Chargor while such event is continuing. The Chargee may serve a Security Enforcement Notice on the Chargor any time upon or after it serves an EOD Notice of Repayment on the Listco.

### 7.2 Exercise of Power of Sale

The power of sale arising under the CPO shall arise upon this Deed becoming enforceable (and the Secured Obligations shall be deemed to have become due and

payable for that purpose). The power of sale and other powers conferred by sections 51 (*Powers of mortgagee and receiver*) and 53 (*Sale by mortgagee*) of and the Fourth Schedule (*Powers of mortgagee and receiver*) to the CPO as varied or extended by this Deed and those powers conferred (expressly or by reference) on a Receiver shall be immediately exercisable by the Chargee at any time on or after the occurrence of an Event of Default which is continuing and the Chargee serves a Security Enforcement Notice on the Chargor while such event is continuing. Paragraph 11 of the Fourth Schedule to the CPO shall not apply to this Deed. For the avoidance of doubt, the powers of the Chargee set out in Clauses 7.1 (*When Enforceable*) and 7.2 (*Exercise of Power of Sale*) may be exercised by the Chargee without prior notice to the Chargor.

## **8. RECEIVERS**

### **8.1 Appointment of Receivers**

At any time after service on the Chargor by the Chargee of a Security Enforcement Notice under Clause 7.1 (*When Enforceable*) (whether or not the Chargee shall have taken possession of the Charged Assets), the Chargee may by a written instrument and without notice to the Chargor appoint one or more persons as Receiver of the Charged Assets or any part of them, each such person being entitled to act individually as well as jointly and being for all purposes the agent of the Chargor.

### **8.2 Powers and Rights of a Receiver**

The Receiver shall be the agent of the Chargor and the Chargor shall be solely responsible for the Receiver's acts or defaults and for the Receiver's remuneration and the Receiver shall, in addition to all powers conferred upon chargees or receivers under the Laws of Hong Kong, (including without limitation the Ordinances) or otherwise, have the rights set out in Schedule 9 (*Rights of Chargee and Receiver*).

## **9. CHARGEES' RIGHTS**

At any time after service on the Chargor by the Chargee of a Security Enforcement Notice under Clause 7.1 (*When Enforceable*) (whether or not the Chargee or a Receiver shall have taken possession of the Charged Assets or a Receiver shall have been appointed), the Chargee shall have, and may in its absolute discretion and without notice to the Chargor or prior authorisation of any court, exercise, all of the rights set out in Schedule 9 (*Rights of Chargee and Receiver*) and all of the powers, authorities and discretions granted to a Receiver under this Deed and by Law.

## **10. ORDER OF DISTRIBUTIONS**

### **10.1 Application of Proceeds**

All amounts received or recovered by the Chargee or any Receiver in exercise of their rights under this Deed shall, subject to the rights of any creditors having priority, be applied in the order provided in Clause 10.2 (*Order of Distributions*).

## 10.2 **Order of Distributions**

The order referred to in Clause 10.1 (*Application of Proceeds*) is:

- 10.2.1 in or towards the payment of all costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver and the exercise of any of his rights, including his remuneration and all outgoings paid by him;
- 10.2.2 in or towards the payment of Secured Obligations owing to the Secured Parties on the date of such application and, if such moneys shall be insufficient to pay such amounts in full, then rateably (without priority of any one over any other) to such Secured Parties in proportion to the unpaid amounts thereof; and
- 10.2.3 in payment of any surplus to the Chargor or other person lawfully entitled to it or as a court of competent jurisdiction may determine.

## 11. **LIABILITY OF CHARGE**

The Chargor agrees with the Chargee that neither the Chargee nor its nominee (including any Receiver and the Safe-Keeping Agent) will have any liability for:

- 11.1 failing to present any coupon or other document relating to any of the Charged Assets;
- 11.2 accepting or failing to accept any offer relating to any of the Charged Assets;
- 11.3 failing to pay any call, installments or other payments which may be due and payable in respect of the Charged Assets;
- 11.4 failing to attend or vote at any meetings relating to the Charged Assets;
- 11.5 failing to notify the Chargor of any matters mentioned in this Clause 11 (*Liability of Chargee*) or of any communication received by the Chargee in relation to the Charged Assets;
- 11.6 relinquishing possession of the Charged Assets at any time after the Chargee or any Receiver has taken possession of the Charged Assets; or
- 11.7 any loss arising out of or in connection with the exercise or non-exercise of any rights or powers attaching or accruing to the Charged Assets or which may be exercised by the Chargee or any nominee for the Chargee under this Deed (whether or not on sale or other realisation of the Charged Assets a better price could have or might have been obtained by either deferring or advancing the date of sale or realisation or otherwise) other than by reason of the Chargee's fraud or willful misconduct.

## 12. **POWER OF ATTORNEY**

### 12.1 **Appointment**

The Chargor by way of security irrevocably (within the meaning of section 4 of the Powers of Attorney Ordinance (Cap. 31) of the Laws of Hong Kong) appoints the Chargee and any Receiver severally as its attorney (with full power of substitution), to,



at any time after a Security Enforcement Notice, on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

12.1.1 do anything which the Chargor or any Receiver is obliged to do (but has not done) under any Transaction Document to which it is a party (including to execute charges over, transfers, conveyances, mortgages, assignments and assurances of, and other instruments, notices, orders and directions relating to, the Charged Assets); and

12.1.2 exercise any of the rights conferred on the Chargee in relation to the Charged Assets or under any Transaction Document, the Ordinances or under general Law.

## 12.2 **Ratification**

The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 12.1 (*Appointment*).

## 13. **PROTECTION OF THIRD PARTIES**

### 13.1 **No Duty to Enquire**

No purchaser or other person dealing with the Chargee, any other Secured Party or any Receiver shall be concerned to enquire:

13.1.1 whether the rights conferred by or pursuant to any Transaction Document are exercisable;

13.1.2 whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;

13.1.3 otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such rights; or

13.1.4 as to the application of any money borrowed or raised.

### 13.2 **Protection to Purchasers**

Upon any sale or disposal of the Charged Assets or any part thereof which the Chargee shall make or purport to make under the provisions of this Deed, a statement in writing from the Chargee that the Charges have become enforceable and that the power of sale has become exercisable shall be conclusive evidence of the fact in favour of any purchaser or other person to whom any of the Charged Assets may be transferred and such purchaser or other person will take the same free of any rights of the Chargor.

## **14. SAVING PROVISIONS**

### **14.1 Continuing Security**

Subject to Clause 15 (*Discharge of Security*), the Charges shall constitute continuing Security and shall extend to the ultimate balance of the Secured Obligations, regardless of any intermediate payment or discharge in whole or in part.

### **14.2 Reinstatement**

If any payment by the Chargor or any discharge given by a Secured Party (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

14.2.1 the liability of the Chargor and the Charges shall continue as if the payment, discharge, avoidance or reduction had not occurred; and

14.2.2 each Secured Party shall be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

### **14.3 Waiver of Defences**

Neither the obligations of the Chargor under this Deed nor the Charges will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under any Transaction Document or any of the Charges (without limitation and whether or not known to it or any Secured Party) including:

14.3.1 any time, waiver or consent granted to, or composition with, the Chargor, any other Obligor or other person;

14.3.2 the release of any Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;

14.3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or security over assets of, the Chargor, any other Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

14.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor, any other Obligor or any other person;

14.3.5 any amendment or replacement of a Transaction Document or any other document or security;

14.3.6 any unenforceability, illegality or invalidity of any obligation of any person under any Transaction Document or any other document or security;

14.3.7 any insolvency, liquidation or Winding-up of any Obligor or similar proceedings with respect to any Obligor; or

14.3.8 this Deed or any other Transaction Document not being executed by or binding against any person intended or expressed to be party thereto.

#### **14.4 Immediate Recourse**

The Chargor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any Law or any provision of a Transaction Document to the contrary.

#### **14.5 No Competition**

Any right which the Chargor may have (a) by way of subrogation, contribution or indemnity in relation to the Secured Obligations or (b) otherwise to claim or prove as a creditor of any person or its estate in competition with the Chargee or any other Secured Party, shall be exercised by the Chargor only if and to the extent that the Chargee so requires and in such manner and upon such terms as the Chargee may specify and the Chargor shall hold any moneys, rights or security held or received by it as a result of the exercise of any such rights on trust for the Chargee for application in accordance with the terms of this Deed as if such moneys, rights or security were held or received by the Chargee under this Deed.

#### **14.6 Deferral of Chargor's Rights**

Until all the Secured Obligations have been irrevocably paid in full and all facilities which might give rise to Secured Obligations have terminated and unless the Chargee otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its Secured Obligations:

14.6.1 to be indemnified by any other Obligor;

14.6.2 to claim any contribution from any other Obligor; or

14.6.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Transaction Documents or of any guarantee or other security taken pursuant to, or in connection with, the Transaction Documents by any Secured Party.

#### **14.7 Additional and Independent Security**

The Charges are in addition to and independent of, and are not in any way prejudiced by, or merge with, any other guarantees or Security (or any right of set-off) now or subsequently held by any Secured Party.

### **15. DISCHARGE OF SECURITY**

#### **15.1 Continuing Security**

This Deed shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Chargor and the successors thereof and shall inure to the benefit of the Chargee and the other Secured Parties and their respective successors,

indorsees, transferees and assigns until all Secured Obligations (other than any contingent indemnity obligations not then due) and the obligations of the Chargor under this Deed shall have been satisfied by payment in full.

## **15.2 Documents for Release**

In connection with any termination or release pursuant to Clause 15.1 (*Continuing Security*), the Chargee shall execute and deliver to the Chargor, at the Chargor's expense, all documents that the Chargor shall reasonably request to evidence such termination or release, including the re-assignment of the Charged Assets and return of all the documents to the Chargor which have been deposited with or delivered to the Chargee under this Deed. Any execution and delivery of documents pursuant to this Clause 15.2 (*Documents for Release*) shall be without warranty by the Chargee.

## **16. COSTS, CHARGES, EXPENSES, INTEREST AND STAMP TAXES**

### **16.1 Costs, Charges and Expenses**

The Chargor shall (or shall cause the Listco to) from time to time forthwith within five (5) Business Days after on demand pay to or reimburse the Chargee, or (as the case may be) each Receiver for:

16.1.1 all costs, Tax, charges and expenses (including legal and other fees on a full indemnity basis and all other out-of-pocket expenses) incurred by the Chargee or the Receiver in connection with the preparation, execution and registration of this Deed, any other documents required in connection herewith and any amendment to or extension of, or the giving of any consent or waiver or release in connection with, this Deed;

16.1.2 all costs, Tax, charges and expenses (including legal and other fees on a full indemnity basis and all other out-of-pocket expenses) incurred by the Chargee or the Receiver in exercising any of its or their rights or powers hereunder or in suing for or seeking to recover any sums due hereunder or otherwise preserving or enforcing its or their rights hereunder or in connection with the preservation or attempted preservation of any or all of the Shares or in defending any claims brought against it or them in respect of this Deed or the Chargor's interest in any or all of the Shares or in releasing or re-assigning this Deed upon payment of all moneys hereby secured; and

16.1.3 all remuneration payable to any Receiver,

and, until payment of the same in full, all such costs, charges, expenses and remuneration shall be secured by this Deed.

## 16.2 **Interest**

Except to the extent that any sum payable under this Deed is already subject to the payment of interest under a provision of another Transaction Document, the Chargor shall (or shall cause the Listco to) with respect to such sums pay interest from the due date to the date of payment (whether before or after any demand or judgment and notwithstanding the liquidation, winding-up or similar circumstances of or affecting the Chargor) at a rate of 18% per annum and upon such terms as may from time to time be determined by the Chargee and such interest shall be compounded in the event of it not being punctually paid with monthly interest or as otherwise determined upon demand by the Chargee but without prejudice to the right of the Chargee to require payment of such interest and all such interest shall form part of the moneys hereby secured.

## 16.3 **Stamp Duty and Other Taxes**

The Chargor shall (or shall cause the Listco to) pay all stamp duty, registration and notarisation fees and other similar Taxes payable in respect of or in connection with the entry into, performance or enforcement against the Chargor of any Transaction Document to which it is a party (including the enforcement of the Security created by this Deed). Within five (5) Business Days after demand by a Secured Party, the Chargor shall (or shall cause the Listco to) indemnify such Secured Party for any cost, loss or liability such Secured Party incurs in relation to any such stamp duty, registration and notarisation fees and other similar Taxes.

## 17. **TAX GROSS UP AND INDEMNITIES**

### 17.1 **Grossing Up**

Each payment made by the Chargor to the Chargee under this Deed shall be made free and clear of and without deduction for or on account of tax unless the Chargor is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Chargor in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of the required deduction or withholding, the Chargee receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

### 17.2 **Payments without Set-Off**

Any payment made by the Chargor under this Deed shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim.

### 17.3 **Manner of Payment**

Each payment made by the Chargor under this Deed shall be paid in the manner in which payments are to be made by the Chargor under the Transaction Documents.

## **18. CONDUCT OF BUSINESS BY THE SECURED PARTIES**

No provision of this Deed will:

- 18.1 interfere with the right of each Secured Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- 18.2 oblige any Secured Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- 18.3 oblige any Secured Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## **19. PAYMENTS**

### **19.1 Payments**

All payments by the Chargor under this Deed (including damages for its breach) shall be made in the Currency of Account and to such account, with such financial institution and in such other manner as the Chargee may direct.

### **19.2 Continuation of Accounts**

At any time after:

- 19.2.1 the receipt by any Secured Party of notice (either actual or otherwise) of any subsequent Security affecting the Charged Assets; or
- 19.2.2 the presentation of a petition or the passing of a resolution in relation to the Winding-up of the Chargor,

any Secured Party may open a new account in the name of the Chargor (whether or not it permits any existing account to continue). If that Secured Party does not open such a new account, it shall nevertheless be treated as if it had done so when the relevant event occurred. No moneys paid into any account, whether new or continuing, after that event shall discharge or reduce the amount recoverable pursuant to any Transaction Document to which the Chargor is a party.

## **20. SET-OFF**

Any Secured Party may set off any matured obligation due from the Chargor under this Deed (to the extent beneficially owned by the Chargee) against any matured obligation owed by such Secured Party to the Chargor, regardless of the place of payment, booking breach or currency of either obligation. If the obligations are in different currencies such Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **21. RIGHTS, AMENDMENTS, WAIVERS, DETERMINATIONS AND ASSIGNMENT**

### **21.1 Exercise of Rights**

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under any Transaction Document shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Transaction Documents are cumulative and not exclusive of any rights or remedies provided by Law.

### **21.2 Amendments and Waivers**

Any term of this Deed may be amended or waived only with the written consent of the Chargee and the Chargor.

### **21.3 Determinations**

Any certification or determination by the Chargee or any Secured Party under any Transaction Document is, in the absence of manifest error, *prima facie* evidence of the matters to which it relates.

### **21.4 Assignment**

21.4.1 The Chargor shall not, and shall not be entitled to, assign or transfer any of its rights (if any) and/or obligations hereunder.

21.4.2 The Chargee may at any time assign or transfer all or any part of its rights, benefits and obligations under or arising out of this Deed to any one or more persons (an “**assignee**”) to whom the whole or any part of the Chargee’s rights, benefits and obligations under the Transaction Documents shall be assigned or transferred. All agreements, representations and warranties made herein shall survive any assignments made pursuant to this Clause 21.4.2 and shall enure to the benefit of all assignees as well as the Chargee.

21.4.3 The Chargee may disclose to an assignee or potential assignee in accordance with Clause 30 (*Confidentiality*) such information about the Chargor, this Deed and/or the security constituted hereby as the Chargee shall consider appropriate.

## **22. SEPARATE AND INDEPENDENT OBLIGATIONS**

The Charges are separate from and independent of the Security created or intended to be created by or in connection with any Transaction Document.

## **23. PARTIAL INVALIDITY**

If, at any time, any provision of this Deed 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.

## **24. CURRENCY CONVERSION**

In order to apply any sum held or received by the Chargee or a Receiver in or towards payment of the Secured Obligations, the Chargee or such Receiver may purchase an amount in another currency and the rate of exchange to be used shall be that at which, at such time as it considers appropriate, the Chargee or such Receiver is able to effect such purchase.

## **25. CURRENCY INDEMNITY**

If any sum due from the Chargor under this Deed or any order or judgment given or made in relation to this Deed has to be converted from the currency (the “**first currency**”) in which the same is payable under this Deed or under such order or judgment into another currency (the “**second currency**”) for the purpose of (a) making or filing a claim or proof against the Chargor, (b) obtaining an order or judgment in any court or other tribunal or (c) enforcing any order or judgment given or made in relation to this Deed, the Chargor shall indemnify and hold harmless the Chargee and each other Secured Party from and against any loss it suffers or incurs as a result of any discrepancy between (i) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (ii) the rate or rates of exchange at which the Chargee or such other Secured Party may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgment, claim or proof.

## **26. NOTICES**

### **26.1 Communications in Writing**

Any notice required or permitted pursuant to this Deed shall be given in writing and shall be given either personally or by sending it by next-day or second-day courier service, fax, email or similar means to the address or fax number of the relevant Party as provided in Clause 26.3 (or at such other address as such Party may designate by five (5) days’ advance written notice to the other Parties to this Deed given in accordance with this Clause 26).

### **26.2 Deemed Notice**

Any notice, demand or other communication so addressed to the relevant Party shall be deemed to have been delivered (a) if delivered by hand, at the time of delivery; (b) if sent by pre-paid post, on the fourth (4<sup>th</sup>) Business Day after the time of posting; (c) if given or made by fax, immediately after it has been despatched with a confirmation that all pages have been transmitted; and (d) if sent by email, immediately after it has been despatched from the sender’s outbox, except where despatch is not on a Business Day in the case of (c) or (d). If a communication would otherwise be deemed to have been delivered outside normal business hours (after 5:30 p.m. on a Business Day) in the time zone of the territory of recipient under the preceding provisions of this Clause 26.2, it shall be



deemed to have been delivered at 9:30 a.m. on the next opening of business in the territory of the recipient. In proving service of a communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a prepaid letter or that the facsimile transmission was despatched and a confirmatory transmission report or other acknowledgement of good receipt was received.

### 26.3 **Addresses**

The contact information for service of a notice in connection with this Deed.

#### The Chargor :

Name: CDH Fast Two Limited  
Address: One Temasek Avenue, #18-02, Millenia Tower, Singapore 039192  
Fax Number: +65 6238 0132  
Email: williamhsu@cdhfund.com  
Attention: William Hsu

#### The Chargee :

Name: CCBI Solar Energy (Holding) Limited  
Address: 12/F, CCB Tower, 3 Connaught Road Central, Central, Hong Kong  
Fax number: +852 2140 6088  
Email: stevenxia@ccbintl.com / patrickchen@ccbintl.com  
Attention: Steven Xia / Patrick Chen

### 26.4 **Exceptions relating to Legal Process**

For the avoidance of doubt, the provisions of this Clause 26 (*Notices*) shall not apply in relation to the service of any claim form, application notice, order, judgment or other notice of legal process relating to or in connection with any proceeding, suit or action arising out of or in connection with this Deed.

## 27. **COUNTERPARTS**

This Deed 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 Deed.

## 28. **FURTHER INSTRUMENTS AND ACTIONS**

The Chargor agrees to execute such further documents and/or instruments and to take

such further actions as may be required by the Chargee to give effect to any term and carry out the intent of this Deed.

## **29. GOVERNING LAW AND JURISDICTION**

### **29.1 Governing Law**

This Deed shall be governed by and construed in accordance with the Laws of Hong Kong without regard to any conflict of laws principles which may exclude the laws of Hong Kong.

### **29.2 Jurisdiction**

Each Party agrees that any legal action or proceeding arising out of or relating to this Deed may be brought in the courts of Hong Kong and irrevocably submits to the exclusive jurisdiction of such courts.

### **29.3 No Limitation on Right of Action**

This Clause 29 (*Governing Law and Jurisdiction*) is for the benefit of the Chargee only. Nothing herein shall limit the right of the Chargee to commence any legal action against the Chargor and/or its respective property in any other jurisdiction or to serve process in any manner permitted by Law, and the taking of proceedings in any jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

### **29.4 Waiver; Final Judgment Conclusive.**

The Chargor irrevocably and unconditionally waives any objection which it may now or hereafter have to the choice of Hong Kong as the venue of any legal action arising out of or relating to this Deed and any claim that any such legal action has been brought in an inconvenient or inappropriate forum. The Chargor also agrees that a final judgment against it in any such legal action shall be final and conclusive and may be enforced in any other jurisdiction, and that a certified or otherwise duly authenticated copy of the judgment shall be conclusive evidence of the fact and amount of its indebtedness.

### **29.5 Consent to Enforcement.**

The Chargor consents generally in respect of any proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.

### **29.6 Waiver of Immunity.**

To the extent that the Chargor may now or hereafter be entitled, in any jurisdiction in which proceedings may at any time be commenced with respect to this Deed, to claim for itself or its assets any immunity (sovereign or otherwise) from suit, jurisdiction of any court, attachment prior to judgment, attachment in aid of execution of a judgment, execution of a judgment or from set off, banker's lien, counterclaim or any other legal process or remedy with respect to its obligations under this Deed and/or to the extent that

in any such jurisdiction there may be attributed to the Chargor, any such immunity (whether or not claimed), the Chargor hereby to the fullest extent permitted by applicable Law irrevocably agrees not to claim, and hereby to the fullest extent permitted by applicable Law waive, any such immunity.

### 29.7 **Appointment of Process Agent.**

The Chargor irrevocably appoints Listco, whose address is 5/F, 180 Hennessy Road, Wan Chai, Hong Kong, as its process agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Hong Kong. If for any reason the process agent named above (or its successor) no longer serves as process agent of the Chargor for this purpose, the Chargor shall promptly appoint a successor agent and notify the Chargee thereof. Failing such appointment within 15 days after the date of cessation of services as a process agent, the Chargee may appoint a substitute process agent for the Chargor. The Chargor agrees that any such legal process is sufficiently served on it if delivered to such process agent for service at its registered office for the time being in Hong Kong whether or not such process agent gives notice thereof to the Chargor. Nothing herein affects the right to serve process in any other manner permitted by Law.

## 30. **CONFIDENTIALITY**

### 30.1 **Confidential Information.**

Except as may be required by Law, none of the Parties hereto shall disclose to any third party the transactions contemplated hereby (“**Confidential Information**”) without prior approval by the other Party hereto.

### 30.2 **Chargor’s Right of Disclosure.**

Notwithstanding anything to the contrary contained herein and subject to applicable Law, the Chargor shall have the right to disclose the Confidential Information (a) to its Affiliates and their respective employees, bankers, lenders, accountants, legal counsels, or advisors who need to know such information strictly in relation to the performance of this Deed, in each case only where such Persons are informed of the confidential nature of the Confidential Information and are under appropriate non-disclosure obligations substantially similar to those set out in this Clause 30 (*Confidentiality*); (b) as required by or in connection with any Law, Governmental Authorities, stock exchanges, legal process, litigation, arbitration, administrative or other investigations, proceedings and/or disputes, in each case subject to Clause 30.4; and (c) to any Person to which disclosure is approved in writing by the Chargee

### 30.3 **Chargee’s Right of Disclosure.**

Notwithstanding anything to the contrary contained herein and subject to applicable Law, the Chargee shall have the right to disclose:

30.3.1 any Confidential Information to its Affiliate, the Chargee’s and/or its Affiliate’s legal counsel, fund manager, auditor, insurer, accountant, consultant, creditor, clients or to an officer, director, general partner, limited partner, fund manager,

shareholder, investor, bona fide potential investor, financing party or resources, counsel or advisor, or employee of such investor and/or any of its Affiliate; provided, however, that any such person shall be advised of the confidential nature of the Confidential Information, except that there shall be no such obligation to so advise 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;

30.3.2 any information as required by or in connection with any Law, Governmental Authorities, stock exchanges, legal process, litigation, arbitration, administrative or other investigations, proceedings and/or disputes;

30.3.3 any information to bona fide prospective purchasers/investor of the Notes, any share, security or other interests in the Listco, including assignees or transferees (or potential assignees or transferees) to whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Transaction Documents and any of such person's Affiliates, representatives and professional advisors; and/or

30.3.4 any information contained in press releases or public announcements of the Chargor.

#### 30.4 **Exceptions to Disclosure Obligations.**

In the event that the Chargor is requested or becomes legally compelled (including without limitation, pursuant to any applicable tax, securities, or other Laws of any jurisdiction) to disclose any Confidential Information, the Chargor shall to the extent permitted by Law provide the Chargee with prompt written notice of that fact and shall consult with the Chargee regarding such disclosure. At the request of the Chargee, the Chargor shall, to the extent reasonably possible and with the cooperation and reasonable efforts of the Chargee, seek a protective order, confidential treatment or other appropriate remedy. In any event, the Chargor shall furnish only that portion of the information that is legally required and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such information.

#### 30.5 **Limitations.**

Notwithstanding any other provision of this Clause 30 (*Confidentiality*), the confidentiality obligations of the Parties under this Clause 30 (*Confidentiality*) shall not apply to: (a) information which a restricted Party learns from a third party having the right to make the disclosure, provided the restricted Party complies with any restrictions imposed by the third party; (b) information which is rightfully in the restricted Party's possession prior to the time of disclosure by the protected Party and not acquired by the restricted Party under a confidentiality obligation; (c) information which was in the public domain or otherwise known to the restricted Party before it is furnished to it by another party hereto or, after it is furnished to that restricted Party, enters the public domain without breach by that restricted Party of this Clause 30 (*Confidentiality*); or (d) information which a restricted Party develops independently without reference to the Confidential Information.

*[The remainder of this page has been left intentionally blank]*

**SCHEDULE 1**  
**PARTICULARS OF INITIALLY CHARGED SHARES**

<b>Beneficial Owner</b>	<b>No. and Class of Shares</b>	<b>Share No. (if in certificated form)</b>
CDH Fast Two Limited	2,889,580,226 ordinary shares	N/A

**SCHEDULE 2**  
**THE ACCOUNT**

<b>Type of Account</b>	<b>Account Number</b>
Securities Account	CDH Fast Two Limited with account number: 1008652-4001

**SCHEDULE 3**  
**FORM OF FORM OF TRANSFER AND BOUGHT AND SOLD NOTES**

**SOLD NOTE**

Name of Purchaser (Transferee): \_\_\_\_\_

Name of Company in which the shares to be transferred: New Focus Auto Tech Holdings Limited (新焦点汽车技术控股有限公司) (SEHK stock code: 360)

Number of Shares: \_\_\_\_\_

Consideration Paid: \_\_\_\_\_

For and on behalf of  
**CDH Fast Two Limited**  
(Transferor)

\_\_\_\_\_

Date:

\_\_\_\_\_

**BOUGHT NOTE**

Name of Seller (Transferor): CDH Fast Two Limited

Name of Company in which the shares to be transferred: New Focus Auto Tech Holdings Limited (新焦点汽车技术控股有限公司) (SEHK stock code: 360)

Number of Shares: \_\_\_\_\_

Consideration Paid: \_\_\_\_\_

For and on behalf of  
(Transferee)

\_\_\_\_\_

Date:

**SCHEDULE 4**  
**FORM OF LETTER OF AUTHORIZATION**

[Date]

From : CDH Fast Two Limited (the “**Chargor**”)

To : CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) (the “**Chargee**”)

Dear Sirs,

**Share Charge (the “Share Charge”) dated [●] between the Chargor and the Chargee in respect of shares in New Focus Auto Tech Holdings Limited (the “Listco”)**

Except as otherwise provided herein, terms and expressions defined in the note exchange agreement dated 26 September 2019 (as the same may be amended, supplemented or otherwise modified from time to time) (the “**Note Exchange Agreement**”), entered into by and among the Chargee, High Inspiring Limited and the Listco (as defined in the Share Charge) have the same meanings herein.

We refer to the executed but undated form of transfer and such other documents as we may deliver to you pursuant to the terms of the Share Charge from time to time (the “**Documents**”).

We hereby authorise you to date, deliver, and give full effect to and otherwise complete the Documents in the event that the security constituted by the Share Charge shall have become enforceable in accordance with its terms.

We confirm that you may delegate the authority conferred by this letter to any of your successors and assigns as Chargee in relation to the charge granted or to be granted over shares in the Listco.

Yours faithfully

For and on behalf of

**CDH FAST TWO LIMITED**

---

Name:

Title: Director



**SCHEDULE 5**  
**FORM OF IRREVOCABLE APPOINTMENT OF PROXY AND**  
**POWER OF ATTORNEY**

**CDH FAST TWO LIMITED**

**Proxy and Power of Attorney Dated<sup>1</sup> \_\_\_\_\_**

We, CDH Fast Two Limited, (Company No. 1770358), a BVI business company incorporated with limited liability under the laws of the British Virgin Islands with its registered office at Kingston Chambers, P.O. Box 173, Road Town, Tortola, British Virgin Islands (the “**Chargor**”), being the beneficial owner of 2,889,580,226 ordinary shares (the “**Shares**”) in the share capital of New Focus Auto Tech Holdings Limited, an exempt company incorporated with limited liability under the laws of the Cayman Island (the “**Company**”), hereby makes, constitutes and appoints CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) (the “**Attorney**”) as the true and lawful attorney and proxy of the undersigned with full power to appoint a nominee or nominees to act hereunder from time to time and to attend all general meetings of shareholders or stockholders of the Company and vote the Shares on our behalf with the same force and effect as the undersigned might or could do and to requisition and convene a meeting or meetings of the shareholders of the Company for the purpose of appointing or confirming the appointment of new directors of the Company and/or such other matters as may in the opinion of the Attorney be necessary or desirable for the purpose of implementing the Share Charge referred to below and the undersigned hereby ratifies and confirms all that the Attorney or its nominee or nominees shall do or cause to be done by virtue hereto.

The Shares have been charged to the Attorney pursuant to a Share Charge dated [●] between the Chargor and the Attorney (the “**Share Charge**”).

This power of attorney and proxy is given to secure a proprietary interest of the donee of the power and is irrevocable and shall remain irrevocable as long as the Share Charge is in force.

This power of attorney and proxy shall be governed by and construed in accordance with the laws of Hong Kong.

---

<sup>1</sup> Leave undated

**IN WITNESS** whereof this instrument has been duly executed the day and the year first above written as a deed.

**THE COMMON SEAL of** ) (common seal)  
**CDH FAST TWO LIMITED** )  
was hereunto affixed )  
in the presence of: )  
) \_\_\_\_\_  
) Signature of authorized person  
)  
) \_\_\_\_\_  
) Office held  
)  
) \_\_\_\_\_  
) Name of authorized person  
)  
)  
)

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

## SCHEDULE 6

### FORM OF INSTRUCTION TO NOMINEE AND SAFE-KEEPING AGENT

[Date]

From : CDH Fast Two Limited

To : CCB International Securities Limited

cc : CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司)

Dear Sirs,

**CDH Fast Two Limited Securities Account (Account number: 1008652-4001) (the “Account”)**

We give you notice that by a Share Charge dated [●] (the “Charge”) (a copy of which is attached), we have charged and assigned to CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) (the “Chargee”) all our right, title and interest in and to all shares and monies which may now or in the future be held in our name with you in the Account together with all interest earned and dividends received from time to time thereon and the debts represented by such shares, monies, interest and dividend.

Please note that under the terms of the Charge, we are not entitled to transfer any shares and withdraw any monies from the Account without the prior consent in writing of the Chargee.

We irrevocably authorise and instruct you (to the extent permitted by the applicable laws, rules of The Stock Exchange of Hong Kong Limited, the Securities and Futures Commission of Hong Kong and other regulatory bodies, regulations, court orders or decrees):

- (i) to disclose to the Chargee without any reference to or further authority from us and without any inquiry by you as to the justification for such disclosure, such information relating to the Account and the sums and shares therein as the Chargee may, at any time and from time to time, request you to disclose to it;
- (ii) subject to the Chargee’s written directions, to hold all shares and sums from time to time in the Account to the order of the Chargee;
- (iii) (after your receipt of your fees, costs and expenses and any taxes and duties payable) to pay, transfer or release all or any part of the sums and/or shares from time to time in the Account in accordance with the written instructions of the Chargee at any time or times;
- (iv) to comply with the terms of any written notice, statement or instructions (including for the avoidance of doubt, by way of facsimile transmission) which you receive at any time from the Chargee and which in any way relate to or purport to relate to the Charge, the Account and the shares and sums in the Account from time to time or the debts represented thereby without any reference to or further authority from us and without any inquiry by you as to the justification for or validity of such notice or instructions.

We agree that you shall not be bound to enquire whether the right of the Chargee to withdraw any monies or to transfer any shares from the Account has arisen or be concerned with the propriety or regularity of the exercise thereof or be concerned with notice to the contrary or be concerned with or responsible for the application of any monies or any shares received by the Chargee.

Please also note that these instructions are not to be revoked or varied without the prior written consent of the Chargee.

This letter shall be governed by and construed in accordance with Hong Kong law.

Please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by signing the attached form of acknowledgement and agreement and returning it to the Chargee with a copy to ourselves.

Yours faithfully,

For and on behalf of

**CDH FAST TWO LIMITED**

---

Name:

Title:

**SCHEDULE 7**  
**FORM OF ACKNOWLEDGEMENT**

Date: [●]

To : CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司)

cc : CDH Fast Two Limited

Dear Sirs,

We acknowledge receipt of a notice dated [●] and addressed to us by CDH Fast Two Limited (the “**Chargor**”) regarding the securities account mentioned in such notice (the “**Account**”).

Without prejudice to the Supplemental Deed to Cash Securities Trading Account Terms and Conditions dated [●] and entered into between CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司), the Chargor and ourselves, we acknowledge and confirm that:

- (a) we accept the instructions and authorisations contained in the notice and agree to comply with its terms;
- (b) we do not have and, until you give us notice in writing (including, for the avoidance of doubt, by way of facsimile transmission) that the Account and the shares and monies from time to time standing to the credit thereof have been released from the charge granted in your favour by the Chargor pursuant to the terms of the Share Charge dated [●] between the Chargor and you, will not make or exercise any claims or demands, rights of combination, consolidation or set-off or any other equities against the Chargor in respect of the Account and the shares and monies from time to time standing to the credit thereof (other than in connection with and to the extent only of the recovery of our fees, costs and expenses and any taxes and duties payable in connection with our role as safekeeping agent and in connection with the operation and administration of the Account); and
- (c) we have not received any notice that any third party has or may have any rights, title or interest in or to, or has made or may be making any claim or demand or taking any action against, the Account and the shares and monies from time to time standing to the credit thereof.

Until you give us notice in writing (including, for the avoidance of doubt, by way of facsimile transmission) that the Account and the shares and monies from time to time standing to the credit thereof have been released from the fixed charge granted to you by the Chargor, we shall not permit any transfers or withdrawals to be made from the Account without your prior written authority.

For the avoidance of doubt, our undertaking in this acknowledgement does not and will not apply to any securities, receivable, monies or other property deposited with us or any account opened with us, other than the Account.

This acknowledgement shall be governed by and construed in accordance with Hong Kong Law.

Yours faithfully

For and on behalf of

**CCB INTERNATIONAL SECURITIES LIMITED**

---

Name:

Title:

**SCHEDULE 8**  
**FORM OF SECURITY ENFORCEMENT NOTICE**

TO: **CDH FAST TWO LIMITED**

(the “**Chargor**”)

Attention: [●]

*[Date]*

We refer to the share charge dated [●] (the “**Share Charge**”) (as the same may be amended, supplemented or otherwise modified from time to time) between the Chargor and CCBI Solar Energy (Holding) Limited (建銀國際光電(控股)有限公司) (the “**Chargee**”) in respect of shares in New Focus Auto Tech Holdings Limited (the “**Listco**”).

Unless otherwise specified, capitalized terms used in this letter have the meanings set forth in the Share Charge.

We write to inform you that an EOD Notice of Repayment has been served on the Listco declaring that an Event of Default has occurred and is continuing.

This Notice constitutes a Security Enforcement Notice under the Share Charge, and immediately following its service, we are entitled to enforce the Charges in accordance with the terms of the Share Charge.

*[Other Event of Default specific provisions]*

We reserve any and all other claims, rights, remedies, causes of action and defences of every type and nature whatsoever under the Share Charge, other Transaction Documents and applicable law.

This letter is governed by and construed in accordance with Hong Kong laws.

Yours faithfully

For and on behalf of

**CCBI SOLAR ENERGY (HOLDING) LIMITED**

\_\_\_\_\_  
Name:

Title:



**SCHEDULE 9**  
**RIGHTS OF CHARGEES AND RECEIVER**

Each of the Chargee and the Receiver shall have the right, either in its own name or in the name of the Chargor or otherwise and in such manner and on such terms and conditions as the Chargee or the Receiver (as the case may be) thinks fit, and either alone or jointly with any other person:

(a) **Enter into possession**

to take possession of, get in and collect the Charged Assets and to require payment to it of all dividends;

(b) **Deal with Charged Assets**

to sell, transfer, assign, exchange or otherwise dispose of or realise the Charged Assets to any person either by public or private offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);

(c) **Borrow money**

to borrow or raise money either unsecured or on the security of the Charged Assets (either in priority to the Charges or otherwise);

(d) **Claims**

to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating to the Charged Assets;

(e) **Legal actions**

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets or any business of the Chargor;

(f) **Redemption of Security**

to redeem any Security (whether or not having priority to the Charges) over the Charged Assets and to settle the accounts of any person with an interest in the Charged Assets;

(g) **Rights of ownership**

to exercise and do (or permit the Chargor or any nominee of it to exercise and do) all such rights and things as the Chargee would be capable of exercising or doing if it were the absolute beneficial owner of the Charged Assets; and

(h) **Other powers**

to do anything else it may think fit for the realisation of the Charged Assets or incidental to the exercise of any of the rights conferred on the Chargee under or by virtue of any Transaction Document to which the Chargor is party, the CPO or any other applicable Laws.



**The Chargee**

**SIGNED** )  
for and on behalf of )  
 )  
**CCBI SOLAR ENERGY (HOLDING)** )  
**LIMITED** )  
(建銀國際光電(控股)有限公司) )  
 )  
 )

---

Name:  
Capacity:

**EXHIBIT 4**

**FORM OF CASH SECURITIES TRADING ACCOUNT TERMS AND CONDITIONS**



**CCB INTERNATIONAL SECURITIES LIMITED**

建銀國際證券有限公司

**Cash Securities Trading Account Terms and Conditions**

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## TERMS AND CONDITIONS

### 1. DEFINITION AND INTERPRETATION

- 1.1 In this Agreement, unless the context requires otherwise, the following expressions shall have the following meanings:

**"Access Codes"** means together the Password and the Login Name (or any of them);

**"Account(s)"** means one or more cash securities trading accounts maintained by the Client with the Company from time to time for the purchase and/or sale of securities;

**"Account Opening Form"** means the Securities Account Application Form and the Cash Securities Trading Account Opening Form to be completed by an applicant with respect to the opening of an Account with the Company.

**"AEOI" or "Automatic Exchange of Financial Account Information"** means any Applicable Laws and Regulations (including intergovernmental agreements that require and facilitate the collection, reporting and exchange of Financial Account Information between governments or tax authorities), including but not limited to the Inland Revenue (Amendment) (No. 3) Ordinance 2016, as amended from time to time. Under these rules, the Company is required to collect and review relevant information relating to account holders and any Controlling Persons of certain entity account holders who hold financial accounts with the Company in order to identify if such account holders or Controlling Persons are reportable foreign tax residents and report their Financial Account Information (as applicable) to the Hong Kong Inland Revenue Department (IRD), which will transfer this information to the tax authority of the reportable foreign tax resident's country of tax residence on a regular, annual basis, where such country of tax residence is a reportable jurisdiction that has entered into a Competent Authority Agreement with Hong Kong for the purposes of AEOI. Please see the IRD website for more information on AEOI and the current list of reportable jurisdictions: [http://www.ird.gov.hk/eng/tax/dta\\_aeoi.htm](http://www.ird.gov.hk/eng/tax/dta_aeoi.htm);

**"Agreement"** means the written agreement between the Client and the Company regarding the opening, maintenance and operation of the Account(s) as amended from time to time, including but not limited to the Account Opening Form, these Terms and Conditions and any authority given or any other agreement (written or verbal) entered into by the Client to/with the Company with respect to the Account(s) (as applicable);

**"Applicable Laws and Regulations"** means: (i) any local or foreign law, ordinance, regulation, demand, guidance, guidelines, rules, codes of practice, whether or not relating to an intergovernmental agreement between the governments or regulatory authorities of two or more jurisdictions (including but not limited to any applicable intergovernmental agreements entered into pursuant to FATCA and AEOI) which in the Company's sole discretion the Company is



obligated to comply with; (ii) any agreement between the Company and any domestic or foreign government authority; and (iii) any code of conduct, best practices, or internal Company policies adopted or implemented to facilitate the Company's compliance with (i) or (ii);

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

**"Clearing House"** has the meaning ascribed hereto in Clause 2.1;

**"Client"** means a person who has opened an Account with the Company, including such person's successors and assigns (as applicable). Where the Account(s) is(are) opened in the joint names of two or more persons, then unless otherwise specified or the context otherwise requires, "Client" shall mean all and each of such persons;

**"Client Money Rules"** means the Securities and Futures (Client Money) Rules (Chapter 571I of the Laws of Hong Kong), as amended from time to time;

**"Client Standing Authority"** means the standing authority granted by the Client to the Company in the terms set out in Clause 18.2 as amended from time to time;

**"Client Securities Rules"** means the Securities and Futures (Client Securities) Rules (Chapter 571H of the Laws of Hong Kong), as amended from time to time;

**"Company"** means CCB International Securities Limited 建銀國際證券有限公司, which is licensed with the SFC (CE No. AMB276) under the SFO to carry on business in Type 1 (dealing in securities), Type 2 (dealing in futures contracts) and Type 4 (advising on securities) regulated activities in Hong Kong, including its successors and assigns;

**"Controlling Person"** means any natural person who exercises control over a legal person or a legal arrangement, such as a corporation, partnership, trust or foundation. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Person" must be interpreted in a manner consistent with the Financial Action Task Force Recommendations. Where no natural person or persons is or are identified as exercising control of the entity through ownership interests, the controlling person of the entity is deemed to be the natural person who holds the position of senior managing official;

**"controlling entity relationship"** means, in relation to a corporation, a relationship where:

- (a) the corporation is (alone or with any of its associates) (i) entitled to exercise or control the exercise of not less than 20% of the voting power at the general meetings of the Company, (ii) has the right to nominate any of the directors of the Company, or (iii) has an interest in shares carrying the right to veto any resolution or amend, modify, limit or add conditions to any resolution, at general meetings of the Company;
- (b) the Company is (alone or with any of its associates) (i) entitled to exercise or control the exercise of not less than 20% of the voting power at the general meetings of the corporation, (ii) has the right to nominate any of the directors of the corporation, or (iii) has an interest in shares carrying the right to veto any resolution or amend, modify, limit or add conditions to any resolution, at general meetings of the corporation; or
- (c) another person is a controlling entity (as described in paragraphs (a) and (b)) of the Company and the corporation, respectively.

**"Corporate"** means a Client that is a corporation, partnership trust or other form of non-natural persons, excluding Institutional Clients;

**"Electronic Services"** means the Electronic Trading Service, the Interactive Voice Response Service and the Mobile Phone Trading Service;

**"Electronic Trading Service"** means a facility or program provided by the Company which enables Clients to give electronic instructions to the Company relating to the purchase or sale of securities through the Account(s) and access related information, with respect to the services provided under this Agreement;

**"Event of Default"** has the meaning ascribed thereto in Clause 15;

**"Exchange"** has the meaning ascribed thereto in Clause 2.1;

**"FATCA"** means:

- (a) sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended, or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any jurisdiction, or relation to an intergovernmental agreement between the United States and any other jurisdiction (including for the avoidance of doubt, the intergovernmental agreement between the United States and Hong Kong), which (in either case) facilitates the implementation of (a) above;
- (c) any agreement pursuant to the implementation of (a) and/or (b) above with the U.S. Internal Revenue Service, the U.S. government or any governmental or taxation authority in any jurisdiction ; or

- (d) any similar or analogous legislation, treaty, intergovernmental agreement, foreign financial institution agreement, regulation, or other official guidance of any taxation authority in any jurisdiction;

**"Financial Account Information"** means in respect of a Client, any Controlling Person or any Substantial U.S. Owner (i) any personal information including without limitation, name, residential and mailing address (including any hold mail instruction or in-care-of address) or registered address and principal place of business (in case of entity account holders), contact information (including telephone number), social security number, citizenship(s), the jurisdiction(s) of tax residence, taxpayer identification number(s) (or its functional equivalent in the absence of taxpayer identification number in that jurisdiction(s)), tax status, date and place of birth or incorporation/formation (in case of entity account holders), financial statements, certification of AEOI or FATCA status, or such other personal information as may be requested or required pursuant to Applicable Laws and Regulations; (ii) any account information including without limitation, the account number (or a functional equivalent in the absence of an account number), the name and identifying number of the reporting financial institution, account balance or value, currency denomination, gross receipts, payments made to or withdrawals from the account, the total gross amount of interest, dividends, proceeds or other income paid or credited to the account or generated with respect to assets held in the account or from the sale or redemption of such assets, the fact of closure of the account, or any other relevant account information; and (iii) any documentation or information (including without limitation self-certification forms, accompanying statements, waivers, and consents) as the Company may from time to time require or as the Client, any Controlling Person or any Substantial U.S. Owner may from time to time give pursuant to the Applicable Laws and Regulations;

**"Financial Product"** means any securities, futures contracts or leveraged foreign exchange contracts as defined under the SFO. For the purpose of this definition, "leveraged foreign exchange contracts" mean those traded by persons licensed for Type 3 regulated activity under the SFO.

**"GEM"** means the Growth Enterprise Market of Hong Kong;

**"Group Company"** means direct or indirect holding companies of the Company and direct or indirect subsidiaries of itself or of such holding companies;

**"HKSCC"** means the Hong Kong Securities Clearing Company Limited;

**"Hong Kong Regulator"** has the meaning ascribed thereto in Clause 22.2;

**"Institutional Client"** means a Client that falls under paragraphs (a) to (i) of the definition of "professional investor" in section 1 of Part 1 of Schedule 1 to the SFO.

**"Instruction"** means any instruction in relation to any Account given in any form or by any means accepted by the Company from time to time.

**"Interactive Voice Response Service"** means a service to be provided by the Company giving the Client access to deal with securities and to an enquiry hotline, as the Company may specify from time to time;

**"Login Name"** means the Client's personal identification used in conjunction with the Password to gain access to the Electronic Trading Service, the Interactive Voice Response Service, the Mobile Phone Trading Service and other services offered by the Company;

**"Losses"** means any losses (including loss of profits and any diminution in the value of or loss or damage to any property or security under and in connection with the Account(s) or in respect of the services or transactions carried out under the Agreement), damages, costs (including legal costs on a full indemnity basis), fines, expenses, fees, taxes, charges, levies, duties actions, suits, proceedings, claims, claims for an account or equitable compensation or equitable lien, liabilities and any other demands or remedy of any nature whatsoever, as applicable;

**"Mobile Phone Trading Service"** means a mobile service or application through which Clients may access services or information relating to their Account(s), including but not limited to functions such as account enquiry, securities trading and provision of securities quotes or as the Company may otherwise specify from time to time;

**"monies"** means any money received or held by or on behalf of (a) the Company, or (b) any corporation which is in a controlling entity relationship with the Company, which is so received or held on behalf of a Client, including any interest or other amounts derived from the holding of such money;

**"Password"** means the Client's personal password(s) used in conjunction with the Login Name to gain access to the Electronic Trading Service, the Interactive Voice Response Service, the Mobile Phone Trading Service and any other services offered by the Company;

**"Professional Investor"** has the meaning ascribed thereto in section 1 of Part 1 of Schedule 1 to the SFO;

**"securities"** has the meaning ascribed thereto by the SFO and, if the context so requires or permits, shall include securities collateral;

**"SEHK"** means The Stock Exchange of Hong Kong Limited;

**"SFC"** means the Securities and Futures Commission;

**"SFC Code of Conduct"** means Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, as amended from time to time;

**"SFO"** means the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong), as amended from time to time;

**"Substantial U.S. Owner"** includes specified U.S. persons as defined under FATCA who (1) with respect to any non-U.S. corporation, directly or indirectly own more than 10% of the corporation's stock (by vote or value), (2) with respect to a non-U.S. partnership, directly or indirectly own more than 10% of the profits or capital interests in the partnership, and (3) with respect to a trust, are treated as the owner of the trust or treated as holding directly or indirectly more than 10% of the beneficial interests of the trust;

**"Terms and Conditions"** means these Cash Securities Trading Account Terms and Conditions as amended from time to time;

**"U.S."** or **"United States"** means the United States of America; and

**"U.S. Person"** includes any natural person who is a citizen of or resident in the United States; a corporation, partnership or other business organization organized or incorporated under the laws of the United States or any political subdivision thereof, any estate or trust which is administered by an executor or trustee who is a U.S. person or the income of which is subject to U.S. federal income taxation regardless of its source; any account (other than any estate or trust held by a dealer or fiduciary for the benefit of a U.S. person) and any partnership or corporation organized and incorporated under the laws of any foreign jurisdiction which was formed by U.S. person principally for the purpose of investing in securities not registered under the United States Securities Act of 1933. **"U.S. Person"** shall not include any branch or agency of a United States bank or insurance company that is operating outside the United States for valid business reasons as a locally regulated branch or agency engaged in the banking or insurance business and not formed primarily for the purpose of investing in securities not registered under the United States Securities Act of 1933. For purposes of this definition, the "United States" includes the United States of America, its states, territories and possessions and the District of Columbia. The Company reserves the right to amend this definition of "U.S. Person" by notice to the Client as may be necessary to conform to applicable law and authoritative interpretation thereof.

1.2 In this Agreement:

1.2.1 unless the context otherwise requires, words and expressions defined in the SFO, the Client Money Rules and the Client Securities Rules shall have the same meanings in this Agreement;

1.2.2 references to the **"Client"**, wherever used, shall in the case where the Client(s) is/are (a) individual(s), include the Client(s) and his/their respective successors, assigns, executors and administrators, (b) a sole proprietorship firm, include the sole proprietor and his successors, assigns, executors and administrators in the business, (b) a partnership, include the partners who (i) are the partners of the firm at the time when the Client's said Account(s) is/are being maintained, or (ii) at any time hereafter be or have been a partner of the partnership, and their

respective successors, assigns, executors and administrators with respect to such partnership. and (c) a company, include its successors, assigns, executors and administrators;

- 1.2.3 references to Clauses and sub-Clauses unless otherwise stated are to clauses and sub-clauses of this Agreement;
- 1.2.4 the headings to the clauses are for convenience only and do not affect their interpretation and construction;
- 1.2.5 words denoting the singular include the plural and vice versa;
- 1.2.6 words importing any gender include every gender and references to persons include companies and corporations; and
- 1.2.7 for the purposes of this Agreement, the terms "tax" and "taxes" shall include any amounts deducted or withheld in connection with FATCA.

## 2. **APPLICABLE RULES AND REGULATIONS**

- 2.1 All transactions for the Account(s) shall be subject to Applicable Laws and Regulations including, without limitation, the relevant constitution, rules, regulations, by-laws, customs and usages, as amended from time to time, of SEHK or such other stock exchanges or markets or over-the-counter markets in or outside Hong Kong (the "**Exchange(s)**"), and the HKSCC or such other clearing houses in or outside Hong Kong ("**Clearing House(s)**"), in which the Company is dealing on the Client's behalf, and to the laws of Hong Kong and of such other places, as amended from time to time.
- 2.2 The Rules of SEHK and the HKSCC or, as the case may be, the rules of the relevant overseas Exchange(s) and Clearing House(s), in particular those rules which relate to trading and settlement, shall be binding on both the Company and the Client in respect of transactions concluded on the instructions of the Client.

## 3. **PROFESSIONAL INVESTOR TREATMENT**

- 3.1 Where the Client is a Professional Investor, the Client hereby acknowledges, confirms and agrees that it:
  - 3.1.1 falls within the definition of "professional investor" under paragraphs (a) to (i) of the definition of "professional investor" in section 1 of Part 1 of Schedule 1 to the SFO ("**Institutional Professional Investor**") and understands that the Company will not and will not be required to ensure the products and services are suitable for the Client;

### **OR**

- 3.1.2 falls within the definition of "professional investor" under section 4, 6 or 7 of the Professional Investor Rules ("**Corporate Professional Investor**") and satisfies the criteria under paragraph 15.3A of the SFC Code of

Conduct (set out in Schedule 2 to these Terms and Conditions) in particular that it has the appropriate corporate structure and investment process and controls, the person/s responsible for making investment decisions on behalf of the Client has/have sufficient investment background, and the Client is aware of the risks involved in relation to the relevant products and/or markets to be invested in under these Terms and Conditions.

Where this sub-clause 3.1.2 is applicable, the Client further agrees and confirms that:

- (a) it agrees to be treated as a "professional investor" for the purposes of the SFC Code of Conduct and acknowledges that, as a consequence, it loses any protections otherwise available to it under the SFC Code of Conduct including, without limitation, those set out in Parts A and B of Schedule 1 to these Terms and Conditions and otherwise provided by the SFC, in respect of the Services to be provided to it under these Terms and Conditions;
- (b) in particular, the Client understands that with respect to any solicitation or recommendation of any Financial Product to be made or provided to the Client, the Company will not be required to (i) ensure the suitability of any such solicitation, recommendation or advice provided to the Client, (ii) establish the Client's financial situation, investment experience and/or investment objectives, or (iii) assess the Client's knowledge of derivatives and characterize it accordingly;
- (c) the consequences of consenting to being treated as a "professional investor" as described in sub-clause 3.1.2(a) and the right to withdraw from being treated as such (whether in respect of all products or markets or any part thereof) have been fully explained to the Client;
- (d) the Client understands that it has the right to withdraw from being treated as such in respect of all products or markets or any part thereof at any time but confirms that, for the purposes of the Services to be provided by the Company to the Client under these Terms and Conditions, the Client wishes be treated as a "professional investor" for the purposes of the SFC Code of Conduct as described in sub-clause 3.1.2(a); and
- (e) the Client may withdraw from being treated as a "professional investor" for the purposes of the SFC Code of Conduct in respect of all products or markets or any part thereof at any time during the course of the Client's relationship with the Company, by providing the Company with not less than 14 days' prior notice in writing.

**OR**

- 3.1.3 falls within the definition of “professional investor” under section 4, 6 or 7 of the Professional Investor Rules (i.e., a Corporate Professional Investor) but does not satisfy the criteria under paragraph 15.3A of the SFC Code of Conduct (set out in Schedule 2 to these Terms and Conditions).

Where this sub-clause 3.1.3 is applicable, the Client further agrees and confirms that:

- (a) it agrees to be treated as a "professional investor" for the purposes of certain provisions of the SFC Code of Conduct and acknowledges that, as a consequence, it loses certain protections otherwise available to it under the SFC Code of Conduct including, without limitation, those set out in Part B of Schedule 1 to these Terms and Conditions and otherwise provided by the SFC, in respect of the Services to be provided to it under these Terms and Conditions;
- (b) the consequences of consenting to being treated as a "professional investor" for the purposes of the SFC Code of Conduct as described in sub-clause 3.1.3(a) and the right to withdraw from being treated as such (whether in respect of all products or markets or any part thereof) have been fully explained to the Client;
- (c) the Client understands that it has the right to withdraw from being treated as such in respect of all products or markets or any part thereof at any time but confirms that, for the purposes of the Services to be provided by the Company to the Client under these Terms and Conditions, the Client wishes be treated as a "professional investor" for the purposes of the SFC Code of Conduct as described in sub-clause 3.1.3(a); and
- (d) the Client may withdraw from being treated as a "professional investor" for the purposes of the SFC Code of Conduct in respect of all products or markets or any part thereof at any time during the course of the Client's relationship with the Company, by providing the Company with not less than 14 days' prior notice in writing.

**OR**

- 3.1.4 falls within the definition of “professional investor” under section 5 of the Professional Investor Rules ("**Individual Professional Investor**").

Where this sub-clause 3.1.4 is applicable, the Client further agrees and confirms that:



- (a) it agrees to be treated as a "professional investor" for the purposes of certain provisions of the SFC Code of Conduct and acknowledges that, as a consequence, it loses certain protections otherwise available to it under the SFC Code of Conduct including, without limitation, those set out in Part B of Schedule 1 to these Terms and Conditions and otherwise provided by the SFC, in respect of the Services to be provided to it under these Terms and Conditions;
- (b) the consequences of consenting to being treated as a "professional investor" for the purposes of the SFC Code of Conduct as described in sub-clause 3.1.4(a) and the right to withdraw from being treated as such (whether in respect of all products or markets or any part thereof) have been fully explained to the Client;
- (c) the Client understands that it has the right to withdraw from being treated as such in respect of all products or markets or any part thereof at any time but confirms that, for the purposes of the Services to be provided by the Company to the Client under this Agreement, the Client wishes be treated as a "professional investor" for the purposes of the SFC Code of Conduct as described in sub-clause 3.1.4(a); and
- (d) the Client may withdraw from being treated as a "professional investor" for the purposes of the SFC Code of Conduct in respect of all products or markets or any part thereof at any time during the course of your relationship with the Company, by providing the Company with not less than 14 days' prior notice in writing.

3.2 Where the Company has categorised the Client as a "professional investor" as described in Clause 3.1 based on the information provided by the Client to the Company:

- 3.2.1 the Client shall inform the Company promptly in the event that any such information ceases to be true, complete and accurate; and
- 3.2.2 by signing the Account Opening Form, the Client agrees and confirms that it has no objection to the terms upon which the Company proposes to deal with the Client as a professional investor as described in this Clause 3.

3.3 The Company will notify the Client of any material change to the information provided in the Agreement. If there is any material change of information in relation to the Client's identification or registration, the Client undertakes to notify the Company accordingly.

#### 4. INSTRUCTIONS

- 4.1 The Client hereby instructs and authorizes the Company to open and maintain in its books one or more Account(s) in the name of the Client for the purpose of purchasing, investing in, selling, exchanging, disposing of, any dealing in or other transaction in securities in accordance with this Agreement.
- 4.2 The Company is hereby authorized to act as the agent of the Client relating to the purchase and sale of or other dealings in securities as well as the registration, withdrawal or collection of securities or distributions from securities, or the exercise of any rights or claims arising from or relating to securities including (without limitation) dividends, rights issues, conditional cash offers or other corporate actions.
- 4.3 All transactions for the Account(s) may be effected by the Company directly on any Exchanges where the Company is authorized to deal in securities, or, at its option, on any Exchanges indirectly through any other company which the Company may, at its discretion, decide to appoint.
- 4.4 Where the Company will provide the Client with information requested by the Client from time to time on the prices of or other information relating to securities, the Company will not be obliged to provide the Client with any translation of any such information requested by the Client.
- 4.5 The Client will operate his Account(s) by giving Instructions to the Company (a) himself/themselves, and/or (b) through another person or other persons duly appointed and authorized by such Client to operate the relevant Account(s) on his/their behalf provided that the Client has provided the Company with written evidence of such appointment and authorization and the name and address of the appointed and authorized person(s) in advance.
- 4.6 All Instructions shall be given by the Client to the Company either (a) verbally in person or by telephone, or (b) in writing delivered by post, by hand, by e-mail or otherwise, or by facsimile transmission, or by any other means acceptable to the Company. Where the Client is an individual or a Corporate, such Client may also give instructions to the Company through the Electronic Services in accordance with the provisions of Clause 19.
- 4.7 The Company shall be entitled to rely on any Instruction, direction, notice or other communication which the Company reasonably believes to be from a person authorized to act on the Client's behalf and the Client shall be bound by such communication. To the extent not restricted under Applicable Laws and Regulations, the Client agrees to indemnify the Company and hold the Company harmless from and against all Losses reasonably and properly incurred by the Company in reliance thereupon, save for, with respect to Institutional Clients, gross negligence, fraud or wilful misconduct by the Company or any of its officers, employees or agents. With respect to the Company and its officers and employees and any agent that is a member of the CCB International group of companies, references to fraud, gross negligence or wilful misconduct mean a

finding to such effect by a competent court in relation to the conduct of the relevant party.

- 4.8 The Company may record all telephone conversations with the Client in order to verify the instructions of the Client. The Client agrees to accept the contents of any such recording as final and conclusive evidence of the instructions of the Client in the event of any dispute.
- 4.9 Notwithstanding anything herein contained, the Company shall be entitled, at its absolute discretion, to refuse to act on any Instruction and shall not be obliged to give any reason for such refusal. In particular (without prejudice to the generality of the foregoing) the Company may refuse to act, or delay in acting, on any Instruction for the sale of securities if such securities are not registered in the name of the Company or documents of title relating to such securities are not held by the Company, if at the time of such Instruction there are insufficient securities or, as the case may be, monies in the Account(s) in order to effect settlement of the relevant transaction on the due settlement date, or where in the opinion of the Company such Instructions are contrary to any Applicable Laws and Regulations and the Company shall be authorized to amend such Instructions so that they comply with such Applicable Laws and Regulations. No failure on the part of the Company to execute any Instruction shall give rise to any claim by the Client against the Company. In accepting and executing Instructions, the Company shall in all circumstances act as the Client's agent and not as principal in the relevant transaction.
- 4.10 If an order cannot be executed or wholly executed, the Company shall be under no obligation to notify the Client immediately. With respect to Institutional Clients, the Company will use commercially reasonable efforts to inform such Institutional Client as soon as practicable. Accordingly, if the Client requires immediate confirmation as to whether any transaction has been effected he should contact the Company subsequently. Instructions to buy or sell securities may be partially executed if the Instructions cannot be fully executed.
- 4.11 By reason of physical restraints on the Exchanges and rapid changes in the prices of securities that frequently take place, there may, on occasions, be a delay in quoting prices or in dealing. The Company may not after using reasonable endeavours be able to trade at the prices quoted at any specific time. To the extent not restricted under Applicable Laws and Regulations, the Company shall not be liable for any Losses arising by reason of its failing, or being unable, to execute or comply with any Instruction in part or in full, provided that with respect to Institutional Clients, this limitation of liability shall not apply to instances of gross negligence, fraud or wilful misconduct by the Company or any of its officers, employees or agents. With respect to the Company and its officers and employees and any agent that is a member of the CCB International group of companies, references to fraud, gross negligence or wilful misconduct mean a finding to such effect by a competent court in relation to the conduct of the relevant party. Where the Company is unable after using reasonable endeavours to execute or comply with any Instruction in full, the Company is authorized to

effect partial performance of the Instruction. The Client accepts and agrees to be bound by all transactions entered into by the Company pursuant to Instructions received.

- 4.12 Any day order for the purchase or sale of securities placed by the Company at the request of the Client that has not been executed before the close of trading hours of the relevant Exchange or such other expiration date required by the relevant Exchange or such other later time as the Client and the Company may agree shall be deemed to have been cancelled automatically (to the extent not executed if executed in part).
- 4.13 The Company may, for the purpose of carrying out any Instruction, contract with or otherwise deal with or through any other agent, including any person or party associated in any manner with the Company, on such terms and conditions as the Company may in its absolute discretion determine to the extent not restricted under Applicable Laws and Regulations.
- 4.14 The Client acknowledges that due to the trading practices of the Exchanges or other markets in which transactions are executed, the Company may not always be able to execute orders at the prices quoted "at best" or "at market" and the Client agrees in any event to be bound by transactions executed by the Company following Instructions received by the Company.
- 4.15 Subject to Applicable Laws and Regulations and market requirements, the Company may in its absolute discretion determine the priority in the execution of its clients' orders, having due regard to the sequence in which such orders were received, and the Client shall not have any claim of priority to another client in relation to the execution of any order received by the Company.
- 4.16 The Client acknowledges and agrees that:
  - 4.16.1 the Client retains full responsibility for all trading and other investment decisions with respect to the Account(s);
  - 4.16.2 where the Client enters into a transaction to buy and/or sell securities without or inconsistent with any solicitation or recommendation from the Company and to the extent not restricted under Applicable Laws and Regulations, (a) the Company shall not have any obligation or duty to assess whether or ensure that the relevant securities are suitable for the Client, and (b) the Client acknowledges and agrees that (i) it is his/their sole responsibility to assess and to satisfy himself/themselves that such transaction is appropriate for him/them, and (ii) the Company shall not be liable for any Losses of any kind incurred or suffered by the Client in connection with such transactions;
  - 4.16.3 the Company provides execution, clearing and other trading services to the Client with respect to the Account(s) in accordance with Instructions received;

- 4.16.4 the Company provides advisory services with respect to securities to the Client and, if applicable, will ensure reasonable suitability as set out in Clause 4.17;;
  - 4.16.5 the Company has no responsibility or obligation regarding any conduct, action, representation or statement of any introducing firm, investment advisor or other third party in connection with the Account(s) or any transaction therein;
  - 4.16.6 any information provided by the Company, its employees or agents, upon the request of the Client, shall not, by itself, constitute solicitation of the sale or recommendation of any securities or services.
- 4.17 Where the Client is not a Professional Investor as described under Clause 3.1.1 or Clause 3.1.2, if the Company solicits the sale of or recommends any Financial Product to the Client, the Financial Product must be reasonably suitable for such Client having regard to such Client's financial situation, investment experience and investment objectives. No other provision of this Agreement or any other document the Company may ask the Client to sign and no statement the Company may ask the Client to make derogates from this Clause 4.17.

5. **MARGIN AND FUNDING**

This Agreement shall apply to an account for cash dealing only. Nothing in this Agreement shall oblige the Company or any Group Company to grant or maintain any margin or credit facilities with respect to the Account(s).

6. **SETTLEMENT**

- 6.1 Unless otherwise agreed in writing by the Company, in respect of each sale and purchase transaction executed on behalf of the Client, unless the Company is already holding cash or securities on behalf of the Client to settle the transaction, the Client shall:

6.1.1 pay cleared funds or deliver securities to the Company; or

6.1.2 otherwise ensure that the Company receives such funds or securities,

by such time and date as prescribed and notified (whether verbally or in writing) by the Company to the Client in relation to the relevant transaction.

- 6.2 Unless otherwise agreed in writing by the Company, the Client agrees that should the Client fail to make such payment or delivery of securities by the time and date prescribed by the Company pursuant to Clause 6.1, the Company is hereby authorized to:

6.2.1 in the case of a purchase transaction, to transfer or sell any such purchased securities to satisfy the Client's obligations to the Company;  
or

6.2.2 in the case of a sale transaction, to borrow and/or purchase such sold securities to satisfy the Client's obligations to the Company.

6.3 The Client hereby acknowledges that the Client shall indemnify and keep indemnified the Company from any Losses incurred by the Company in connection with the Client's failure to meet his/their obligations by the time and date prescribed by the Company pursuant to Clause 6.1.

## 7. **SHORT SALES**

7.1 Clauses 7.2, 7.3 and 7.4 are applicable to Institutional Clients only. With respect to Clients who are not Institutional Clients, the Client acknowledges that the Company will not accept an instruction to sell for short account on behalf of such Client and the Company shall not be responsible to such Client for identifying whether or not an instruction is to sell for short account.

7.2 Whenever any instruction to be given by an Institutional Client is an instruction to sell in respect of securities which the Institutional Client does not own (a short sale), the Institutional Client undertakes to inform the Company immediately of the same and to provide the particulars of the borrowed securities in connection with the short sale and any other related information requested by the Company upon the Company's request.

7.3 The Institutional Client acknowledges that the Company has the absolute discretion to reject an instruction to execute a short sale on behalf of the Institutional Client. The Company shall not be responsible for identifying whether or not an Instruction is to sell for short account.

7.4 The designation of a sale order by such Institutional Client that is not marked "short" shall constitute a representation by the Institutional Client that the Institutional Client owns and intends to deliver the securities (i.e., the sale is "long"); and if the securities is not in the Company's possession at the time of contract for sale, the Institutional Client shall deliver the security to the Company promptly but in no event later than the applicable settlement date.

## 8. **CONTRACT NOTES**

8.1 Where the Client is a Professional Investor as described in Clause 3.1, the Client agrees not to receive any contract notes, statements of the Account and/or receipts from the Company or any of its affiliates under the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (Chapter 571Q of the Laws of Hong Kong), as amended from time to time.

8.2 Where the Client is not a Professional Investor, the Company shall within the period from time to time specified under the SFO or the subsidiary legislation related thereto or the rules of any Exchange as amended from time to time, send to the Client copies of the contract note relating to any transactions in securities effected by the Company for the Account(s). The Company shall despatch the copy of the contract note to the Client at the last mailing address on record with the Company. The Client shall upon receipt of the contract note examine the

same and to promptly give notice to the Company if the Client considers that any details stated therein are incorrect in any respect. If the Company does not receive any written objection from the Client within the period stipulated in a contract note for this purpose, the Client shall be deemed to have accepted all the transaction details contained as true and accurate in all respects.

**9. STATEMENTS**

- 9.1 This Clause 9 is only applicable where the Client is not a Professional Investor.
- 9.2 The Company shall send the Client monthly statements showing the position of the Account. Such statement shall be in such form and contain such information as the Company may from time to time determine.
- 9.3 The Company shall send to the Client such information relating to the Account as the Client may from time to time reasonably require in writing.
- 9.4 The Client shall upon receipt of a monthly statement examine the same. If the Company does not receive any written objection from the Client in respect of any details stated in a monthly statement within the period stipulated in the statement for this purpose, the Client shall be deemed to have accepted the same as true and accurate in all respects. Notwithstanding the foregoing, the Client shall not have the right to object to details contained in a monthly statement if those details have already been previously stated in a contract note which have been accepted by the Client as true and accurate.
- 9.5 The Company shall despatch the monthly statement and any other information requested in accordance with Clauses 9.1 and 9.3 respectively to the Client at the last mailing address on record with the Company.

**10. COMMISSIONS AND EXPENSES**

- 10.1 All transactions executed in pursuance of the instructions of the Client on the Exchanges shall be subject to a transaction levy and any other levies that the relevant Exchange from time to time may impose. The Company is authorized to collect any such levies in accordance with the rules prescribed by the relevant Exchange from time to time.
- 10.2 Without prejudice and in addition to any other rights and remedies of the Company hereunder, the Client hereby irrevocably authorizes the Company, without prior notice to the Client, to apply or withhold all or any part of any cash, securities or other properties held for the account of the Client by the Company in the Account(s) whatsoever and whether or not relating to a particular transaction or order, in or towards payment of money properly required to meet commissions, brokerages, taxes (including taxes that are potentially payable as determined by the Company in its reasonable discretion), stamp duties, bank charges, transfer fees, interest, custodial expenses or other charges in respect of or connected with the Account(s) or any transactions or services thereof or any securities therein. The Client shall also on demand pay the Company forthwith such

amounts or additional amounts as notified by the Company to him from time to time.

- 10.3 Subject to any disclosure or other requirements prescribed by Applicable Law, the Company and/or any of its associated entities shall, at the Company's absolute discretion, be entitled to solicit, accept and retain from any broker or any other person and retain for the Client its own account and benefit absolutely any and all profit, rebate (including rebates from standard commissions charged by brokers or other agents to their clients), brokerage, commission, fee, benefit, discount and other advantage (whether monetary or otherwise) from any person arising out of or in connection with the Account(s) or the provision of the services under the Agreement, whether these are managed, advised, issued or distributed by the Company, without having to account to the Client.
- 10.4 The Company shall, at its absolute discretion, be entitled to solicit, accept and retain any benefit in connection with any transaction effected with any person for the Client in accordance with this Agreement, including any commissions, rebates or similar payments received in connection therewith, and rebates from standard commissions charged by companies or other agents to their clients. The Company shall also, at its absolute discretion, be entitled to offer any benefit in connection with any transaction effected with any person for the Client pursuant to the terms and subject to the conditions of this Agreement, including any benefit relating to commissions or similar payments in connection therewith.
- 10.5 Unless otherwise informed by the Company, the Company is not an independent intermediary because: (a) it receives fees, commissions, or other monetary benefits from other parties (which may include product issuers) in relation to its distribution of investment products to the Client. For details, the Client should refer to the Company's disclosure on monetary benefits which it is required to deliver to the Client prior to or at the point of entering into any transaction in investment products; and/or (b) it receives non-monetary benefits from other parties, or has close links or other legal or economic relationships with issuers of products that it may distribute to the Client.

## 11. **INTEREST**

- 11.1 Unless otherwise indicated, the Client undertakes to pay interest to the Company in respect of any debit balance on the Account(s) at any time at such rate as may be specified from time to time by the Company or failing any such specification at a rate equivalent to 5 per cent per annum above the prime rate quoted by China Construction Bank (Asia) Corporation Limited from time to time. Such interest shall accrue on a day-to-day basis and shall be payable on the last day of each calendar month or upon any demand being made by the Company.
- 11.2 Unless otherwise indicated:
- 11.2.1 in respect of any amount otherwise owing to the Company; or



11.2.2 in the event of any default under Clause 15 (whether monetary or otherwise),

the Client undertakes to pay interest to the Company at any time at such rate as may be specified from time to time by the Company or failing any such specification at a rate equivalent to 13 per cent per annum above the prime rate quoted by China Construction Bank (Asia) Corporation Limited from time to time. For the purpose of Clause 11.2.2, the relevant rate of interest payable by the Client to the Company shall be calculated based on the total amount owing to the Company at the time of such default.

Such interest shall accrue on a day-to-day basis and shall be payable on the last day of each calendar month or upon any demand being made by the Company.

11.3 The Company may pay interest on credit balance on the Account(s) at the rate and time as determined by the Company from time to time. Notwithstanding the foregoing, the Company may apply negative interest rate over credit balance on the Account(s). Negative interest will be calculated at the rate, and be debited from the Account(s) at the time, determined by the Company from time to time. Different currencies may have different rates and such negative interest will be calculated for each day over a 360 or 365 day year according to the Company's practice for the relevant currency.

## 12. **SECURITIES IN THE ACCOUNT(S)**

12.1 The Client authorizes the Company and its associated entities, in respect of all securities held in the Account(s) and all securities received or held by or on behalf of the Company (or any corporation which is in a controlling entity relationship with the Company) for or on behalf of the Client or in which the Client has a legal or equitable interest in accordance with the Client Securities Rules, to (a) register such securities in the name of an associated entity of the Company or in the Client's name, or (b) deposit such securities in safe custody in a segregated account which is designated as a trust account or client account and established and maintained in Hong Kong by the Company or an associated entity of the Company with an authorized financial institution, an approved custodian or another intermediary licensed for dealing in securities, or otherwise in accordance with the Client Securities Rules.

12.2 Any securities held by the Company, any associated entity of the Company, banker, institution, custodian or other intermediary pursuant to Clauses 12.1 shall be at the sole risk of the Client and the Company and the relevant associated entity, banker, institution, custodian and other intermediary shall be under no obligation to insure the Client against any risk, and such obligation shall be the sole responsibility of the Client.

12.3 If in relation to any securities deposited with the Company which are not registered in the Client's name, any dividends or other distributions or benefits accrue in respect of such securities, the Account(s) shall be credited (or other

payment made to the Client as may be agreed between the Company and the Client) with the proportion of such benefit equal to the proportion of the securities held on behalf of the Client out of the total number or amount of such securities.

- 12.4 If in relation to any securities deposited with the Company but which are not registered in the name of the Client, any Loss is suffered by the Company, the Account(s) may be debited (or payment made by the Client as may be agreed) with the proportion of such Loss equal to the proportion of the securities held on behalf of the Client out of the total number or amount of such securities.
- 12.5 Except as provided in Clauses 6.2, 12.6 and 15.2, the Company shall not, without the Client's oral or written direction or standing authority under the Client Securities Rules, deposit, transfer, lend, pledge, re-pledge or otherwise deal with any securities of the Client for any purpose.
- 12.6 Pursuant to section 6(3) of the Client Securities Rules, the Client authorizes the Company to dispose, or initiate a disposal by its associated entity, of any of the securities held in the Account(s) and all securities received for or on the account of the Client or in which the Client has a legal or equitable interest (and the Company shall have absolute discretion to determine which securities are to be disposed of) in settlement of any liability owed by or on behalf of the Client to the Company or its associated entity or any third party.
- 12.7 The Company's obligations under Clause 12.1 shall be satisfied by the delivery, holding or registration in the Client's name or the Client's nominee of securities of the same class, denomination and nominal amount as, and rank *pari passu* with, those originally deposited with, transferred to or acquired by the Company on the Client's behalf (subject always to any capital reorganization which may have occurred in the meantime) and the Company shall not be bound to deliver or return securities which are identical with such securities in terms of number, class denomination, nominal amount and rights attached thereto.

13. **MONIES IN THE ACCOUNT(S)**

The Company shall deal with all monies held in the Account(s) and all monies received for or on the account of the Client or in which the Client has a legal or equitable interest in accordance with the Client Money Rules. Unless otherwise agreed between the Client and the Company, the Client agrees that the Company shall be entitled to retain absolutely and for its own benefit any interest accrued on such monies.

14. **NEW LISTING OF SECURITIES**

- 14.1 In the event that the Client requests and authorizes the Company to apply for securities in respect of a new listing and/or issue of securities on the Exchange as his agent and for his benefit or for the benefit of any other person, the Client hereby warrants to and for the Company's benefit that the Company have authority to make such application on the Client's behalf.

- 14.2 The Client shall familiarize himself and comply with all the terms and conditions governing the securities of the new listing and/or issue and the application for such new securities set out in any prospectus and/or offering document and the application form or any other relevant document in respect of such new listing and/or issue and the Client agrees to be bound by such terms and conditions in any such transaction the Client may have with the Company.
- 14.3 The Client hereby gives to the Company all the representations, warranties and undertakings which an applicant for securities in a new listing and/or issue is required to give (whether to the issuer, sponsors, underwriters or placing agents of the relevant securities, the Exchange or any other relevant regulator or person).
- 14.4 The Client hereby further declares and warrants, and authorizes the Company to disclose and warrant to the Exchange on any application form (or otherwise) and to any other person as appropriate, that any such application made by the Company as his agent is the only application made, and the only application intended to be made, by the Client or on the Client's behalf, to benefit the Client or the person for whose benefit the Client is applying. The Client acknowledges and accepts that the aforesaid declaration and warranty will be relied upon by the Company and by the issuer, sponsors, underwriters or placing agents of the relevant securities, the Exchange or any other relevant regulator or person in respect of any application made by the Company as the Client's agent.
- 14.5 The Client acknowledges that any application made by an unlisted company which does not carry on any business other than dealing in securities and in respect of which the Client exercises statutory control shall be deemed to be an application made for the benefit of the Client.
- 14.6 The Client recognizes and understands that the legal, regulatory requirements and market practice in respect of applications for securities may vary from time to time as may the requirements of any particular new listing or issue of securities. The Client undertakes to provide to the Company such information and take such additional steps and make such additional representations, warranties and undertakings as may be required in accordance with such legal, regulatory requirements and market practice as the Company may in the Company's absolute discretion determine from time to time.
- 14.7 In relation to a bulk application to be made by the Company or the Company's agent on the Company's own account and/or on behalf of the Client and/or the Company's other clients, the Client acknowledges and agrees:
- 14.7.1 that such bulk application may be rejected for reasons which are unrelated to the Client and the Client's application and neither the Company nor the Company's agent shall, in the absence of fraud, gross negligence or wilful default (with respect to the Company and its and any agent that is a member of the CCB International group of companies, references to fraud, gross negligence or wilful misconduct mean a

finding to such effect by a competent court in relation to the conduct of the relevant party), be liable to the Client or any other person in consequence of such rejection; and

- 14.7.2 to indemnify the Company in accordance with Clause 24 if such bulk application is rejected either in circumstances where the representations and warranties have been breached or otherwise because of factors relating to the Client. Where the Client is an individual or a Corporate, the Client acknowledges that the Client may also be liable in damages to other persons affected by such breach or other factors.

## 15. **EVENT OF DEFAULT**

### 15.1 Any one of the following events shall constitute an event of default ("**Event of Default**"):

- 15.1.1 the Client's failure to pay any deposits or any other sums payable to the Company or submit to the Company any documents or deliver any securities to the Company hereunder, when called upon to do so or on due date and in the case where an Account is being held in the joint name of two or more persons, any such failure of payment, submission or delivery by any one of them;
- 15.1.2 default by the Client in the due performance of any of the terms of this Agreement and the observance of any applicable laws, regulations, by-laws, rules and requirements of the appropriate Exchanges and/or Clearing Houses and in the case where an Account is being held in the joint name of two or more persons, any such default in respect of or against any one of them;
- 15.1.3 the filing of a petition in bankruptcy, winding up or the commencement of other analogous proceedings against the Client and in the case where an Account is being held in the joint name of two or more persons, any such filing or proceedings in respect of or against any one of them;
- 15.1.4 the death of the Client (being an individual) and in the case where an Account is being held in the joint name of two or more persons, the death in respect of any one of them;
- 15.1.5 the levy or enforcement of any attachment, execution or other process against the Client and in the case where an Account is being held in the joint name of two or more persons, any such levy, enforcement or proceedings in respect of or against any one of them;
- 15.1.6 any representation or warranty made by the Client to the Company in this Agreement or in any document being or becoming incorrect or misleading and in the case where an Account is being held in the joint name of two or more persons, any such incorrect or misleading representation or warranty made by any one of them;

- 15.1.7 any consent, authorization or board resolution required by the Client (being a corporation or a partnership) to enter into this Agreement being wholly or partly revoked, suspended, terminated or ceasing to remain in full force and effect;
  - 15.1.8 the occurrence of any event which, in the sole opinion of the Company where the Client is an individual or a Corporate, or in the reasonable opinion of the Company where the Client is an Institutional Client, might jeopardize any of its rights under this Agreement;
  - 15.1.9 the receipt by the Company of notice of any dispute as to the validity of any order or instruction from the Client and in the case where an Account is being held in the joint name of two or more persons, any such receipt in respect of or against any one of them; and
  - 15.1.10 the continued performance of this Agreement becomes illegal or claim by any government authority to be illegal.
- 15.2 If an Event of Default occurs, without prejudice to any other rights or remedies that the Company may have against the Client and without further notice to the Client and to the extent not restricted under Applicable Laws and Regulations, the Company shall be authorized and entitled, at its sole discretion, to take any or all of the following actions:
- 15.2.1 immediately close the Account(s);
  - 15.2.2 terminate all or any part of this Agreement;
  - 15.2.3 cancel any or all outstanding orders or any other commitments made on behalf of the Client;
  - 15.2.4 close any or all contracts between the Company and the Client, cover any short position of the Client through the purchase of securities on the relevant Exchange(s) or, subject to Clauses 12.5 and 12.6, liquidate any long position of the Client through the sale of securities in the Account(s) on the relevant Exchange(s);
  - 15.2.5 subject to Clauses 12.5 and 12.6, dispose of any or all securities and other property held for or on behalf of the Client in the Account(s) and to apply the proceeds thereof and any cash deposit(s) to settle all outstanding balances owing to the Company;
  - 15.2.6 combine, consolidate and set-off any or all Accounts of the Client in accordance with Clause 17; and
  - 15.2.7 sell, transfer or otherwise dispose any or all securities and other property in the Account(s) or held for or on behalf of the Client for the purpose of complying with the applicable laws, regulations, by-laws and rules of the appropriate Exchanges and/or Clearing Houses or meeting the requirements thereof.

15.3 In the event of any sale or liquidation of the assets in the Account(s) pursuant to this Clause 15 and to the extent not restricted under Applicable Laws and Regulations:

15.3.1 the Company shall not be responsible for any Losses occasioned thereby howsoever arising if the Company has already used reasonable endeavours to sell or dispose of the securities or any part thereof at the then available market price;

15.3.2 the Company will exercise its own judgment in determining the time to sell or dispose of the securities or any part thereof and the Company shall not be responsible for any Losses occasioned thereby;

15.3.3 the Company shall be entitled to appropriate to itself or sell or dispose of the securities or any part thereof at the current price to any of the Company's Group Companies without being in any way responsible for Losses occasioned thereby howsoever arising and without being accountable for any profit made by the Company and/or any of the Company's Group Companies; and

15.3.4 the Client undertakes to pay to the Company any deficiency if the net proceeds of sale or net proceeds of liquidation shall be insufficient to cover all the outstanding balances owing by the Client to the Company.

15.4 Any determination of whether an Event of Default has occurred shall be based on the reasonable opinion of the Company. The Client undertakes to notify the Company in writing immediately upon becoming aware of the occurrence of any event which constitutes or is likely to constitute an Event of Default (although any failure to so notify the Company will not prevent an Event of Default from having occurred).

## 16. **PROCEEDS OF SALE**

16.1 Subject to Clauses 12.5 and 12.6, the proceeds of sale or liquidation of the Account(s) made under Clause 15 shall be applied in the following order of priority and any residue shall be paid to the Client or to his/its order:

16.1.1 payment of all costs, charges, legal fees and expenses including stamp duty, commission and brokerage properly incurred by the Company in transferring and selling all or any of the securities or properties in the Account(s) or in perfecting title thereto;

16.1.2 payment of all interest due;

16.1.3 payment of all monies and liabilities due, owing or incurred by the Client, to the Company;

16.1.4 payment of all monies and liabilities due, owing or incurred by the Client to any of the Group Companies.

16.2 Subject to the Client Money Rules, any dividends, interest or other payments which may be received or receivable by the Company in respect of any of the securities may be applied by the Company as though they were proceeds of sale hereunder notwithstanding that the power of sale may not have arisen and notwithstanding that subsequent to the execution of this Agreement the Company may have paid any of the said dividends, interest or other payments to the Client.

**17. SET-OFF, LIEN AND COMBINATION OF ACCOUNTS**

17.1 In addition and without prejudice to any general liens, rights of set-off or other similar rights to which the Company may be entitled under law or this Agreement, all securities, receivables, monies (in any currency) and other property of the Client (held by the Client either individually or jointly with others) held by or in the possession of the Company at any time shall be subject to a general lien in favour of the Company as continuing security to offset and discharge all of the Client's obligations, arising from the business of dealing in securities or otherwise, to the Company and any of the Group Companies.

17.2 In addition and without prejudice to any general liens or other similar rights which the Company may be entitled under law or this Agreement and subject to applicable rules and regulations, including without limitation, the Client Money Rules and the Client Securities Rules, the Company for itself and as agent for any of the Group Companies, at any time without notice to the Client, may combine or consolidate any or all accounts, of any nature whatsoever and either individually or jointly with others, with the Company or any of the Group Companies and the Company may set off or transfer any monies (in any currency), securities or other property in any such accounts to satisfy obligations or liabilities of the Client to the Company or any of the Group Companies, whether such obligations and liabilities are actual or contingent, primary or collateral, secured or unsecured, or joint or several.

17.3 Without limiting or modifying the general provisions of this Agreement and subject to applicable rules and regulations, including without limitation, the Client Money Rules and the Client Securities Rules, the Company may, without notice, transfer all or any sum or properties interchangeably between any of the accounts maintained at any time by the Client with the Company and any of the Group Companies.

**18. CLIENT STANDING AUTHORITY**

18.1 The Client Standing Authority covers the following:

18.1.1 monies from time to time received by the Company from or on behalf of or held by the Company on behalf of the Client; and

18.1.2 securities from time to time received or held on behalf of the Client.

18.2 The Client authorizes the Company and its associated entity to:

- 18.2.1 combine or consolidate any or all segregated accounts, of any nature whatsoever and either individually or jointly with others, maintained by the Company or any of the Group Companies and the Company may transfer any sum of monies or any of the securities to and between such segregated account(s) to satisfy the Client's obligations or liabilities to the Company or any of the Group Companies, whether such obligations and liabilities are actual or contingent, primary or collateral, secured or unsecured, or joint or several; and
  - 18.2.2 transfer any sum of monies or any of the securities interchangeably between any of the segregated accounts maintained at any time by the Company or any of the Group Companies.
- 18.3 The Client acknowledges and agrees that the Company may do any of the things set out in Clause 18.2 without giving further notice to the Client.
- 18.4 The Client Standing Authority is given without prejudice to other authorities or rights which the Company or any of the Group Companies may have in relation to dealing in monies or any of the securities in the segregated accounts.
- 18.5 Where the Client is:
  - 18.5.1 a Professional Investor, the Client Standing Authority shall be valid until revoked by the Client in accordance with Clause 18.6; or
  - 18.5.2 not a Professional Investor, the Client Standing Authority shall be valid for a period of up to 12 months from the date of execution of the Account Opening Form and shall expire on 31 December each year, subject to renewal by the Client in accordance with Clause 18.7.
- 18.6 The Client may revoke the Client Standing Authority by giving written notice address to the Customer Service Department at the Company's address specified in the Account Opening Form or such other address which the Company may notify the Client in writing for this purpose. Such notice shall take effect upon the expiry of fourteen (14) days from the date of the Company's actual receipt of such notice.
- 18.7 The Client understands and agrees that upon the expiry of the the Client Standing Authority (where applicable), such authority shall be deemed to be renewed for a further period of twelve (12) months on a continuing basis without the Client's written consent if the Company issues a written notice to the Client reminding the Client of the impending expiry of the Client Standing Authority at least fourteen (14) days prior to the expiry date, and the Client does not object to such deemed renewal before such expiry date.
- 19. **ELECTRONIC SERVICES**
- 19.1 This Clause 19 is not applicable to Institutional Clients. Unless otherwise specified, this Clause is made without prejudice and in addition to all the other provisions in this Agreement.



- 19.2 The Company may provide the Client with Electronic Services, and the Client hereby requests the provision of such services, upon the terms and conditions as embodied in this Agreement, as modified, amended or expanded by any notice, letter, publication or such other document as may be issued from time to time by the Company.
- 19.3 The Client may from time to time instruct the Company, acting as the Client's agent, to deposit, purchase and/or sell securities for the Account(s) or otherwise deal with securities, receivables or monies on behalf of the Client through the Electronic Services.
- 19.4 The Client agrees that the Client shall be the only authorized user of the Electronic Services under this Agreement. The Client shall be wholly and solely responsible for the confidentiality, security and use of the Access Codes issued to the Client by the Company.
- 19.5 The Client acknowledges and agrees that the Client shall be wholly and solely responsible for all Instructions entered through the Electronic Services. The Client further acknowledges that the Electronic Services, the Company's website, and the software comprised in them, are proprietary to the Company. The Client undertakes and warrants that the Client shall not, and shall not attempt to, tamper with, modify, decompile, reverse engineer, damage, destroy or otherwise alter in any way, and shall not attempt to gain unauthorized access to, any part of the Electronic Services, the Company's website, and any of the software comprised in them. The Client agrees that the Company shall be entitled to close any or all of the Account(s) immediately without notice to the Client, and the Client acknowledges that the Company may take legal action against the Client, if the Client at any time breaches this warranty and undertaking or if the Company at any time reasonably suspects that the Client has breached the same. The Client undertakes to notify the Company immediately if the Client becomes aware that any of the actions described above in this paragraph is being perpetrated by any other person.
- 19.6 As and when the Company allows the Client to open an Account on-line with the Company, in addition to completing and returning this Agreement through the Internet, the Client agrees to return to the Company the hard copy of this Agreement (including the Account Opening Form, applicable Risk Disclosure Statement and any authority given by the Client to the Company with respect to the Account(s)) duly completed and executed.
- 19.7 Unless otherwise agreed between the Company and the Client, the Company will not execute any trading orders of the Client until there are sufficient cleared funds, securities or other assets acceptable to the Company in the Account(s) to settle the Client's transactions and upon receipt of the documents as stated in Clause 19.6.
- 19.8 The Company will not be deemed to have received the Client's Instructions or have executed the Client's orders unless and until the Client is in receipt of the

Company's message acknowledging receipt or confirming execution of the Client's orders, either electronically or by hard copy.

- 19.9 The Client acknowledges and agrees that, as a condition of using the Electronic Services to give Instructions, the Client shall immediately notify the Company if:
- 19.9.1 an Instruction has been placed through the Electronic Services and the Client has not received an Instruction number or has not received an accurate acknowledgement of the Instruction or of its execution (whether by hard copy, electronic or verbal means);
  - 19.9.2 the Client has received acknowledgement (whether by hard copy, electronic or verbal means) of a transaction which the Client did not instruct or any similar error;
  - 19.9.3 the Client becomes aware of any of the acts stated in Clause 19.5 being done or attempted by any person;
  - 19.9.4 the Client becomes aware of any unauthorized use of the Client's Access Codes;
  - 19.9.5 the Client has difficulties with regard to the use of the Electronic Services; or
  - 19.9.6 the Client has lost the SIM Card.
- 19.10 The Client agrees to review every order before entering it as it may not be possible to cancel an Instruction once given.
- 19.11 The Client agrees that the Company shall not be liable for any Losses to the Client or any other person that may suffer as a result of using or attempting to use the Electronic Services including but not limited to any Losses due to any system or software or hardware failure or any interruption or failure of communication lines or devices for any reasons, unless such Losses are caused by wilful default or gross negligence on the part of the Company. The Client further undertakes to indemnify the Company, on a full indemnity basis, for any Losses the Company may suffer as a result of the use of Electronic Services except to the extent that such Losses are outside the Client's control.
- 19.12 The Client acknowledges and agrees that if the mode of communication used by the Client in the course of the Electronic Services becomes temporarily unavailable, the Client can during such period continue to operate the relevant Account subject to the right of the Company to obtain such information regarding the verification of the Client's identity as it may from time to time think fit.
- 19.13 The Client acknowledges that Exchanges and certain associations may assert proprietary interests and rights over all market data they furnish to parties who disseminate such data and agrees not to do any act which would constitute any infringement or encroachment of such rights or interests. The Client also understands that the Company does not guarantee the timeliness, sequence,

accuracy or completeness of market data or any market information (including any information provided to the Client through the Electronic Services). The Company shall not be liable in any way for any Losses arising from or caused by (1) any inaccuracy, error in or omission from any such data, information or message; (2) any delay in the transmission or delivery thereof; (3) any suspension or congestion in communication; (4) any unavailability or interruption of any such data, message or information whether due to any act of the Company; or (5) by any forces beyond the control of the Company.

## 20. **RISK DISCLOSURE STATEMENTS**

20.1 The Client acknowledges, understands and accepts the risks set out below.

20.1.1 The prices of securities fluctuate, sometimes dramatically. The price of a security may move up or down, and may become valueless. It is as likely that losses will be incurred rather than profit made as a result of buying and selling securities. This is a risk that the Client is prepared to accept.

20.1.2 GEM stocks involve a high investment risk. In particular, companies may list on GEM with neither a track record of profitability nor any obligation to forecast future profitability. GEM stocks may be very volatile and illiquid. The Client acknowledges and understands that he should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of GEM mean that it is a market more suited to professional and other sophisticated investors. The Client acknowledges and understands that current information on GEM stocks may only be found on the internet website operated by SEHK. GEM companies are usually not required to issue paid announcements in gazetted newspapers. This sub-clause does not purport to disclose all the risks and other significant aspects of GEM. The Client understands and acknowledges that he should undertake his own research and study on the trading of securities on GEM before commencing any trading activities, and that he should seek independent professional advice if he is uncertain of or has not understood any aspect of this sub-clause or the nature and risks involved in trading of GEM stocks.

20.1.3 Client assets received or held by the Company outside Hong Kong are subject to the applicable laws and regulations of the relevant overseas jurisdiction which may be different from the SFO and the rules made there under. Consequently, such client assets may not enjoy the same protection as that conferred on client assets received or held in Hong Kong.

20.1.4 There are risks in leaving securities in the custody of the Company, its associated entities or its agents. For example, if the Company is holding the Client's securities and becomes insolvent, the Client may experience

significant delay in recovering securities. These are risks that the Client is prepared to accept.

- 20.1.5 If the Company commits a default as defined in Part XII of the SFO and a qualifying client thereby suffers a pecuniary loss, the qualifying client shall have a right to claim under the compensation fund established under the SFO, subject to the terms of the compensation fund from time to time. The qualifying client's right to claim under the compensation fund shall be restricted to the extent provided for in the SFO and its rules and regulations.
  - 20.1.6 If the Client undertakes transactions on an electronic trading system, he will be exposed to risks associated with the system including the failure of hardware and software, and that the result of any system failure may be that his order is either not executed according to the Instructions or is not executed at all.
  - 20.1.7 Due to unpredictable traffic congestion and other reasons, electronic transmission may not be a reliable medium of communication, that transactions conducted via electronic means are subject to delays in transmission and receipt of the Instructions or other information, delays in execution or execution of the Instructions at prices different from those prevailing at the time the Instructions were given, transmission interruption or blackout, that there are risks of misunderstanding or errors in communication, and that it is also usually not possible to cancel an Instruction after it has been given.
  - 20.1.8 The Company does not provide "Hold Mail" services to its clients.
  - 20.1.9 The securities under the Nasdaq-Amex Pilot Program ("**PP**") are aimed at sophisticated investors. The Client understands and acknowledges that he should consult his dealer and become familiarised with the PP before trading in the PP securities and that he should be aware that the PP securities are not regulated as a primary or secondary listing on the Main Board or GEM of SEHK.
- 20.2 In the event that the Client wishes to have transactions pursuant to this Agreement executed on Exchanges other than the SEHK, since such transactions will be subject to the rules and regulations of those Exchanges, and applicable local laws, and not those of the SEHK, the Client may have a markedly different level and type of protection in relation to those transactions compared to the level and type of protection afforded by the rules and regulations of the SEHK and Hong Kong law (and the Client acknowledges and recognizes, without limitation, that such transactions executed on exchanges other than the SEHK will not be subject to a right to claim under the compensation fund established under the SFO where the Client suffers a pecuniary loss).

21. **COMPLIANCE WITH LAWS, ETC.**

- 21.1 The Client shall not instruct the Company to do anything in relation to the Account(s) which is a breach of, or may breach or would involve or result in the Company, any Group Company or any other person being in breach of Applicable Laws and Regulations including the SFO, the Rules of the Exchange, the Codes on Takeovers and Mergers and Share Buy-backs or any other laws, rules or regulations in force or applicable to the conduct of the business of dealing in securities in Hong Kong or elsewhere or otherwise binding on the Company or any Group Company (whether or not having the force of law).
- 21.2 The Client acknowledges that he/they shall be solely responsible for compliance with all obligations of disclosure under the relevant provisions of Part XV of the SFO, the Codes on Takeovers and Mergers and Share Buy-backs, and any other applicable laws, rules or regulations relating to disclosure of interests in securities in Hong Kong or any other relevant countries, each as amended from time to time. The Company shall not be obliged to give notice of holdings to the Client in any form or by any time limit for such purpose save any notice or statement to be issued as expressly set out in this Agreement or as required by the applicable laws, regulations, by-laws and rules of the appropriate Exchanges and/or Clearing Houses. The Client acknowledges that neither the Company nor any Group Company, their respective directors, officers or employees shall be liable for any Losses of the Client from any failure or delay by the Client or any other person to disclose in accordance with any such obligation nor any delay or default in notification to the Client as to the carrying into effect of instructions and shall indemnify the Company for any such Losses.
- 21.3 The Client undertakes to the Company that the Client will not engage or attempt to engage, and that the Client has proper safeguards in place to prevent the Client from engaging, in any activity which may constitute market misconduct under the SFO and further agrees to inform the Company immediately if the Client becomes aware of any activity by any person that may result in the Client being involved in market misconduct.
- 21.4 The Client agrees to provide to the Company and consents to the collection and processing by the Company of, any authorizations, waivers, forms, documentation and other information, relating to its status (or the status of its direct or indirect owners or accountholders) or otherwise required to be reported, under AEOI and FATCA. The Client further consents to the disclosure, transfer and reporting of Financial Account Information to any relevant government or taxing authority, any Group Company, any sub-contractors, agents, service providers or associates of the Company or Group Company, and any person making payments to the Company or any Group Company, including transfers to jurisdictions which do not have strict data protection or similar laws, to the extent that the Company reasonably determines that such disclosures, transfer or reporting is necessary or warranted to facilitate compliance with AEOI and FATCA. The Client warrants that each person whose AEOI or FATCA Information it provides (or has provided) to the Company has been notified of and agreed to,

and has been given such other information as may be necessary to permit, the collection, processing, disclosure, transfer and reporting of their information as set out in this paragraph.

21.5 The Client acknowledges that the Company may take or refrain from taking any action the Company reasonably determines it is required by AEOI and FATCA to take or refrain from taking, including without limitation closing, transferring or blocking Account(s).

21.6 The Client agrees to provide all such information and documents as may be necessary to verify the Client's identity and do all such acts and things as may be necessary to enable the Company to comply with the Applicable Laws and Regulations, including but not limited to AEOI and FATCA. In particular, the Client:

- (a) undertakes to comply with all requests made by the Company for Financial Account Information (including the completion of a self-certification) to enable the Company to comply with its obligations pursuant to the Applicable Laws and Regulations, including but not limited to AEOI and FATCA;
- (b) undertakes to comply with all requests made by the Company to enable the Company to comply with its obligations, requirements or arrangements for disclosing or using Financial Account Information;
- (c) undertakes to inform the Company promptly in writing with required documentation (including a self-certification) if there are any changes in circumstances or any changes or additions (and in any event no later than 30 days from the date of the change or addition) to the Financial Account Information that may affect the tax residency status of the Client or, where the Client is an entity account holder, the identity and tax residency status of such Client's Controlling person(s) or Substantial U.S. Owner(s) if applicable; and
- (d) expressly authorizes the Company to disclose the Financial Account Information to any relevant person including any tax authority as required under the Applicable Laws and Regulations (including but not limited to AEOI and FATCA) and acknowledges that the Financial Account Information may be reported to domestic and foreign tax authorities, including but not limited to the U.S. Internal Revenue Service and the Inland Revenue Department of Hong Kong which may exchange such information with the tax authorities of another jurisdiction(s) or jurisdiction(s) in which the Client or Controlling Person (if applicable) may be resident for tax purposes pursuant to the legal provisions for the exchange of Financial Account Information under the Inland Revenue Ordinance (Cap. 112) , as amended from time to time, or other Applicable Laws and Regulations.

The Client agrees that the Company shall not be liable or responsible in anyway whatsoever and shall be held harmless against any Losses or withholding arising as a result of or in connection with any actions taken by, or any inactions on the part of, the Company in compliance with Applicable Laws and Regulations (including but not limited to AEOI and FATCA) or for any delay or failure to process any application or transaction if information and documents requested by the Company have not been promptly provided by the Client to the Company.

## 22. REPRESENTATIONS AND WARRANTIES

22.1 The Client hereby represents and warrants to the Company on a continuing basis that:

22.1.1 in the case of a Corporate Client or an Institutional Client, it is validly incorporated and existing under the laws of its country of incorporation and has full power and capacity to enter into and perform its obligations hereunder; its entry into this Agreement has been duly authorized by its governing body and is in accordance with the memorandum and articles of association or by-laws as the case may be of the Client;

22.1.2 neither the signing, delivery or performance of this Agreement nor any Instructions given hereunder will contravene or constitute a default under any existing applicable law, statute, ordinance, rule or regulation or judgment or cause to be exceeded any limit by which the Client or any of the Client's assets is bound;

22.1.3 save as otherwise disclosed to the Company in writing, all transactions to be effected under this Agreement are for the benefit of (a) the Client, and/or (b) in the case of an Institutional Client, to the best of such Client's knowledge, its clients, and no other party has any interest therein;

22.1.4 subject to any security interest of any of the Group Companies created pursuant to any agreement between the Client and that Group Company, all securities provided by the Client for selling or crediting into the Account(s) are fully paid with valid and good title and whose legal and beneficial titles are owned by (a) the Client, and/or (b) in the case of an Institutional Client, to the best of such Client's knowledge, its clients,;

22.1.5 the information contained in the Account Opening Form or other information supplied by or on behalf of the Client to the Company in connection with the Account(s) is complete, true and correct. The Company is entitled to rely on such information until written notice from the Client of any changes therein has been received by the Company, with notice of such change to be promptly provided to the Company (and in any event no later than thirty (30) days from the date of the change);

- 22.1.6 the Client understands the nature and suitability for its purposes of the types of transactions contemplated by the Agreement and the risks involved in them, and that it has sufficient experience to assess the suitability of such transactions;
- 22.1.7 in the case of an individual Client or a Corporate Client, it is not a U.S. Person;
- 22.1.8 in the case of an individual Client or a Corporate Client, it has not been nor does it anticipate or expect to be present in the United States for 183 or more days in aggregate during a calendar year or otherwise treated as resident in the United States for U.S. federal income tax purposes;
- 22.1.9 in the case of an individual Client or a Corporate Client, it is not a United States person for U.S. federal income tax purposes;
- 22.1.10 in the case of an individual Client or a Corporate Client, the gains from its subscription, purchase, sale or other transactions carried out pursuant to the Account are not effectively connected or related to any U.S. Person or any US trade or business which the Client is engaged in or plans to engage in during the calendar year;
- 22.1.11 in the case of an individual Client or a Corporate Client, the securities are not being acquired or held beneficially by or for a U.S. Person, or in violation of any applicable law;
- 22.1.12 it acknowledges the Risk Disclosure Statements set out in this Agreement and fully understands and accepts the risks (including the risk of loss) described thereunder;
- 22.1.13 it is its independent judgment and decision without reliance on the Company or its employees to enter into any dealings in securities ("**Transactions**") and the Client fully understands the risks and consequences of his doing so and agree to bear all consequences of Transactions. The Company and its employees shall have no liability whatsoever in respect of the Client's entering into any or all of the Transactions;
- 22.1.14 it acknowledges that the Company may require further information from him or a third party on his financial standing and investment objectives or to verify the same and agrees to provide the same on request;
- 22.1.15 in the case of an Institutional Client, where such Client is dealing as an agent for its own underlying clients, it is in full compliance and is fully responsible for being complaint with all applicable laws, rules, regulations, guidelines, policies and codes relating to the eligibility, legitimacy and legality for the Company to execute trades on behalf of the underlying clients;



- 22.1.16 it has full power and authority to enter into this Agreement and to exercise the Client's right and perform the Client's obligations hereunder; and
- 22.1.17 all the representations and warranties made by the Client remain true and accurate at all times.
- 22.2 If the Client effects transactions for the account of its clients, whether on a discretionary or non-discretionary basis, and whether as agent or by entering into matching transactions as principal with any clients of the Client, the Client hereby agrees that, in relation to a transaction where the Company has received an enquiry from SEHK and/or SFC ("**Hong Kong Regulators**"), the following provisions shall apply:
- 22.2.1 Subject to as provided below, the Client shall, immediately upon request by the Company (which request shall include the relevant contact details of the Hong Kong Regulators), inform the Hong Kong Regulators of the identity, address, occupation and contact details of the client for whose account the transaction was effected and (so far as known to the Client) of the person with the ultimate beneficial interest in the transaction. The Client shall also inform the Hong Kong Regulators of the identity, address, occupation and contact details of any third party (if different from the Client/the ultimate beneficiary) who originated the transaction.
- 22.2.2 (a) If the Client effected the transaction for a collective investment scheme, discretionary account or discretionary trust, the Client shall, immediately upon request by the Company (which request shall include the relevant contact details of the Hong Kong Regulators), inform the Hong Kong Regulators of (i) the identity and address of the scheme, account or trust and, if applicable, the occupation and contact details of the person(s) who, on behalf of the scheme, account or trust, instructed the Client to effect the transaction, and (ii) in addition, with respect to Institutional Clients, the contact details of the scheme, account or trust and, if applicable, the identity and address of the person(s) who, on behalf of the scheme, account or trust, instructed the Client to effect the transaction.
- (b) If the Client effected the transaction for a collective investment scheme, discretionary account or discretionary trust, the Client shall, as soon as practicable, inform the Company when his discretion to invest on behalf of the scheme, account or trust has been overridden. In the case where the Client's investment discretion has been overridden, the Client shall immediately upon request by the Company (which request shall include the relevant contact details of the Hong Kong Regulators), inform the Hong Kong Regulators of the identity, address, occupation and contact details of the person(s) who has or have given the instruction.

- (c) If the Client is a collective investment scheme, discretionary account or discretionary trust and in respect of a particular transaction the discretion of the Client or its officers or employees has been overridden, the Client shall, as soon as practicable, inform the Company when his discretion to invest on behalf of the beneficiary of such scheme, account or trust has been overridden. In case where the Client's investment discretion has been overridden, the Client shall, immediately upon request by the Company (which request shall include the relevant contact details of the Hong Kong Regulators), inform the Hong Kong Regulators of the identity, address, occupation and contact details of the person(s) who has or have given the instruction in relation to the relevant transaction.

22.2.3 If the Client is aware that his client is acting as intermediary for its underlying client(s), and the Client does not know the identity, address, occupation and contact details of the underlying client for whom the transaction was effected, the Client confirms that:

- (a) the Client has arrangements in place with his client which entitle the Client to obtain the information set out in sub-clauses 22.2.1 and/or 22.2.2 from his client immediately upon request or procure that it be so obtained; and
- (b) the Client will, upon request from the Company in relation to a transaction, promptly request the information set out in sub-clauses 22.2.1 and/or 22.2.2 from his client on whose instructions the transaction was effected, and provide the information to the Hong Kong Regulators as soon as it is received from his client or procure that it be so provided.

22.2.4 The above terms shall continue in effect notwithstanding the termination of this Agreement.

22.3 The Client undertakes to perform such acts, sign and execute all such agreements or documents whatsoever as may be required by the Company for the performance or implementation of this Agreement or any part thereof.

22.4 The Client must notify the Company when a sale order relates to securities which the Client does not own (short selling), including where the Client has borrowed stock for the purposes of the sale.

22.5 The Client acknowledges and agrees that no short selling orders will be accepted by the Company unless the Client provides the Company with such confirmation, documentary evidence and assurance as the Company in the Company's opinion considers necessary to show that the Client has a presently exercisable and unconditional right to vest such securities in the purchaser before placing any short selling order.

- 22.6 The Client agrees not to pledge or charge any securities or monies forming part of any Account(s) without the prior consent of the Company, or to sell, grant an option over, or otherwise deal in any securities or monies forming part of the Account(s).
- 22.7 This Clause 22.7 is applicable where the Client is not a Professional Investor as described under Clause 3.1.1 or Clause 3.1.2. The Company and the Client undertake to inform each other of any material change to the information provided in this Agreement. In particular, the Company and the Client agree that:
- 22.7.1 the Company will notify the Client of any material change to its name, its business address, its licensing status, the nature of services provided by the Company to the Client under this Agreement, or any remuneration and the basis for payment payable by the Client to the Company; and
  - 22.7.2 the Client will notify the Company of any change of name and address and provide supporting documents as reasonably required by the Company.

23. **AUTOMATED QUOTATIONS AND CONFIRMATIONS**

- 23.1 The Client acknowledges that any quotes on the price of securities or other information provided via any automated quotation system (which may be operated by way of terminal or over the telephone or other tele-electronic means) maintained by the Company are provided by an independent third party, subject to a disclaimer by the Exchange to the following effect: "The Stock Exchange of Hong Kong Limited endeavours to ensure the accuracy and reliability of the information provided but does not guarantee its accuracy and accepts no liability (whether in tort or contract or otherwise) for any loss or damage arising from any inaccuracies or omissions". The Company is not responsible for the accuracy or completeness of such information.
- 23.2 All orders shall be executed at the then current market prices and the Company does not represent to the Client that any order will be executed at a price previously quoted to the Client by way of an automated quotation system or otherwise.
- 23.3 Any written confirmation sent out by the Company shall (save in the case of manifest error) be conclusive as to the price at which any particular order has been executed and shall be deemed to have been accepted by the Client if not objected to in writing by the Client within the period (if any) stipulated in such statement for this purpose. The Client acknowledges that any statement given over the telephone or other electronic means as to the status of the Account or any particular transaction is not binding on the Company.

24. **LIABILITIES AND INDEMNITIES**

- 24.1 To the extent not restricted under Applicable Laws and Regulations, neither the Company nor any of its directors, employees or agents shall have any liability

whatsoever (whether in negligence or otherwise) for any Losses suffered by the Client as a result of:

- 24.1.1 the Company acting or relying on any instruction given by the Client whether or not such instruction was given following any recommendation, advice or opinion given by the Company or by any of its directors, employees or agents; or
  - 24.1.2 any condition or circumstances which are beyond the reasonable control or anticipation of the Company, its directors, officers, employees and agents, including but not limited to any delays in the transmission of orders due to disruption, breakdown, failure or malfunction of transmission of communication facilities, failure of electronic or mechanical equipment, telephone or other interconnection problems, prevailing fast market conditions, governmental agency or exchange actions, theft, war (whether declared or not), severe weather, earthquakes and strikes, (in the case of an individual or a Corporate) unauthorized use of Access Codes; or
  - 24.1.3 the Company exercising any or all of its rights conferred by the terms of this Agreement; or
  - 24.1.4 any conversion of one currency to another pursuant to, in relation to or arising from this Agreement.
- 24.2 Without limiting the generality of Clause 24.1 above and to the extent not restricted under Applicable Laws and Regulations, neither the Company nor any of its directors, employees or agents shall have any liability whatsoever (whether in negligence or otherwise) for any Losses suffered by the Client arising out of or allegedly arising out of or in connection with any inconvenience, delay or loss of use of the Electronic Services or any delay or alleged delay in acting or any failure to act on any instruction given by the Client to the Company, even if the Company has been advised of the possibility of such Losses.
- 24.3 To the extent not restricted under Applicable Laws and Regulations, the Client undertakes to indemnify and keep indemnified the Company in respect of any Losses which may be reasonably and properly suffered or incurred by the Company directly or indirectly arising out of or in connection with any transaction entered into by the Company as agent on behalf of the Client or otherwise whatsoever or howsoever arising out of anything done or omitted to be done by the Company in accordance with the terms of this Agreement or pursuant to any Instruction or communication from or on behalf of the Client. The Client also agrees to pay promptly to the Company, on demand, all Losses (including legal fees and expenses on a full indemnity basis) reasonably and properly incurred by the Company in the enforcement of any of the provisions of this Agreement.
- 24.4 The Client undertakes to indemnify and keep indemnified the Company and its officers, employees and agents for any Losses arising out of or connected with any breach by the Client of its obligations hereunder, including any costs

reasonably and necessarily incurred by the Company in collecting any debts due to the Company or in connection with the closure of the Account(s).

24.5 The above terms shall continue to take effect notwithstanding the termination of this Agreement.

25. **FURTHER ASSURANCE**

25.1 The Client hereby undertakes to the Company to do and/or execute any act, deed, document or thing which the Company shall require the Client to do in connection with the implementation, execution and enforcement of the agreement constituted by this Agreement, including without limitation the rights referred to in Clause 17, and the Client hereby constitutes the Company the lawful attorney of the Client to do or execute all such acts, deeds, documents or things on behalf of the Client as the Company considers necessary or desirable in connection with such implementation, execution and enforcement.

25.2 In the event of any conflict or discrepancy between the Agreement and (a) the terms of any other agreement subsisting from time to time between the Company and the Client or (b) the terms of any agreement between such Client and any other Group Company in respect of dealings in securities, the Agreement shall prevail.

25.3 In the event of any conflict or discrepancy between the Account Opening Form and these Terms and Conditions, these Terms and Conditions shall prevail. In the event of any conflict or discrepancy between these Terms and Conditions and any specific terms applicable to a specific product, service or transaction, the specific terms applicable to the relevant product, service or transaction shall prevail.

25.4 The Company may provide the Client with a translation of the Agreement in Chinese, but any such translation shall be for the Client's reference only. **Where any such translation is provided, the Client agrees that the English language version shall be the only binding version and shall prevail in the event of any inconsistency. Any translation is provided for reference only and should not be relied upon as being true and accurate and the Company shall not be liable for any inaccuracy or inconsistency between the English language version and the translation.**

26. **NOTICES, CONFIRMATIONS AND STATEMENTS**

26.1 Reports, written confirmations, statements of the Account(s), notices, and any other communications may be transmitted to the Client (who, in the case of a joint account without nominating a person therefore, will be deemed for these purposes to be the Client whose name first appears in the Account Opening Form) at the address, telephone, fax or telex number given in the Account Opening Form, or at such other address, telephone, fax or telex number as the Client hereafter shall notify the Company in writing; and all communications so transmitted, whether by mail, telegraph, telephone, messenger or otherwise, shall

be deemed transmitted when telephoned, when deposited in the mail, or when received by a transmitting agent, whether actually received by the Client or not.

- 26.2 Written confirmation of the execution of the Client's orders and statements of the Client's Account(s) shall be conclusive and deemed to be accepted if not objected to in writing by the Client directed to the address stated in the Account Opening Form (or such other address communicated in writing by the Company) within two (2) Business Days after transmittal thereof to the Client, by mail or otherwise.
- 26.3 Any notice or other communications including, but not limited to, written confirmations and statements of the Account(s) delivered to the Client by the Company under this Agreement by electronic devices or otherwise shall be deemed made or given upon transmission of the message to the Client.
- 26.4 Any communication from the Client to the Company shall be irrevocable and shall not be effective until actually received by the Company at its designated address and/or in the designated manner.

27. **WAIVER AND AMENDMENT**

The Company may at its discretion amend, delete or substitute any of the terms in this Agreement or add new terms to this Agreement by sending to the Client a notice in writing setting out such amendment, deletion, substitution or addition. Such variation of this Agreement shall be deemed to have been accepted by the Client unless written notice of objection is received by the Company within fourteen (14) Business Days after despatch of such notification by the Company.

28. **JOINT CLIENTS**

28.1 Where the Client consists of more than one person:

28.1.1 the liability and obligations of each of them shall be joint and several and references to the Client shall be construed, as the context requires, to any or each of them;

28.1.2 the Company shall be entitled to, but shall not be obliged to, act on instructions or requests from any of them;

28.1.3 each of them shall be bound though any other Client or any other person intended to be bound is not, for whatever reason, so bound; and

28.1.4 the Company shall be entitled to deal separately with any of the Client on any matter including the discharge of any liability to any extent without affecting the liability of any others.

28.2 Where the Client consists of more than one person, on the death of any of such persons (being survived by any other such persons), this Agreement shall not be terminated and the interest in the Account(s) of the deceased will thereupon vest in and enure for the benefit of the survivor(s) provided that any liabilities incurred by the deceased Client shall be enforceable by the Company against such

deceased Client's estate. The surviving Client(s) shall give the Company written notice immediately upon any of them becoming aware of any such death.

**29. CORPORATE ACTIONS**

29.1 The Company shall use reasonable endeavours to notify the Client with regard to communications in respect of distributions or pecuniary entitlements requiring any election or decision by the Client received by the Company in respect of securities held in the Account and the Company shall not be liable for any non-receipt, delay or failure in forwarding communications in sufficient time for instruction to be given by the Client save in the case of fraud or wilful default of the Company (as determined by a competent court in relation to the conduct of the Company).

29.2 The Company shall not be under any duty to investigate or participate in any meeting or any subscription, conversion or other rights in respect thereof or as regards any merger, consolidation, reorganization, receivership, bankruptcy or insolvency proceedings, compromises or arrangement or to take any affirmative action in connection therewith except in accordance with written instructions issued by the Client and upon such conditions as to indemnity, provisions for expenses and otherwise as the Company may at that time require in its favour.

29.3 Where any securities are held in the Company's name, the name of any associated entity of the Company or the name of any nominee of the Company in accordance with Clause 12.1, the Company will not attend any meeting or exercise any voting or other rights including the completion of proxies except in accordance with written instructions of the Client. Nothing in this Agreement shall in any way impose on the Company any duty to inform the Client or to take any action with regards the attendance of meetings and to vote at such meetings. The Company has no duty in respect of notices, communications, proxies and other documents, relating to the securities received by the Company or to send such documents or to give any notice of the receipt of such documents to the Client. The Company has the right to charge the Client for its services in taking any action pursuant to the Client's instruction.

29.4 The provisions contained in this paragraph only apply where the Client is an individual or a Corporate.

**30. CONFLICT OF INTEREST**

30.1 The Client acknowledges that when the Company deals for the Account it may have an interest, arrangement or relationship that is material in relation to the investment or transaction concerned. To the extent not restricted under Applicable Laws and Regulations, such interests will not necessarily be separately disclosed to the Client prior to or at the time of any transaction or at any other time. To the extent required by Applicable Laws and Regulations, the Company will disclose any material interest or actual or potential conflict of interest to the Client and take all reasonable steps to ensure fair treatment of the

Client, and should not advise or deal in the relevant transaction unless it has done so with respect to any actual or potential conflict of interest.

The following interests of the Company may affect the Client (without limitation):

- 30.1.1 the Company may have acted, may be acting or may seek to act as a financial adviser or lending banker to the issuer (or any of its affiliated companies) of the securities in which the Client may be dealing or may have advised or may be advising any person in connection with a merger, acquisition or take over by or for such issuer (or any of its affiliated companies);
  - 30.1.2 the Company may have a holding, dealing, or market making position or may otherwise be trading or dealing in the securities or assets of any kind underlying, derived from or otherwise directly or indirectly related to such securities;
  - 30.1.3 the Company may have received or may be receiving rebates, payments or other benefits for giving business to any companies;
  - 30.1.4 the Company may have sponsored or underwritten or otherwise participated in, or may be sponsoring or underwriting or otherwise may be participating in a transaction;
  - 30.1.5 the Company may have been or may be an affiliate of an issuer (or any of its affiliated companies) of the securities in which the Client may be dealing; or
  - 30.1.6 the Company may be matching the Client's transaction with that of any other customer (including, without limitation, any Group Company) or with the Company either on behalf of such person or the Company as well as on behalf of the Client or by executing matching transactions at or about the same time with the Client and such person.
- 30.2 Nothing herein contained shall be deemed to inhibit the Company from:
- 30.2.1 the Company may buy, sell, hold or deal in any securities or take the opposite position to the Client's order whether it is on the Company's own account or on behalf of its other clients;
  - 30.2.2 the Company and its directors, officers or employees may trade on its/their own account or on the account of any of the Group Companies subject to any applicable regulatory requirements;
  - 30.2.3 instructing or otherwise procuring the purchase for the Client of securities held by the Company for its own account or held by any other of its Clients;
  - 30.2.4 acting in any capacity for any other person or from buying, selling, holding or dealing in any securities for its own account or that of any



other Group Company notwithstanding that instructions have at any time been received from or on behalf of the Client for the purchase, sale or holding of or other dealing in the same or similar securities; or

- 30.2.5 purchasing or procuring the purchase for its own account or for the account of any other of its Clients securities of the same type as or a similar type to any securities in respect of which instructions have at any time been received from the Client,

and the Client hereby acknowledges and agrees that the Company may so act, buy, sell, hold, deal, or instruct provided that in any such case the terms of any such dealing are not less favourable to the Client than they would have been had the transactions been entered into with a party other than the Company or one of its Clients.

- 30.3 In any of the above-mentioned events the Company shall not be obliged to account for any profits or benefits obtained.

- 30.4 The Company shall not be under any duty to disclose to the Client any fact or thing which comes to its knowledge or notice in the course of acting in any capacity for any other person or in its own capacity.

### 31. **TERMINATION**

- 31.1 Without prejudice to Clauses 10, 22.2 and 24, this Agreement shall continue in effect until terminated by either party giving not less than seven (7) Business Days prior written notice to the other.

- 31.2 Service of notice of termination by the Client pursuant to Clause 31 shall not affect any transaction entered into by the Company pursuant to this Agreement before the notice has been actually received by the Company.

- 31.3 Termination of this Agreement shall not affect any outstanding orders or any legal rights or obligations which may already have arisen.

- 31.4 Notwithstanding Clause 31, the Client shall have no right to terminate this Agreement if the Client has open positions or outstanding liabilities or obligations.

- 31.5 Clauses 22.2, 24, 26, 34.4, 35 and 36 shall survive the termination of this Agreement.

### 32. **SEVERABILITY**

Each of the provisions of this Agreement is severable and distinct from the others and, if one or more of such provisions is or becomes illegal, invalid or unenforceable, the remaining provisions shall not be affected in any way. In the event that any provision would be invalid if part of the wordings thereof were not deleted, the provision shall apply as if the relevant wordings were deleted.

33. **ASSIGNABILITY**

The provisions of this Agreement shall be binding on and enure to the benefit of the successors, assigns and personal representatives (where applicable) of each party hereto provided that the Client may not assign, transfer, charge or otherwise dispose of any of the Client's rights or obligations hereunder without the prior written consent of the Company. With respect to a Client who is an individual or a Corporate, the Company may assign all or any part of its rights and obligations under this Agreement to any person without the prior consent or approval of, or notice to such Client. With respect to an Institutional Client, the Company may assign all or a part of its rights and obligations under this Agreement to any person with the prior written notice to such Client.

34. **GENERAL**

- 34.1 The Client authorizes the Company and any Group Company to contact from time to time such credit reporting agencies, credit bureaus and other information sources (both in Hong Kong and overseas) as it deems necessary or desirable for the Company to open and to maintain the Account and request them to conduct a credit enquiry (or a personal credit enquiry in the case of an individual client) or check on the Client for the purpose of ascertaining the financial situation and investment objectives of the Client.
- 34.2 Nothing herein contained shall place the Company under any duty to disclose to the Client any fact or thing which comes to its notice in the course of acting in any capacity for any other person or in its own capacity.
- 34.3 When dealing with a Client, the Company shall deal with such Client on the basis that only such Client is the Company's client and is acting as principal in all respects. If such Client acts on behalf of another person, whether or not the Client identifies such other person to the Company, such other person will not be the Company's client and the Company does not and will not in any circumstances have or accept any responsibility towards such other person on whose behalf the Client may act and the Client hereby acknowledges and agrees that the Client shall be solely responsible for the settlement of all liabilities arising from transactions effected pursuant to and in accordance with this Agreement in connection with or on behalf of any such other person.
- 34.4 Whilst the Client expects the Company to keep confidential all matters relating to the Account(s), the Client hereby expressly agrees that the Company may make such disclosure of all matters relating to the Account(s) as may be required under any laws, orders, lawful requests or regulations of any relevant market, banking or governmental authority without further consent from or notification to the Client.
- 34.5 Time shall in all respects be of essence in the performance of all of the Client's obligations under this Agreement.
- 34.6 By placing an order with the Company, the Client is deemed to have accepted the terms and conditions of this Agreement.

- 34.7 A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or future exercise of that right, power or privilege.
- 34.8 The Client hereby declares that he has read the English/Chinese version of this Agreement and that the contents of this Agreement have been fully explained to him by the Company in a language that the Client understands and that the Client accepts and agrees to be bound by this Agreement.
- 34.9 In the event of any difference in interpretation or meaning between the Chinese and English versions of this Agreement, the Client and the Company agree that the English version shall prevail.
- 34.10 Any personal data obtained by the Company in connection with this Agreement shall be used in the manner as described in the Company's Personal Data Privacy Policy as notified to the Client from time to time and the Client consents to such use by the Company.

35. **GOVERNING LAW**

- 35.1 This Agreement and all rights, obligations and liabilities shall be governed by and construed in accordance with the laws of Hong Kong.
- 35.2 The Client hereby submits to the non-exclusive jurisdiction of the courts of Hong Kong in relation to all matters arising from or in connection with this Agreement.

36. **ARBITRATION**

- 36.1 At the sole option of the Company and in its absolute discretion, any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Hong Kong International Arbitration Centre Administered Arbitration Rules in force at the time when the Company notifies the Client that the relevant breach, termination or invalidity shall be settled by arbitration as may be amended by the rest of this Clause 36. The appointing authority shall be Hong Kong International Arbitration Centre ("**HKIAC**"). The place of arbitration shall be in Hong Kong at HKIAC. There shall be only one arbitrator. The language to be used in the arbitral proceedings shall be English.
- 36.2 Notwithstanding the above, in the case of an individual, the Client shall be able to elect for any such disputes to be managed and resolved under the Financial Dispute Resolution Scheme administered by the Financial Dispute Resolution Centre Limited.

## Schedule 1 to the Terms and Conditions

### Part A – Extract of Paragraph 15.4 of the SFC Code of Conduct

#### **15.4 Exempt provisions for Corporate Professional Investors where licensed or registered persons have complied with paragraphs 15.3A and 15.3B and Institutional Professional Investors**

- (a) Information about clients
  - (i) the need to establish a client's financial situation, investment experience and investment objectives (paragraph 5.1 and paragraphs 2(d) and 2(e) of Schedule 6 to the SFC Code of Conduct), except where the licensed or registered person is providing advice on corporate finance work;
  - (ii) the need to ensure the suitability of a recommendation or solicitation (paragraph 5.2 and paragraph 49 of Schedule 6 to the SFC Code of Conduct); and
  - (iii) the need to assess the client's knowledge of derivatives and characterize the client based on his knowledge of derivatives (paragraph 5.1A of the SFC Code of Conduct);
- (b) Client agreement
  - (i) the need to enter into a written agreement and the provision of relevant risk disclosure statements (paragraph 6.1, paragraph 2 of Schedule 3, paragraph 2 of Schedule 4 and paragraph 1 of Schedule 6 to the SFC Code of Conduct);
- (c) Information for clients
  - (i) the need to disclose transaction related information (paragraph 8.3A of the SFC Code of Conduct);
- (d) Discretionary accounts
  - (i) the need for a licensed or registered person to obtain from the client an authority in a written form prior to effecting transactions for the client without his specific authority (paragraph 7.1(a)(ii) of the SFC Code of Conduct);
  - (ii) the need to explain the authority described under paragraph 7.1(a)(ii) of the SFC Code of Conduct and the need to confirm it on an annual basis (paragraph 7.1(b) of the SFC Code of Conduct); and
  - (iii) the need for a licensed or registered person to disclose benefits receivable for effecting transactions for a client under a discretionary account (paragraph 7.2 of the SFC Code of Conduct).

**Part B – Extract of Paragraph 15.5 of the SFC Code of Conduct**

**15.5 Exempt provisions for Corporate Professional Investors and Individual Professional Investors where licensed or registered persons have complied with paragraph 15.3B and Institutional Professional Investors**

Information for clients

- (i) the need to inform the client about the licensed or registered person and the identity and status of its employees and others acting on its behalf (paragraph 8.1 of the SFC Code of Conduct);
- (ii) the need to confirm promptly with the client the essential features of a transaction after effecting a transaction for a client (paragraph 8.2, paragraph 4 of Schedule 3 and paragraph 18 of Schedule 6 to the SFC Code of Conduct); and
- (iii) the need to provide the client with documentation on the Nasdaq-Amex Pilot Program (paragraph 1 of Schedule 3 to the SFC Code of Conduct).

## Schedule 2 to the Terms and Conditions

### Extract of Paragraph 15.3A of the SFC Code of Conduct

#### 15.3A Assessment requirements for Corporate Professional Investors

- (a) If a licensed or registered person has complied with paragraph 15.3B, it is exempt from the provisions set out in paragraph 15.5 and may also be exempt from the provisions set out in paragraph 15.4 if it is reasonably satisfied that the Corporate Professional Investor meets the three criteria set out in paragraph 15.3A(b) in relation to the relevant products and markets.
- (b) In making the assessment on a Corporate Professional Investor in relation to the relevant products and/or markets, the licensed or registered person should assess whether or not the Corporate Professional Investor satisfies all of the following three criteria:
  - (i) the Corporate Professional Investor has the appropriate corporate structure and investment process and controls (i.e., how investment decisions are made, including whether the corporation has a specialised treasury or other function responsible for making investment decisions);
  - (ii) the person(s) responsible for making investment decisions on behalf of the Corporate Professional Investor has(have) sufficient investment background (including the investment experience of such person(s)); and
  - (iii) the Corporate Professional Investor is aware of the risks involved which is considered in terms of the person(s) responsible for making investment decisions.
- (c) The above assessment should be in writing. Records of all relevant information and documents obtained in the assessment should be kept by the licensed or registered person so as to demonstrate the basis of the assessment.
- (d) A licensed or registered person should undertake a separate assessment for different product types or markets.
- (e) A licensed or registered person should undertake a new assessment where a Corporate Professional Investor has ceased to trade in the relevant product or market for more than 2 years.

**EXHIBIT 5**

**FORM OF SUPPLEMENTAL DEED**

**SUPPLEMENTAL DEED TO CASH SECURITIES TRADING ACCOUNT  
TERMS AND CONDITIONS**

**DATED** **2019**

**BY AND AMONG**

**CCB INTERNATIONAL SECURITIES LIMITED**  
(as Safekeeping Agent)

**CCBI SOLAR ENERGY (HOLDING) LIMITED**  
(建銀國際光電(控股)有限公司)  
(as Investor)

and

**CDH FAST TWO LIMITED**  
(as Client)



**THIS SUPPLEMENTAL DEED** (this “**Deed**”) is made on 2019 by and among:

- (1) **CCB INTERNATIONAL SECURITIES LIMITED**, a company incorporated in Hong Kong with registration number 953394 and whose registered office is at 12/F, CCB Tower, 3 Connaught Road Central, Central, Hong Kong (the “**Safekeeping Agent**”) (which expression shall include its permitted successor);
- (2) **CCBI SOLAR ENERGY (HOLDING) LIMITED (建銀國際光電(控股)有限公司)**, a company incorporated in Hong Kong with registration number 1237094 and whose registered office is at 12/F, CCB Tower, 3 Connaught Road Central, Central, Hong Kong (the “**Investor**”); and
- (3) **CDH FAST TWO LIMITED** (Company No. 1770358), a BVI business company incorporated under the laws of the British Virgin Islands with its registered office at Kingston Chambers, P.O. Box 173, Road Town, Tortola, British Virgin Islands (the “**Client**”).

(the Safekeeping Agent, the Investor and the Client are collectively referred to below as the “**Parties**” and each a “**Party**”).

**WHEREAS** the Client is entering into this Deed in connection with a note exchange agreement dated 26 September 2019 (the “**Note Exchange Agreement**”), by and among the Investor, High Inspiring Limited and the Listco (as defined below) pursuant to which the Listco agreed, among others, to issue notes in the aggregate principal amount of US\$24,200,000 (the “**Notes**”) to the Investor in exchange for the termination of all the outstanding convertible notes in the aggregate principal amount of US\$24,200,000 which were issued by the Listco to High Inspiring Limited pursuant to a convertible note purchase agreement dated 21 August 2017 (as the same may be amended, supplemented or otherwise modified from time to time) between the Listco and High Inspiring Limited.

**WHEREAS** the Client has opened the CDH Securities Account (as defined below) in the name of the Client with and to be maintained by the Safekeeping Agent into which it has transferred certain Shares (as defined below), upon the terms and subject to the conditions set out in the Cash Securities Trading Account Terms and Conditions of the Safekeeping Agent and the related account opening form (the “**Standard Terms**”).

**WHEREAS** the Parties intend to enter into this Deed with the intention that it shall take effect in addition to the Standard Terms.

**IT IS AGREED** as follow:

## **1. INTERPRETATION**

### **1.1 Definitions**

In this Deed:

“**CDH Securities Account**” means the cash securities trading account of the Client established with the Safekeeping Agent with account number 1008652-4001 (including any renewal or redesignation thereof) maintained in the name of the Safekeeping Agent

through a Central Clearing and Settlement System participant account under the name of CCB International Securities Limited (CCASS ID: B01813).

“**Client Assets**” has the meaning given to it in Clause 2.1.

“**Instruction**” means any written notice or instruction in relation to the matters referred to in Clause 7(b) (*Instructions*) relating to the CDH Securities Account and/or the Shares received by the Safekeeping Agent from the Investor.

“**Investor Authorised Person**” has the meaning given to it in Clause 3(a).

“**Listco**” means New Focus Auto Tech Holdings Limited (新焦点汽车技术控股有限公司) (Company Number 117682), an exempted company incorporated with limited liability under the laws of the Cayman Islands with its principal place of business at 5/F, 180 Hennessy Road, Wan Chai, Hong Kong, and whose ordinary shares are listed on the Main Board of the HKSE with stock code 360.

“**Permitted Amendment**” has the meaning given to it in Clause 2.3(e).

“**Proposed Transaction**” has the meaning given to it in Clause 2.2(d).

“**Security**” means a mortgage, charge, pledge, lien, assignment, hypothecation or other security interest securing any obligation of any person or any other agreement or any arrangement having the effect of conferring security or a similar effect.

“**Shares**” means all shares deposited in the CDH Securities Account from time to time.

## 1.2 Construction

- (a) Capitalised terms defined in the Note Exchange Agreement and the Notes have, unless expressly defined in this Deed, the same meaning in this Deed.
- (b) The provisions of clause 1.3 of the Note Exchange Agreement apply to this Deed as though they were set out in full in this Deed except that references to “this Agreement” therein are to be construed as references to this Deed.

## 2. DUTIES, UNDERTAKING AND ACKNOWLEDGEMENT

### 2.1 Duties

The Safekeeping Agent has only those duties which are expressly specified in the Standard Terms and this Deed.

Until effective termination of this Deed, the CDH Securities Account will be maintained and all or any portion of the money and securities in the CDH Securities Account (the “**Client Assets**”) will be dealt with only for the purposes and in the manner as specified in this Deed.

### 2.2 Undertaking by Safekeeping Agent

Notwithstanding the terms of any Standard Terms, the Safekeeping Agent undertakes that it will:

- (a) comply with the terms of any Instruction;
- (b) not enter into any arrangement or agreement, pursuant to which the Client will, directly or indirectly, conditionally or unconditionally, deal with the Client Assets in the manner described in Clause 3(d);
- (c) unless required by applicable Law, not comply with the terms of any notice or any instruction (written or otherwise) relating to or in connection with any of the Client Assets and/or the CDH Securities Account received by it from any person (other than the Investor) at any time;
- (d) supply to the Investor the Client's instructions (if the notice or instruction is in writing) or inform the Investor of (if the notice or instruction is not in writing) any proposed withdrawal and/or transfer and/or otherwise dealing by the Client of any Client Assets (the "**Proposed Transaction**") promptly after its receipt of notice of such;
- (e) dispatch to the Investor and the Client by 11:00 a.m. (Hong Kong time) on the first Trading Day of each calendar month a statement of holding setting out the number of Shares and the amount of the cash balance standing to the credit of the CDH Securities Account as at the close of trading on the preceding Trading Day;
- (f) subject to applicable Law, disclose to the Investor any information referred to in Clause 3(c); and
- (g) at any time after the date hereof, enter into such further documentation as the Investor may reasonably require in connection with the grant of Security over any of the Client Assets and/or the CDH Securities Account.

### **2.3 Acknowledgement by the Client**

The Client agrees, acknowledges and confirms that:

- (a) it will remain liable under the Standard Terms to perform all the obligations assumed by it under the Standard Terms;
- (b) it is not permitted to withdraw, transfer, assign, dematerialise, re-materialise, grant any rights over or otherwise deal with any Shares in the CDH Securities Account without the prior written consent of the Investor;
- (c) the Safekeeping Agent may comply with the terms of this Deed and any Instruction without any further permission from the Client, and the Client is deemed to have approved, ratified and adopted each such terms and Instruction;
- (d) it will not give any notice or instruction to the Safekeeping Agent which would or be likely to cause the Safekeeping Agent to be in breach of its undertakings and obligations under this Deed; and
- (e) no term of this Deed or of the Standard Terms may be waived, terminated or amended without the prior written consent of all Parties (such consent shall not be unreasonably withheld), except for any amendment to the standard terms and

conditions of the Safekeeping Agent applicable to the Safekeeping Agent's customers generally (“**Permitted Amendment**”), provided that, the Client must:

- (i) promptly notify the Investor upon it becoming aware of the proposed Permitted Amendment;
- (ii) promptly upon its receipt, provide a copy of the proposed Permitted Amendment to the Investor; and
- (iii) at its own expense, take whatever action the Investor may reasonably require to give full effect to, preserve and/or maintain any right, power or discretion exercisable by the Investor under this Deed, including the giving of any notice, order or direction or the execution of any documents which, in any such case, the Investor may think expedient.

#### **2.4 Acknowledgement by the Parties**

Save as contemplated by the Standard Terms for the benefit of the Safekeeping Agent, each Party acknowledges and confirms that by entering into this Deed, it does not intend to, directly or indirectly, conditionally or unconditionally, create or permit to exist any Security over, or otherwise create any options, rights or interests in respect of, the Shares.

### **3. OPERATION OF THE CDH SECURITIES ACCOUNT**

The Client as the holder of the CDH Securities Account hereby irrevocably:

- (a) instructs and authorises the Safekeeping Agent to inform as soon as practicable, Steven Xia or any other person specified in the list of authorized signatories of the Investor provided by the Investor to the Safekeeping Agent from time to time in relation to the operation of the CDH Securities Account (each, an “**Investor Authorised Person**”), of any Proposed Transaction in any manner;
- (b) appoints the Safekeeping Agent as the Client’s exclusive broker for dealing with the Client Assets;
- (c) instructs and authorises the Safekeeping Agent to disclose to any Investor Authorised Person of all and any information with regard to the CDH Securities Account, Client Assets and/or any Proposed Transaction without prior notice to or consent from the Client; and
- (d) instructs and authorises the Safekeeping Agent not to process any of the Client’s instructions (other than in accordance with the terms of this Deed) as to all or any dealing of all or any portion of the Client Assets (including but not limited to any proposed withdrawal, transfer and/or otherwise dealing in any manner any portion of the Client Assets) without receiving any prior clearance from any Investor Authorised Person in writing and the Safekeeping Agent shall not be obliged to make any enquiry as to the rights and authorities of the Investor hereunder or be in any way answerable therefor.

### **4. INDEMNITY**

The Client shall indemnify and keep the Safekeeping Agent harmless from and against all actions, suits, proceedings, losses, liabilities, claims, demands, costs and expenses whatsoever which may be taken or made by or against the Safekeeping Agent in respect of or arising from the Safekeeping Agent's acceptance and/or observance of the instruction and authorization given to the Safekeeping Agent hereunder. For the avoidance of doubt, the Safekeeping Agent may, but is not obliged to, take any interpleader or other proceedings with any competent authorities in respect of any dispute arising from or in connection with this Deed at the Client's sole costs.

## **5. SAFEKEEPING AGENT'S EXPENSES**

The Client agrees to pay to the Safekeeping Agent in advance an annual service charge pursuant to a fee letter dated on or about the date of this Deed and made between the Client and the Safekeeping Agent and/or reimburse the Safekeeping Agent for all and any fees, costs and expenses, (including but not limited to any expenses relating to any physical withdrawal of the Client Assets) incurred by the Safekeeping Agent in relation to the performance of its obligations herein. For the avoidance of doubt, the Client agrees and acknowledges that no refund (whether in whole or in part) will be made in respect of any payment made under this Deed notwithstanding termination of this Deed or withdrawal of all or any part of the Client Assets or otherwise.

## **6. SAFEKEEPING AGENT LIABILITY AND OBLIGATIONS**

- 6.1** The Client and the Investor agree that the Safekeeping Agent shall have no liability whatsoever and the Client shall have no claims, rights or recourse whatsoever if the Safekeeping Agent refuses to act in accordance with any instructions purportedly given by the Client prior to receiving clearance from any Investor Authorised Persons pursuant to Clause 3 above.
- 6.2** The Client and the Investor agree and acknowledge that the Safekeeping Agent shall not be bound to take, defend or otherwise participate in any legal action or proceedings whatsoever in connection with the Client Assets and shall not be required to do anything which may be illegal or contrary to any applicable Law or which may cause the Safekeeping Agent to incur any expenses or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.
- 6.3** Save as provided in this Deed and the Standard Terms, both the Investor and the Client acknowledge and agree that (a) the Safekeeping Agent will not assume and expressly disclaim any responsibility or liabilities to the fullest extent permitted by applicable Law with respect to maintaining the CDH Securities Account and keeping of the Client Assets; and (b) the Safekeeping Agent will not assume any fiduciary or other duty or responsibility of any nature, other than those expressly assumed and undertaken by it as stipulated in this Deed and the Standard Terms.
- 6.4** For the avoidance of doubt, the Client and the Investor acknowledge and understand that neither the Safekeeping Agent nor any of its nominees or agents shall have the responsibility to give notice of any shareholder meeting or other corporate communication from the issuer(s) of the securities to the Client or the Investor or attend any shareholder meeting or vote upon or, in respect of any of the Client Assets, execute any form of proxy to vote thereon, or give any consent or take any action with respect

thereto. Where the Safekeeping Agent is instructed to take any action or corporate action, the Client and the Investor acknowledge that the Safekeeping Agent will only carry out such action or corporate action on a best effort basis at such charge to be agreed between the Safekeeping Agent and the Client on a case by case basis and such charge shall be borne solely by the Client.

## **7. INSTRUCTIONS**

Each Party agrees and acknowledges that:

- (a) all Instructions must be in writing; and
- (b) the Investor may, in its absolute discretion, after the New Share Charge has become enforceable in accordance with its terms, deliver Instructions to the Safekeeping Agent, instructing the Safekeeping Agent to take whatever action the Investor may request
  - (i) for the receipt and /or deposit of any of the Shares or in relation to the grant and enforcement of the Security over any of the Client Assets; and
  - (ii) in connection with the payment into the CDH Securities Account of any amount of dividend, money or interest payments received in relation to the Shares.

## **8. CONFLICTS**

Each Party agrees that to the extent a provision of this Deed conflicts with any provision in the Standard Terms, the provision of this Deed shall prevail.

## **9. RESIGNATION OF SAFEKEEPING AGENT**

The Safekeeping Agent may resign at any time on giving a sixty (60) days prior written notice to the Investor and the Client, provided that its resignation shall not take effect unless and until the Investor and the Client shall have appointed a new Safekeeping Agent. If a new Safekeeping Agent has not been appointed within the said sixty (60) days period, the outgoing Safekeeping Agent shall be empowered, following such consultation with the Investor and the Client as is practicable in the circumstances, to appoint a new Safekeeping Agent which shall be either one of the parties designated by the Investor or a reputable and experienced institution in the business of providing such a service. The Parties shall execute such documents as may be deemed necessary by the Safekeeping Agent and the Investor for the purpose of effecting the foregoing replacement of the Safekeeping Agent. Upon such resignation and replacement, all responsibilities and liabilities of the Safekeeping Agent hereunder shall be discharged accordingly.

## **10. TERMINATION**

### **10.1** Each Party agrees that:

- (a) this Deed shall be terminated automatically on the date that all obligations and liabilities of the Client to the Investor under the Transaction Documents have been unconditionally and irrevocably paid and discharged in full; and

- (b) the termination of this Deed shall be without prejudice to any rights or obligations which have accrued before termination.

**10.2** Without prejudice to any rights or obligations which have accrued before termination of this Deed, the Client agrees that the Safekeeping Agent shall be discharged from all responsibilities and liabilities whatsoever in relation to all restrictions and obligations stipulated in this Deed upon termination of this Deed thereupon the Safekeeping Agent may act on any instructions from the Client without any prior notice or consent from the Investor if the Safekeeping Agent deems appropriate. The Investor Authorised Person shall notify the Safekeeping Agent in writing (delivered by hand or post) promptly upon termination of this Deed.

## **11. NOTICES**

### **11.1 In writing**

- (a) Any communication in connection with this Deed must be in writing and, unless otherwise stated, may be given:
  - (i) in person, by post or fax; or
  - (ii) by e-mail or other electronic communication.
- (b) For the purpose of this Deed, an electronic communication will be treated as being in writing.
- (c) Unless agreed otherwise, any consent or agreement required under this Deed must be given in writing.

### **11.2 Contact details**

- (a) The contact details of the Client for all notices in connection with this Deed are:
  - Address: One Temasek Avenue, #18-02, Millenia Tower, Singapore 039192
  - Fax number: +65 6238 0132
  - Email: [williamhsu@cdhfund.com](mailto:williamhsu@cdhfund.com)
  - Attention: William Hsu
- (b) The contact details of the Investor for all notices in connection with this Deed are:
  - Address: 12/F., CCB Tower, 3 Connaught Road Central, Central, Hong Kong
  - Fax number: +852 2140 6088
  - Email: [di5@ccbintl.com](mailto:di5@ccbintl.com)

Attention: Steven Xia / Patrick Chen

- (c) The contact details of the Safekeeping Agent for all notices in connection with this Deed are.

Address: 12/F., CCB Tower, 3 Connaught Road Central, Central, Hong Kong

Fax number: +852 2530 2606

Email: CCBISSTL@ccbintl.com

Attention: Head of Settlement / Head of Operations

- (d) Any Party may change its contact details by giving five (5) Business Days' notice to the other Parties.
- (e) Where the Investor nominates a particular department or officer to receive a notice, a notice will not be effective if it fails to specify that department or officer.

### **11.3 Effectiveness**

- (a) Except as provided below, any communication in connection with this Deed will be deemed to be given as follows:
- (i) if delivered in person, at the time of delivery;
  - (ii) if posted, five (5) days after being deposited in the post, postage prepaid, in a correctly addressed envelope;
  - (iii) if by fax, when received in legible form; and
  - (iv) if by e-mail or any other electronic communication, when received in legible form.
- (b) A communication given under paragraph (a) above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.
- (c) A communication to the Investor or the Safekeeping Agent will only be effective on actual receipt by it.

## **12. COUNTERPARTS**

This Deed may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

## **13. SURVIVAL**

Clauses 4, 10.2, 13, 14 and 15 shall survive termination of this Deed.



#### 14. GOVERNING LAW

This Deed is governed by and shall be construed in accordance with Hong Kong law without regard to any conflict of laws provisions which would exclude Hong Kong law.

#### 15. JURISDICTION

- (a) The Hong Kong courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a “**Dispute**”).
- (b) The Hong Kong courts are the most appropriate and convenient courts to settle any Dispute and each Party waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Deed.
- (c) The Client irrevocably appoints Listco, whose address is 5/F, 180 Hennessy Road, Wan Chai, Hong Kong, as its agent for service of process in any proceedings before the Hong Kong courts and agrees that failure by a process agent to notify it of any process will not invalidate the relevant proceedings. If any person appointed as process agent under this paragraph is unable for any reason to so act, the Client must immediately (and in any event within ten (10) Business Days of the event taking place) appoint another agent on terms acceptable to the Investor. Failing this, the Investor may appoint another process agent for this purpose.
- (d) This Clause does not affect any other method of service allowed by Law.
- (e) This Clause is for the benefit of the Investor and the Safekeeping Agent only. As a result, the Investor and the Safekeeping Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by Law, the Investor and the Safekeeping Agent may take concurrent proceedings in any number of jurisdictions.

#### 16. THIRD-PARTY RIGHTS

Except as expressly provided herein, this Deed does not confer any rights on any person or party under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of Laws of Hong Kong), and no third-party consent is required for any variation (including any release or compromise of any liability under) or termination of this Deed.

*[The remainder of this page has been left intentionally blank]*

**EXECUTION PAGE**

In witness whereof this Deed has been entered into and delivered as a deed by the Parties on the date stated at the beginning of this Deed.

**THE COMMON SEAL of** )  
**CCB INTERNATIONAL SECURITIES** )  
**LIMITED** )  
 )  
 )  
 )  
was hereunto affixed )  
in the presence of: )

*Common Seal*

\_\_\_\_\_  
Name:  
Capacity:

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

**THE COMMON SEAL of**  
**CCBI SOLAR ENERGY (HOLDING)**  
**LIMITED**  
(建銀國際光電(控股)有限公司)

)  
)  
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)  
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)  
)  
)

*Common Seal*

was hereunto affixed  
in the presence of:

\_\_\_\_\_  
Name:  
Capacity:

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

**THE COMMON SEAL of  
CDH FAST TWO  
LIMITED**

)  
)  
)  
)  
)  
)  
)  
)  
)

*Common Seal*

was hereunto affixed  
in the presence of:

\_\_\_\_\_  
Name:  
Capacity:

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

**EXHIBIT 6**

**FORM OF CORPORATE GUARANTEE**

**DATED**                      **2019**

(1)     **DR.PENG HOLDING HONGKONG LIMITED**  
          (鵬博士投資控股香港有限公司)

-and-

(2)     **CCBI SOLAR ENERGY (HOLDING) LIMITED**  
          (建銀國際光電(控股)有限公司)

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**DEED OF GUARANTEE**

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PROSKAUER ROSE  
Suites 1701-1705, 17/F  
Two Exchange Square  
8 Connaught Place, Central  
Hong Kong

**THIS DEED OF GUARANTEE** (this “**Deed**” or “**Guarantee**”) is made on \_\_\_\_\_, 2019

**BETWEEN**

- (1) **DR.PENG HOLDING HONGKONG LIMITED** (鵬博士投資控股香港有限公司) (Company Registration Number 1604159), a public company limited by shares incorporated under the laws of Hong Kong with its registered address at Level 54, Hopewell Centre, 183 Queen’s Road East, Hong Kong (the “**Guarantor**”);
- (2) **CCBI SOLAR ENERGY (HOLDING) LIMITED** (建銀國際光電(控股)有限公司) (Company Registration No. 1237094), a private company limited by shares incorporated under the laws of Hong Kong with its registered office at 12/F, CCB Tower, 3 Connaught Road Central, Central, Hong Kong (the “**Investor**”).

**WHEREAS:**

- (A) The Investor, High Inspiring Limited and the Listco (as defined below) entered into a note exchange agreement dated 26 September 2019 (the “**Note Exchange Agreement**”, as the same may be amended, supplemented or otherwise modified from time to time), pursuant to which the Listco has agreed, among others, to issue notes in the aggregate principal amount of US\$24,200,000 (the “**Notes**”) to the Investor in exchange for the termination of all the outstanding convertible notes in the aggregate principal amount of US\$24,200,000 which were issued by the Listco to High Inspiring Limited pursuant to a convertible note purchase agreement dated 21 August 2017 (as the same may be amended, supplemented or otherwise modified from time to time) between the Listco and High Inspiring Limited (the “**Note Exchange**”).
- (B) It is a condition precedent to the Note Exchange under the Note Exchange Agreement that the Guarantor executes and delivers this Guarantee in favour of the Investor.

**IT IS AGREED as follows:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1. Except as otherwise provided in this Guarantee, terms and expressions defined in the Note Exchange Agreement (as the same may be amended, supplemented or otherwise modified from time to time) shall have the same meanings when used in this Guarantee:

“**Note Exchange**” has the meaning given to it in Recital (A).

“**Note Exchange Agreement**” has the meaning given to it in Recital (A).

“**Notes**” has the meaning given to it in Recital (A).

“**Listco**” means New Focus Auto Tech Holdings Limited (新焦点汽车技术控股有限公司) (Company Number 117682), an exempted company incorporated with

limited liability under the laws of the Cayman Islands with its principal place of business at 5/F, 180 Hennessy Road, Wan Chai, Hong Kong, and whose ordinary shares are listed on the Main Board of the HKSE with stock code 360.

**“Obligors”** means the Listco, CDH and the Guarantor, and **“Obligor”** means any one of them.

**“Parties”** means the parties to this Guarantee collectively, and **“Party”** means either one of them.

**“Transaction Documents”** has the meaning given to it in the Note Exchange Agreement.

1.2. The “Guarantor”, the “Investor” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Investor, each person which is for the time an Investor in accordance with the Transaction Documents.

1.3. The headings and subtitles used in this Guarantee are used for convenience only and are not to be considered in construing or interpreting this Guarantee.

1.4. In this Guarantee, unless the context requires otherwise:

(a) references to “Clauses” are references to Clauses of this Guarantee; references to sub-clauses are, unless otherwise stated, references to sub-clauses of the Clause;

(b) references to the singular shall include the plural and vice versa and references to the masculine shall include the feminine or neuter and vice versa;

(c) the term “or” is not exclusive;

(d) the terms “herein”, “hereof”, and other similar words refer to this Guarantee as a whole and not to any particular section, subsection, paragraph, clause, or other subdivision;

(e) the term “including” shall be construed to mean “including without limitation”;

(f) the terms “shall”, “will”, and “agrees” are mandatory, and the term “may” is permissive;

(g) the term “day” means “calendar day”;

(h) references to “HK\$”, “HKD” and “HK Dollar” are to currency of Hong Kong (and shall be deemed to include reference to the equivalent amount in other currencies);

(i) references to “US\$”, “USD” and “United States Dollar” are to the



currency of the United States of America (and shall be deemed to include reference to the equivalent amount in other currencies);

- (j) a “person” includes any individual, corporation, partnership, limited partnership, proprietorship, association, limited liability company, firm, trust, estate or other enterprise or entity;
- (k) references to “assets” include present and future properties, rights and assets of every description;
- (l) references to “indebtedness” include any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (m) references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and shall include references to any provisions of which they are re-enactments (whether with or without modification);
- (n) references to any document are to be construed as references to such document as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time;
- (o) a reference to a legal term for a legal document, court, judicial process, action, remedy, legal status, official or any other legal concept, in respect of a jurisdiction other than Hong Kong, shall be deemed to be a reference to whatever most closely equates to the Hong Kong legal term in that jurisdiction; and
- (p) the Recitals to this Guarantee form part of it and shall have the same force and effect as if expressly set out in the body of this Guarantee.

1.5. If the Investor considers that an amount paid by any Obligor to the Investor under a Transaction Document is capable of being avoided or otherwise set aside on the liquidation or administration of such Obligor, then that amount shall not be considered to have been irrevocably paid for the purposes of this Guarantee.

1.6. Except as expressly provided herein, this Guarantee does not confer any rights on any person or party under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong), and no third-party consent is required for any rescindment, variation (including any release or compromise of any liability under) or termination of this Guarantee. Subject to applicable Law, the Parties may rescind, vary or terminate this Guarantee in accordance with its terms without the consent of or notice to any person on whom such rights are conferred.

## **2. GUARANTEE**

2.1. The Guarantor hereby irrevocably, absolutely and unconditionally:

- 2.1.1. guarantees to the Investor the due and punctual observance and performance by the Obligors of all of the obligations of, or expressed to be assumed by, the Obligors under or pursuant to any or all of the Transaction Documents and agrees to pay to the Investor from time to time, upon demand by the Investor, any and all sums of money which all or any of the Obligors is or are at any time liable, or expressed to be liable, to pay to the Investor under or pursuant to any or all of the Transaction Documents and which have become, or are expressed to have become, due and payable but have not been paid at the time such demand is made as if it was the principal obligor in respect to that amount;
  - 2.1.2. agrees as a primary obligation to indemnify the Investor from time to time, upon demand in writing by the Investor, from and against any loss incurred by the Investor as a result of any of the obligations of or expressed to be assumed by all or any of the Obligors under or pursuant to any or all of the Transaction Documents being or becoming void, voidable, unenforceable or ineffective as against all or any of the Obligors for any reason whatsoever, whether or not known to the Investor or any other person, the amount of such loss being the amount which the Investor would otherwise have been entitled to recover from all or any of the Obligors; and
  - 2.1.3. agrees with the Investor that if, for any reason, any amount claimed by the Investor under this Clause is not recoverable from the Guarantor on the basis of a guarantee then the Guarantor will be liable as a principal debtor and primary obligor to indemnify the Investor in respect of any loss it incurs as a result of all or any of the Obligors failing to pay any amount expressed to be payable by it under a Transaction Document on the date when it ought to have been paid. The amount payable by the Guarantor under this indemnity shall not exceed the amount it would have had to pay under this Clause had the amount claimed been recoverable on the basis of a guarantee.
- 2.2. This Guarantee and indemnity is a continuing guarantee and indemnity and will extend to the ultimate balance of all sums payable by the Obligors under the Transaction Documents, regardless of any intermediate payment or discharge in whole or in part.

### **3. PRESERVATION OF RIGHTS**

- 3.1. The obligations of the Guarantor contained in this Guarantee shall be in addition to and independent of (a) every other security which the Investor may at any time hold in respect of all or any of the Obligors' obligations under the Transaction Documents and/or (b) every other source of funding (including without limitation by way of equity contribution) that the Obligors may have.
- 3.2. Neither the obligations of the Guarantor contained in this Guarantee nor the rights, powers and remedies conferred in respect of the Guarantor upon the Investor by this Guarantee or by Law shall be discharged, impaired or otherwise affected by:

- 3.2.1. the bankruptcy, winding-up, dissolution, administration or reorganisation of any Obligor (as the case may be) or any other person or any change in its status, function, control or ownership;
  - 3.2.2. any of the obligations of all or any of the Obligors under any or all of the Transaction Documents, or under any other security relating to any Transaction Document being or becoming illegal, invalid, unenforceable or ineffective in any respect;
  - 3.2.3. any time or other indulgence being granted or agreed to be granted to all or any of the Obligors in respect of any of their respective obligations under any Transaction Document or under any other security;
  - 3.2.4. any amendment (however fundamental) to, or any variation, waiver or release of, any obligation of all or any of the Obligors under any Transaction Document or under any other security;
  - 3.2.5. any failure to take or perfect, or fully to take or perfect, any security contemplated by any Transaction Document or otherwise agreed to be taken in respect of the obligations of all or any of the Obligors under any Transaction Document;
  - 3.2.6. any failure to realise or to fully realise the value of, or any release, discharge, exchange or substitution of, any security taken in respect of the obligations of all or any of the Obligors under any Transaction Document;
  - 3.2.7. any incapacity or lack of power, authority or legal personality of or change in the status of all or any of the Obligors or any other person;
  - 3.2.8. any claims or set-off right that the Guarantor may have; or
  - 3.2.9. any other act, event or omission which, but for this Clause 3.2, might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor contained in this Guarantee or any of the rights, powers or remedies conferred upon the Investor by any or all of the Transaction Documents or by Law.
- 3.3. Any settlement, discharge or waiver given by the Investor to the Guarantor in respect of the Guarantor's obligations under this Guarantee, or any release of the Guarantor from any of its obligations under this Guarantee, shall be, and be deemed always to have been, void if any act, receipt or recovery on the faith of which the Investor gave the Guarantor that settlement, discharge or waiver, or based on which such release is made or occurs, is subsequently avoided (in whole or in part) by or in pursuance of any provision of Law. Without prejudice to the foregoing, if any payment by or recovery from all or any of the Obligors or any release or discharge given by the Investor (whether in respect of the obligations of all or any of the Obligors or any security for those obligations or otherwise) under or in connection with any Transaction Document is avoided or reduced or (in the case of a payment by or recovery

from all or any of the Obligors) is otherwise required to be refunded as a result of insolvency or any similar event or for any other reason:

- 3.3.1. the liabilities of the Guarantor under this Guarantee shall continue as if such payment, recovery, release or discharge had not occurred; and
  - 3.3.2. the Investor shall be entitled to receive and recover payments from the Guarantor under this Guarantee as if such payment, recovery, release or discharge had not occurred.
- 3.4. The Investor shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor by this Guarantee or by Law:
  - 3.4.1. to make any demand of all or any of the Obligors or any other person;
  - 3.4.2. to take any action or obtain judgment in any court against all or any of the Obligors or any other person;
  - 3.4.3. to make or file any claim or proof in a winding-up or dissolution of all or any of the Obligors or any other person; or
  - 3.4.4. to enforce or seek to enforce any security taken in respect of any of the obligations of all or any of the Obligors under any Transaction Document.
- 3.5. The Guarantor agrees that for all times until the Investor has confirmed in writing to the Guarantor that all amounts which may be or become payable by the Obligors under or in connection with the Transaction Documents have been irrevocably paid in full, the Guarantor shall not exercise any rights which the Guarantor may at any time have by reason of performance by it of its obligations under this Guarantee:
  - 3.5.1. to be indemnified by any of the Obligors or to receive any collateral from any Obligor; and/or
  - 3.5.2. to claim any contribution from any Obligor or any Obligor's obligations under any or all of the Transaction Documents; and/or
  - 3.5.3. to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Investor under any Transaction Documents or of any other security taken pursuant to, or in connection with, any Transaction Documents by the Investor.
- 3.6. Until all amounts which may be or become payable by the Obligors under or in connection with the Transaction Documents have been irrevocably paid in full, the Investor may:
  - 3.6.1. refrain from applying or enforcing any other moneys, security or rights held or received by the Investor in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be

entitled to the benefit of the same; and

3.6.2. hold in a suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Guarantee.

#### **4. REPRESENTATIONS AND WARRANTIES**

4.1. The Guarantor hereby represents and warrants to the Investor that:

4.1.1. it is duly organized, validly existing and in good standing under the Laws of Hong Kong, and has all requisite legal and corporate power and authority to carry on its business as now conducted, and is duly authorized and qualified to transact business in each jurisdiction in which it operates;

4.1.2. it has full power and legal capacity to enter into and perform this Guarantee and this Guarantee will, when executed, constitute legal, valid and binding obligations on it in accordance with its terms;

4.1.3. the execution, delivery and performance of the obligations under this Guarantee by it will not:

(a) contravene any of its constitutional documents;

(b) conflict with any Law or regulation applicable to it; or

(c) conflict with any Contract binding upon it or any of its assets;  
or

(d) result in the existence of or oblige it to create any security over all or any of its assets;

4.1.4. it has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against it for its winding-up or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues and no other steps which are similar or which would have a similar effect have been taken in Hong Kong or elsewhere;

4.1.5. all Approvals required or desirable:

(a) to enable it to lawfully enter into, exercise its rights and comply with its obligations in this Guarantee; and/or

(b) to make this Guarantee admissible in evidence in Hong Kong,  
have been obtained or effected and are in full force and effect;

4.1.6. the choice of Hong Kong Law as the governing law of this Guarantee will be recognised and enforced;

- 4.1.7. any judgment of any court or any award of a tribunal obtained in Hong Kong in relation to this Guarantee will be recognised and enforced;
- 4.1.8. under the laws of Hong Kong it is not necessary that this Guarantee 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 this Guarantee or the transactions contemplated by this Guarantee;
- 4.1.9. all information (including, without limitation, information provided through e-mail) supplied by or on behalf of it to the Investor (or any agent, attorney, officer, director, employee or advisors of the Investor) is true, complete and accurate as at the date it was given and is not misleading in any respect, and does not omit to state any fact that is necessary to make the statements contained in such information not misleading in the light of the circumstances under which the statements contained in such information were made;
- 4.1.10. its payment obligations under this Guarantee rank at least *pari passu* with the claims of all its other present and future secured and unsubordinated creditors, except for obligations mandatorily preferred by Law applying to individuals generally;
- 4.1.11. no investigation, litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency has been started or is pending, or has been threatened, against it or its assets;
- 4.1.12. in any proceedings taken in Hong Kong in relation to this Guarantee, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process;
- 4.1.13. its execution of this Guarantee constitutes, and its exercise of its rights and performance of its obligations hereunder will constitute, private and commercial acts done and performed for private and commercial purposes;
- 4.1.14. it is able to meet its obligations and pay its debts as they fall due (taking into account contingent and prospective liabilities), it does not admit and has not admitted any inability to pay its debts as they fall due and it has not suspended making payments on any of its debts;
- 4.1.15. it has not by reason of actual or anticipated financial difficulties commenced, and does not intend to commence, negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness, and no moratorium has been, or may in the reasonably foreseeable future be, declared in respect of any of its indebtedness; and
- 4.1.16. its:
  - (a) irrevocable submission under this Guarantee to the jurisdiction

of the courts of Hong Kong,

- (b) agreement that this Guarantee is governed by Hong Kong Law, and
- (c) agreement not to claim any immunity to which it or its assets may be entitled,

are legal, valid and binding under the Laws of Hong Kong or jurisdictions where its assets are situated.

- 4.2. All the representations and warranties in this Clause 4 are made or deemed to be made by the Guarantor to the Investor on the date of this Guarantee and on each day up to and including the date on which all the obligations of the Obligors under the Transaction Documents have been fully performed and discharged.
- 4.3. Each representation and warranty deemed to be made after the date of this Guarantee shall be deemed to be made by reference to the facts and circumstances existing at the date on which such representation or warranty is deemed to be made (except that, for the avoidance of doubt, any representation or warranty that is expressed to be made by reference to the facts and circumstances existing as at a specific date shall be made by reference to the facts and circumstances existing as at such specific date).

## **5. UNDERTAKINGS**

Until such time as the Investor has confirmed to the Guarantor in writing that any and all amounts which are or may become due to the Investor from all or any of the Obligors under any and all of the Transaction Documents have been paid in full, the Guarantor shall comply with the undertakings set out in this Clause 5.

- 5.1. The Guarantor shall promptly supply to the Investor (or procure the supply of) such information regarding its financial condition as the Investor may reasonably request from time to time.
- 5.2. If there is:
  - 5.2.1. any introduction of or any change in (or in the interpretation, administration or application of) any Law or regulation made after the date of this Guarantee;
  - 5.2.2. any change in the status of the Guarantor or the composition of the shareholders, members or investors of the Guarantor, after the date of this Guarantee; or
  - 5.2.3. a proposed assignment or transfer by the Investor of any of its rights and/or obligations under any Transaction Document, obliges the Investor (or any prospective assignee or transferee of the Investor) to comply with any “know your customer”, anti-money laundering or similar identification procedures in circumstances where the necessary information is not already available to it,

the Guarantor shall promptly upon the reasonable request of the Investor (or any prospective assignee or transferee of the Investor) supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Investor (or any prospective assignee or transferee of the Investor) in order for the Investor (or any prospective assignee or transferee of the Investor) to carry out and be satisfied with the results of all necessary “know your customer”, anti-money laundering and/or other similar checks under all applicable Laws and regulations in connection with any or all of the Transaction Documents to which the Guarantor is a party and/or the transactions contemplated thereunder.

- 5.3. The Guarantor shall promptly (a) obtain, comply with the terms and conditions of, and do all that is necessary to maintain in full force and effect, any Approval as is required under any Law or regulation of the PRC and/or Hong Kong to enable it to perform its obligations under this Guarantee and/or to ensure the legality, validity and enforceability in the PRC and/or Hong Kong of this Guarantee, and (b) upon request by the Investor, supply certified copies to the Investor of any such Approval.
- 5.4. The Guarantor shall ensure that at all times its payment obligations under this Guarantee rank at least *pari passu* with the claims of all its other secured and unsecured creditors, except for obligations mandatorily preferred by Law applying to individuals generally.
- 5.5. The Guarantor shall offer to CCB International Asset Management Limited or its designated Affiliates a right to invest in the entity or the business (equity, debt or otherwise) of the Guarantor or its Affiliates (including its parent company) in priority to any other investor, provided that the terms and conditions agreed by CCB International Asset Management Limited or its Affiliates are no less favourable than those agreed by any such investor.

## **6. PAYMENTS**

- 6.1. All payments to be made by the Guarantor to the Investor under this Guarantee shall be made free and clear of and without deduction for or on account of Tax unless the Guarantor is required to make such payment subject to the deduction or withholding of Tax, in which case the sum payable by the Guarantor in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the person on account of whose liability to Tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.
- 6.2. On each date on which the Guarantor is required to make a payment under this Guarantee, the Guarantor shall make the same available to the Investor for value on the due date and in cleared HK Dollar funds. Payment shall be made to such account in such jurisdiction with such bank as the Investor specifies from time to time.



- 6.3. All payments to be made by the Guarantor under this Guarantee shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

## 7. CURRENCY CONVERSION AND INDEMNITIES

- 7.1. The Investor may convert any money received or realised by it under or pursuant to this Guarantee which is not in United States Dollars from that currency into United States Dollars at the spot rate of exchange available to the Investor for the time being for such conversion.
- 7.2. If any sum due from the Guarantor under this Guarantee or any order or judgment given or made in relation to this Guarantee has to be converted from the currency (the “**first currency**”) in which the same is payable under the Guarantee or under such order or judgment into another currency (the “**second currency**”) for the purpose of (a) making or filing a claim or proof against the Guarantor (b) obtaining an order or judgment in any court or other tribunal or (c) enforcing any order or judgment given or made in relation to this Guarantee, the Guarantor shall indemnify and hold harmless the Investor from and against any loss it suffers or incurs as a result of any discrepancy between (i) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (ii) the rate or rates of exchange at which the Investor may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgment, claim or proof.
- 7.3. Within three (3) days of making any deduction or withholding for or on account of Tax from a payment under this Guarantee or any payment required in connection with such deduction or withholding, the Guarantor shall deliver to the Investor an original receipt (or a certified copy thereof) satisfactory to the Investor that such deduction or withholding has been made or (as applicable) any appropriate payment has been paid to the relevant Tax authority.
- 7.4. Neither the Investor nor any of its Affiliates nor any of their respective agents, attorneys, officers, directors, employees, advisors, heirs, executors, administrators, successors or assigns shall have any liability to the Guarantor or be responsible to the Guarantor for (whether under contract, tort, any other theory of liability or otherwise) any special, indirect, consequential or punitive losses or damages incurred or suffered by the Guarantor, any Obligor, or any of their respective agents, attorneys, officers, directors, employees, advisors, heirs, executors, administrators, successors or assigns under or in connection with any Transaction Document or any transaction contemplated thereby, whether or not such party shall have been advised of the likelihood of such loss or damage; and the Guarantor hereby waives, releases and agrees not to sue upon any claim for any such loss or damage, whether or not accrued and whether or not known or suspected to exist in its favour. Such Affiliates of the Investor, and the agents, attorneys, officers, directors, employees, advisors, heirs, executors, administrators, successors and assigns of the Investor and Affiliates of the Investor may rely on this Clause 7.4. This Clause 7.4 however

shall not preclude the Guarantor claiming for losses, damages, costs and/or expenses incurred or suffered as a result of the fraud and willful default of the Investor, its Affiliates and/or any of their respective agents, attorneys, officers, directors, employees, advisors, heirs, executors, administrators, successors or assigns.

## **8. CONTINUING SECURITY**

The obligations of the Guarantor contained in this Guarantee shall constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever, and shall not be considered satisfied by any intermediate payment or satisfaction of any of the obligations of all or any of the Obligors under any of the Transaction Documents and shall continue in full force and effect until the Investor has confirmed in writing to the Guarantor that all amounts owing by all or any of the Obligors under any or all of the Transaction Documents have been paid in full.

## **9. APPLICATION OF PROCEEDS**

All monies received or recovered by the Investor under or pursuant to this Guarantee (including the proceeds of any conversion of currency) may, subject to Clause 3.6, be applied towards the satisfaction and/or discharge of any or all of the obligations of all or any of the Obligors under the Transaction Documents in such manner and in such order as the Investor may think fit. Such application shall override any application by the Guarantor.

## **10. SET-OFF**

The Investor may set off any matured obligation due from the Guarantor under this Guarantee against any matured obligation owed by the Investor to the Guarantor, regardless of the place of payment, booking branch or currency of either obligation. If such obligations are in different currencies, the Investor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of such set-off.

## **11. NOTICES**

11.1. Any notice required or permitted pursuant to this Guarantee shall be given in writing and shall be given either personally or by sending it by next-day or second-day courier service, fax, email or similar means to the address, fax number or email address of the relevant Party as provided in Clause 11.3 (or at such other address as such Party may designate by five (5) days' advance written notice to the other Party given in accordance with this Clause 11).

11.2. Any notice, demand or other communication so addressed to the relevant Party shall be deemed to have been delivered (a) if delivered by hand, at the time of delivery; (b) if sent by pre-paid post, on the fourth (4<sup>th</sup>) Business Day after the time of posting; (c) if given or made by fax, immediately after it has been despatched with a confirmation that all pages have been transmitted; and (d) if sent by e-mail, immediately after it has been despatched from the sender's outbox, except where dispatch is not on a Business Day in the case of (c) and (d). If a communication would otherwise be deemed to have been delivered

outside normal business hours (after 5:30 p.m. on a Business Day) in the time zone of the territory of the recipient, it shall be deemed to have been delivered at 9:30 a.m. on the next opening of business in the territory of the recipient. In proving service of a communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a prepaid letter or that the facsimile transmission was despatched and a confirmatory transmission report or other acknowledgement of good receipt was received.

- 11.3. The addresses, fax numbers and email addresses for service of a notice in connection with this Guarantee are:

The Guarantor :

Name: DR.PENG HOLDING HONGKONG LIMITED

Address: Level 54, Hopewell Centre, 183 Queen's Road East,  
Hong Kong

c/o 3/F, Block 5, HangXing Building, No.11 Hepingli  
East Street, Dongcheng District, Beijing, the PRC

Fax Number: +86 1052206858

Attention: Sun Lisi / 孙莉斯

The Investor :

Name: CCBI SOLAR ENERGY (HOLDING) LIMITED

Address: 12/F, CCB Tower, 3 Connaught Road Central, Central,  
Hong Kong

Fax number: +852 2140 6088

Email : stevenxia@ccbintl.com / patrickchen@ccbintl.com

Attention: Steven Xia / Patrick Chen

**12. COSTS, EXPENSES AND STAMP DUTY**

- 12.1. The costs and expenses incurred by each of the Parties in connection with this Guarantee shall be borne by the Guarantor.
- 12.2. The Guarantor shall indemnify the Investor upon demand for any cost, loss or liability which the Investor incurs in relation to any or all stamp duty, registration and/or other similar Taxes payable in respect of this Guarantee.

**13. SUCCESSORS AND ASSIGNS**

This Guarantee shall be binding upon and enure to the benefit of each Party hereto and its successors. The Guarantor may not assign or transfer any of its rights,

benefits, duties or obligations hereunder without the prior written consent of the Investor. The Investor may, with prior written notification to the Guarantor, assign or transfer any of its rights, benefits, duties or obligations hereunder, and the Guarantor shall upon the request of the Investor (or any prospective assignee or transferee of the Investor) execute and deliver such documents and take such actions as may be reasonably required by the Investor (or any prospective assignee or transferee of the Investor) to effect such assignment or transfer.

#### **14. SEVERABILITY**

If one or more provisions of this Guarantee are held to be unenforceable under applicable Law, such provision shall be excluded from this Guarantee and the balance of the Guarantee shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

#### **15. AMENDMENTS AND WAIVERS**

Any term of this Guarantee may be amended and the observance of any term of this Guarantee may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of each Party; provided that each Party may waive any of its rights hereunder without the consent of any other Parties. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each of the Parties.

#### **16. WAIVERS**

Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof will not be deemed a waiver of such term, covenant, or condition, nor will any waiver or relinquishment of, or failure to insist upon strict compliance with, any right, power or remedy hereunder at any one or more times be deemed a waiver or relinquishment of such right, power or remedy at any other time or times.

#### **17. GOVERNING LAW AND JURISDICTION**

17.1. This Guarantee shall be governed by and construed in accordance with the Laws of Hong Kong without regard to any conflict of laws principles which may exclude the Laws of Hong Kong.

17.2. Each Party agrees that any legal action or proceeding arising out of or relating to this Guarantee may be brought in the courts of Hong Kong and irrevocably submits to the exclusive jurisdiction of such courts.

17.3. Nothing herein shall limit the right of the Investor to commence any legal action against the Guarantor and/or its property in any other jurisdiction or to serve process in any manner permitted by Law, and the taking of proceedings in any jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

17.4. The Guarantor irrevocably and unconditionally waives any objection which it may now or hereafter have to the choice of Hong Kong as the venue of any legal action arising out of or relating to this Guarantee and any claim that any

such legal action has been brought in an inconvenient or inappropriate forum. The Guarantor also agrees that a final judgment against it in any such legal action shall be final and conclusive and may be enforced in any other jurisdiction, and that a certified or otherwise duly authenticated copy of the judgment shall be conclusive evidence of the fact and amount of its indebtedness.

17.5. The Guarantor consents generally in respect of any proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.

17.6. To the extent that the Guarantor may now or hereafter be entitled, in any jurisdiction in which proceedings may at any time be commenced with respect to this Guarantee, to claim for itself or its assets any immunity (sovereign or otherwise) from suit, jurisdiction of any court, attachment prior to judgment, attachment in aid of execution of a judgment, execution of a judgment or from set off, banker's lien, counterclaim or any other legal process or remedy with respect to its obligations under this Guarantee and/or to the extent that in any such jurisdiction there may be attributed to it, any such immunity (whether or not claimed), the Guarantor hereby, to the fullest extent permitted by applicable Law, irrevocably agrees not to claim, and hereby to the fullest extent permitted by applicable Law waive, any such immunity.

## **18. INDEPENDENT LEGAL ADVICE**

The Guarantor agrees and acknowledges that (a) it was afforded sufficient opportunity to obtain independent legal advice regarding this Guarantee and the transactions contemplated under the other Transaction Documents; and (b) it fully understands all of the terms, conditions, restrictions and provisions set forth in this Guarantee and the other Transaction Documents and the obligations and liabilities thereof, and that each such term, condition, restriction and provision is fair and reasonable with respect to the subject matter thereof.

## **19. NO PRESUMPTION**

The Parties acknowledge that any applicable Law that would require interpretation of any claimed ambiguities in this Guarantee against the Party that drafted it has no application and is expressly waived. If any claim is made by a Party relating to any conflict, omission or ambiguity in the provisions of this Guarantee, no presumption or burden of proof or persuasion will be implied because this Guarantee was prepared by or at the request of any Party or its counsel.

## **20. COUNTERPARTS**

This Guarantee may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and e-mailed copies of signatures shall be deemed to be originals for purposes of the effectiveness of this Guarantee.

**21. EFFECT OF THIS GUARANTEE**

The Parties intend this Guarantee to take effect as a deed, notwithstanding that the Investor has signed this Guarantee underhand.

*[The remainder of this page has been left intentionally blank]*

**IN WITNESS WHEREOF** this Guarantee has been executed as a deed by the Guarantor and signed by the Investor under hand, and is intended to be delivered and is hereby delivered on the date specified on the first page of this Guarantee.

**The Guarantor**

**THE COMMON SEAL of** )  
**DR.PENG HOLDING HONGKONG** )  
**LIMITED** )  
**(鵬博士投資控股香港有限公司)** )

Common Seal

was hereunto affixed )  
in the presence of: )  
)

\_\_\_\_\_  
Name:  
Capacity:

Witness Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Occupation: \_\_\_\_\_

**The Investor**

**SIGNED**

For and on behalf of

**CCBI SOLAR ENERGY (HOLDING)  
LIMITED**

(建銀國際光電(控股)有限公司)

)  
)  
)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Name:  
Capacity:



IN WITNESS whereof this Agreement has been executed and delivered as a deed on behalf of each of the Parties on the day and year first stated above.

COMPANY:

THE COMMON SEAL of )  
NEW FOCUS AUTO TECH HOLDINGS )  
LIMITED )

was hereunto affixed )  
in the presence of: )

Common Seal



Name: 王颖  
Capacity: Director

Witness Signature: 王颖

Name: 王颖

Address: 北京市朝阳区朝阳门外大街昆泰国际中心写字楼1915


Occupation: 会计

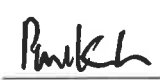


NEW INVESTOR:

THE COMMON SEAL of )  
CCBI SOLAR ENERGY (HOLDING) )  
LIMITED )  
(建銀國際光電(控股)有限公司) )  
was hereunto affixed )  
in the presence of: )



  
Name: LI NGAI  
Capacity: DIRECTOR

Witness Signature:   
Name: CHEN QIMING  
Address: 3 Connaught Rd Central, HK  
Occupation: \_\_\_\_\_