



**US\$650,000,000
FACILITY AGREEMENT**

dated 4 January 2017

for

CHINA MENGNIU DAIRY COMPANY LIMITED
as Borrower

with

DBS BANK LTD., HONG KONG BRANCH
as Lender

KING & WOOD MALLESONS
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The Landmark
15 Queen's Road Central
Central, Hong Kong
Ref: 800-0009584

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THIS AGREEMENT is dated 4 January 2017 and made between:

- (1) **CHINA MENGNIU DAIRY COMPANY LIMITED**, an exempted company with limited liability incorporated under the laws of the Cayman Islands the shares of which are (as at the date of this Agreement) listed on the Main Board of the HKSE (stock code 2319). (the "**Borrower**"); and
- (2) **DBS BANK LTD., HONG KONG BRANCH** (the "**Lender**");

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Acquisition**" means the acquisition of the Target Shares by the Borrower pursuant to the Share Purchase Agreement and/or the acquisition by the Borrower of the Target Shares and the cancellation of Target Options pursuant to the Offer.

"**Acquisition Consideration**" means the consideration payable in cash by the Borrower in respect of the Acquisition.

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

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

"**Authorisation**" means:

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

"**Availability Period**" means the period from and including the date of this Agreement to and including the earliest of (a) the date falling four (4) Months from the date of this Agreement, (b) the date on which the Share Purchase Agreement is terminated in accordance with its terms and the Borrower is not required to make the Offer under the Takeovers Code, (c) the date on which the Borrower has paid the Acquisition Consideration in full, and (d) the date on which the Offer lapses or is withdrawn in accordance with its terms and the Takeovers Code.

"Available Commitment" means at any time the Lender's Commitment *minus*:

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

"Borrower Shares" means the ordinary shares in the issued share capital of the Borrower.

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

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

exceeds:

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

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in Hong Kong and, in respect of any date for payment or purchase of US dollars only, New York.

"Certain Funds Advance" means any Loan requested by the Borrower the proceeds of which will be applied in accordance with Clause 3.1 (*Purpose*).

"Certain Funds Default" means any Default relating to any of:

- (a) Clause 21.1 (*Non-payment*) or Clause 21.9 (*Unlawfulness*);
- (b) Clause 21.11 (*Repudiation*) (only to the extent it relates to actual repudiation of any Transaction Document);
- (c) (only to the extent it relates to the Borrower) Clause 21.3 (*Other obligations*) insofar as it relates to any of Clauses 20.5 (*Negative pledge*), 20.6 (*Disposals*), 20.7 (*Merger*) and 20.9 (*Acquisitions*);
- (d) Clause 21.4 (*Misrepresentation*) insofar as it relates to a Certain Funds Representation;
- (e) (only to the extent it relates to the Borrower) paragraph (a) of Clause 21.5 (*Cross default*);

- (f) (only to the extent it relates to the Borrower) Clauses 21.6 (*Insolvency*) to 21.8 (*Creditors' process*);
- (g) paragraphs (c) and (d) of Clause 21.16 (*Ownership*); and/or
- (h) (only to the extent relating to the Borrower or the Borrower Shares, and only where any cessation of listing or suspension of trading referred to therein arises due to any request, election or other voluntary act of or on behalf of the Borrower) Clause 21.15 (*Borrower's shares*).

"**Certain Funds Period**" means the period starting from the date of this Agreement to the last day of the Availability Period.

"**Certain Funds Representation**" means, to the extent it relates to the Borrower only, any representation or warranty under any of paragraphs (a) and (b) of Clause 17.1 (Status), Clauses 17.2 (Binding obligations) to 17.5 (Validity and admissibility in evidence) and/or Clause 17.24 (*Offer and Related Documents*).

"**CISADA**" means the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 of the United States of America.

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

"**Commitment**" means in relation to the Lender, US\$650,000,000, to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Compliance Certificate**" means a certificate delivered pursuant to Clause 18.2 (*Compliance Certificate*) and signed by one director or company secretary of the Borrower substantially in the form set out in Schedule 3 (*Form of Compliance Certificate*).

"**Confidential Information**" means all information relating to the Borrower, the Group, the Finance Documents or the Facility of which the Lender becomes aware in its capacity as, or for the purpose of becoming, the Lender or which is received by the Lender in relation to, or for the purpose of becoming the Lender under, the Finance Documents or the Facility from any Group Member or any of its advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 23 (*Disclosure of information*); or
- (b) is identified in writing at the time of delivery as non-confidential by any Group Member or any of its advisers; or
- (c) is known by the Lender before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Group and which, in either case, as far as the Lender is

aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

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

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

"Designated Accounts" means each of the following accounts:

- (a) the saving account no. 10014677788;
- (b) the US dollars C/A account no. 30013923688; and
- (c) the HK dollars C/A account no. 30013922988,

in each case including, without limitation, any securities and cash sub-accounts thereunder and any renewal or re-designation thereof, opened and maintained by the Borrower with the Lender for the sole purpose of the Acquisition.

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

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

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

"Final Repayment Date" means the date falling four (4) Months from the date of this Agreement.

"Finance Document" means this Agreement, any Utilisation Request and any other document designated as such by the Lender and the Borrower.

"Financial Advisers" means UBS AG Hong Kong Branch and DBS Bank Ltd., Hong Kong Branch.

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

"**Governmental Agency**" means any government or any governmental agency, semi-governmental or judicial entity or authority (including, without limitation, any stock exchange or any self-regulatory organisation established under statute).

"**Group**" means the Borrower and each of its Subsidiaries from time to time and "**Group Member**" means any of those persons.

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

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

"**Hong Kong**" means the Hong Kong Special Administrative Region of the People's Republic of China.

"**IFRS**" means international accounting standards within the meaning of the IAS Regulation 1606/2002 or any other applicable international accounting standards approved by the Lender.

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

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

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

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

each as of 11.00am London time on the Quotation Day for which an interest rate is to be determined for the offering of deposits in US dollars.

"ISA" means the Iran Sanctions Act of 1996 of the United States of America.

"LIBOR" means, in relation to any Loan:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Rate for that Loan; or
- (c) if no Screen Rate is available for US dollars for the Interest Period of that Loan, the arithmetic mean of the rates (rounded upwards to four decimal places) quoted by the Reference Banks to leading banks in the London interbank market (as supplied to the Lender at its request),

each as of 11.00am London time on the Quotation Day for which an interest rate is to be determined for the offering of deposits in US dollars and for a period comparable to the Interest Period for that Loan, provided that if such rate is less than zero, LIBOR shall be deemed to be zero.

"Listing Rules" means the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited.

"Loan" means, as the context requires, any loan made or to be made under the Facility or the principal amount outstanding at any time of such loan.

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

"Management Option Scheme" means the share option scheme adopted by the Target on October 31, 2010.

"Margin" means 0.8 per cent. per annum.

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, property or financial condition of the Borrower and/or the Group taken as a whole; (b) the ability of the Borrower to perform its obligations under the Finance Documents; or (c) the validity or enforceability of, or the rights or remedies of the Lender under, the Finance Documents.

"Material Subsidiary" means each of the following:

- (a) Inner Mongolia Mengniu Dairy (Group) Co., Ltd., a company incorporated in Hohhot City, Inner Mongolia, the PRC;
- (b) Yashili International Holdings Ltd., an exempted company with limited liability incorporated under the laws of the Cayman Islands; or
- (c) any Subsidiary of the Borrower as designated by the Lender and the Borrower from time to time.

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

- (a) subject to paragraph (c) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

"Moody's" means Moody's Investors Service Limited or any successor to its ratings business.

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

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Offer" means the possible mandatory cash offer by the Borrower for the Target Shares and for the cancellation of the Target Options (other than any Target Shares or Target Options already owned or agreed to be acquired by the Borrower and persons acting in concert with it).

"Offer Document" means the offer document relating to the Offer to be issued by the Borrower (or by the Borrower and the Target jointly) to the holders of Target Shares and Target Options.

"Original Financial Statements" means the audited consolidated financial statements of the Group for the financial year ended 31 December 2015.

"Party" means a party to this Agreement.

“**PRC**” means the People’s Republic of China, but excluding Hong Kong, the Macau Special Administrative Region and Taiwan solely for the purpose of the Finance Documents.

“**Public Announcement**” means the public announcement to be released by the Borrower (or by the Borrower and the Target jointly) announcing the terms of the Offer.

“**Quotation Day**” means:

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

“**Reference Bank Rate**” means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lender at its request by the Reference Banks, as the rate at which the relevant Reference Bank could borrow funds in the London interbank market in US dollars and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in US dollars and for that period.

“**Reference Banks**” means the principal London offices of DBS Bank Ltd. or such other banks as may be appointed by the Lender in consultation with the Borrower.

“**Relevant Documents**” means:

- (a) the Public Announcement; and
 - (b) the Offer Document;
- (each a “**Relevant Document**”).

“**Relevant Jurisdiction**” means in relation to the Borrower:

- (a) its jurisdiction of incorporation or residence; and
- (b) any jurisdiction where it conducts its business.

“**Repeating Representations**” means at any time the representations and warranties which are then made or deemed to be repeated under Clause 17.25 (*Repetition*) or any other Finance Documents.

“**Representative**” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"**S&P**" means S&P Global Ratings, a division of S&P Global Inc. or any successor to its ratings business.

"**Sanctions**" means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctions Authority including pursuant to the ISA and the CISADA or any equivalent sanctions or measures imposed any Sanctions Authority.

"**Sanctions Authority**" means (a) the United States government; (b) the United Nations; (c) the European Union; (d) the United Kingdom government; (e) the respective governmental institutions and agencies of any of the foregoing; or (f) any other relevant governmental entity in any other applicable jurisdiction, including OFAC, the United States Department of State, and Her Majesty's Treasury.

"**Sanctions List**" means the "Specially Designated Nationals and Blocked Persons" list maintained by OFAC, the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by Her Majesty's Treasury, or any similar list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities.

"**Screen Rate**" means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for US dollars and the relevant period displayed on page LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Lender may specify another page or service displaying the relevant rate after consultation with the Borrower.

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

"**Selection Notice**" means a notice substantially in the form set out in Part II of Schedule 2 (*Requests*) given in accordance with Clause 9 (*Interest Periods*).

"**Share Option Scheme I**" means the share option scheme adopted by the Target on November 17, 2011.

"**Share Option Scheme II**" means the share option scheme adopted by the Target on June 5, 2014.

"**Share Option Scheme III**" means the share option scheme adopted by the Target on September 30, 2016.

"**Share Purchase Agreement**" means the share and purchase agreement to be executed on or about the date of this Agreement under which the Borrower will be conditionally agreeing to purchase 965,465,750 Target Shares from Success Dairy II Limited.

"Subordinated Creditor" means any shareholder of the Borrower or any Group member who has made any loan or advance which is required to be subordinated to the Facility pursuant to Clause 20.13 (*Subordination*).

"Subordinated Loan" means any loan or advance made by a Subordinated Creditor which is required to be subordinated to the Facility pursuant to Clause 20.13 (*Subordination*).

"Subordination Deed" means any deed of subordination executed or to be executed pursuant to Clause 20.13 (*Subordination*), such deed of subordination shall be in form and substance satisfactory to the Lender.

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

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

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

"Takeovers Code" means The Code on Takeovers and Mergers published by the Securities and Futures Commission of Hong Kong, as amended from time to time.

"Target" means China Modern Dairy Holdings Ltd., an exempted company with limited liability incorporated under the laws of the Cayman Islands the shares of which are (as at the date of this Agreement) listed on the Main Board of the HKSE (stock code 1117).

"Target Group" means the Target and its Subsidiaries from time to time.

"Target Options" means outstanding share options granted by the Target pursuant to the Management Option Scheme, Share Option Scheme I, Share Option Scheme II and Share Option Scheme III, whether vested or not.

"Target Shares" means ordinary shares in the issued share capital of the Target.

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

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

"Transaction Documents" means the Finance Documents and the Relevant Documents and each a **"Transaction Document"**.

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

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

"**US Tax Obligor**" means:

- (a) an entity which is resident for Tax purposes in the US; or
- (b) an entity some or all of whose payment under the Finance Documents are from sources within the US for US federal income tax purposes.

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

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

"**Utilisation Request**" means a notice substantially in the form set out in Part I of Schedule 2 (*Requests*) or a notice in any form acceptable to the Lender (which may include an oral request by telephone call).

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) any "**Lender**", the "**Borrower**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) "**assets**" includes present and future properties, revenues and rights of every description;
 - (iii) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (iv) "**including**" shall be construed as "including without limitation" (and cognate expressions shall be construed similarly);
 - (v) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (vi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (vii) any reference to the male gender shall include the female gender and neutral gender and vice versa;
 - (viii) 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 organisation;

- (ix) a provision of law is a reference to that provision as amended or re-enacted; and
 - (x) a time of day is a reference to Hong Kong time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
 - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (d) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.
 - (e) Unless this Agreement expressly provides to the contrary, an obligation of the Borrower under the Finance Documents which is not a payment obligation remains in force for so long as any payment obligation of the Borrower is outstanding or any Commitment is in force under the Finance Documents.
 - (f) Unless this Agreement expressly provides otherwise, where this Agreement specifies an amount in a given currency (the "**specified currency**") "**or its equivalent**", the "**equivalent**" is a reference to the amount of any other currency which, when converted into the specified currency utilising the Lender's spot rate of exchange for the purchase of the specified currency with that other currency at or about 11 a.m. on the relevant date, is equal to the relevant amount in the specified currency.

1.3 **Currency symbols and definitions**

"**USD**", "**US\$**" and "**US dollar**" denote the lawful currency of the US. "**Renminbi**" or "**RMB**" denote the lawful currency of the PRC. "**HKD**", "**HK\$**" and "**HK dollar**" denote the lawful currency of Hong Kong.

1.4 **Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) (the "**Third Parties Ordinance**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

SECTION 2 THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lender makes available to the Borrower a US dollar term loan facility in an aggregate amount equal to the Commitment.

3. PURPOSE

3.1 Purpose

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

- (a) the payment of the Acquisition Consideration; and
- (b) the payment of fees and expenses relating to the Facility and/or the Acquisition.

3.2 Monitoring

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Borrower may not deliver a Utilisation Request unless the Lender has received (or waived) all of the documents and other evidence listed in and appearing to comply with the requirements of Schedule 1 (*Conditions Precedent*) in form and substance satisfactory to the Lender (acting reasonably). The Lender shall notify the Borrower and the Financial Advisers promptly upon being so satisfied.

4.2 Further conditions precedent

Subject to Clause 4.3 (*Certain funds*), the Lender will only be obliged to comply with Clause 5.4 (*Lender's participations*) if on the date of each Utilisation Request and on the proposed Utilisation Date for the relevant Loan:

- (a) evidence that the Securities and Futures Commission's clearance to make the Public Announcement has been obtained;
- (b) (in the case of a Certain Funds Advance) no Certain Funds Default is continuing or would result from such proposed Loan or (in the case of a Loan that is not a Certain Funds Advance) no Default is continuing or would result from the proposed Loan; and
- (c) (in the case of a Certain Funds Advance) all of the Certain Funds Representations are true in all material respects (whether before or after giving effect to such proposed Loan) or (in the case of a Loan that is not a Certain Funds Advance) the Repeating Representations are true in all material respects.

4.3 **Certain funds**

During the Certain Funds Period (notwithstanding any provision in this Agreement to the contrary) the Lender shall not:

- (a) unless an Event of Default that constitutes a Certain Funds Default is continuing, be entitled to cancel any part of the Commitment, declare any Loan due and payable or payable on demand, rescind, terminate or cancel this Agreement, require prepayment or repayment of or accelerate any or all of the Loans, take any other action under Clause 21.18 (*Acceleration*) with respect to any Loan or any part of the Commitment, or exercise any right of rescission, termination, set-off or counterclaim in respect of any Loan, except that none of the foregoing shall prejudice the provisions of Clause 7.1 (*Illegality*); or
- (b) by virtue of any Default (other than a Certain Funds Default), refuse to make available a Loan requested to be made during the Certain Funds Period, provided that immediately upon the expiry of the Certain Funds Period, all such rights, remedies and entitlements shall be available to the Lender, notwithstanding that such rights, remedies and/or entitlements may not have been used or been available for use during the Certain Funds Period.

SECTION 3 UTILISATION

5. UTILISATION

5.1 Utilisation of Loan

The Borrower may utilise the Facility by delivery to the Lender of a duly completed Utilisation Request no later than three (3) Business Days before the proposed Utilisation Date.

5.2 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
 - (iii) the proposed first Interest Period complies with Clause 9.1 (*Interest Periods*).
- (b) Only one Loan may be requested in each Utilisation Request.
- (c) The proceeds of each Loan shall be credited to a Designated Account.

5.3 Currency and amount

- (a) The currency specified in the Utilisation Request must be US dollars.
- (b) The amount of the proposed Loan must be an amount which is not more than the Available Commitment.

5.4 Lender's participations

If the conditions set out in Clause 4 (*Conditions of Utilisation*) and 5.1 (*Utilisation of Loan*) to 5.3 (*Currency and amount*) above have been met, the Lender shall make the proposed Loan available by the Utilisation Date through its Facility Office by crediting a Designated Account with the proceeds of the proposed Loan.

5.5 Cancellation of Available Commitment

Any Commitment which, at that time, is unutilised shall be immediately and automatically cancelled at 5 p.m. on the last day of the Availability Period.

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

The Borrower shall repay any Loan which is outstanding in full on the Final Repayment Date.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

If, at any time, it is or will become unlawful in any applicable jurisdiction for the Lender to perform any of its obligations as contemplated by any Finance Document or to fund or maintain any Loan or it is or will become unlawful for any Affiliate of the Lender for the Lender to do so:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon the Lender notifying the Borrower, the Commitment of the Lender will be immediately cancelled; and
- (c) the Borrower shall repay each Loan on the last day of the Interest Period for that Loan occurring after the Lender has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

7.2 Mandatory prepayment of Loan – Acquisition Proceeds

- (a) For the purposes of this Clause 7.2:

"**Acquisition Proceeds**" means the cash proceeds received by the Borrower out of a claim (a "**Recovery Claim**") against the seller of the Target Shares in relation to the Acquisition except for Excluded Acquisition Proceeds, and after deducting:

- (a) any reasonable expenses which are incurred by the Borrower or any Group Member; and
- (b) any Tax incurred and required to be paid by the Borrower or any Group Member (as reasonably determined by the Borrower on the basis of existing rates and taking into account any available credit, deduction or allowance),

in each case in connection with that Recovery Claim.

"**Excluded Acquisition Proceeds**" means any proceeds of a Recovery Claim which the Borrower notifies the Lender are, or are to be, applied in payment of amounts payable by the Borrower pursuant to the Offer Document by way of adjustment to the purchase price in respect of the Acquisition (except to the extent relating to a working capital adjustment) as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are so applied as soon as reasonably practicable (but in any event within five (5) Business Days, or such longer period as the Lender may agree) after receipt.

- (b) The Borrower shall apply all Acquisition Proceeds towards prepayment of the Loans on or before the last day of the Interest Period during which the Borrower receives such Acquisition Proceeds.

7.3 Mandatory prepayment – bond issuance or loan financing

- (a) For the purpose of this Clause 7.3:

“**Debt Incurrence Proceeds**” means the proceeds received by the Borrower in respect of any bond or note issuance or any bilateral or syndicated facility (“**Debt Incurrence**”) except for Excluded Debt Incurrence Proceeds, and after deducting:

- (a) any reasonable expenses which are incurred by the Borrower or any Group Member; and
- (b) any Tax incurred and required to be paid by the Borrower or any Group Member (as reasonably determined by the Borrower on the basis of existing rates and taking into account any available credit, deduction or allowance),

in each case in connection with that Debt Incurrence.

“**Excluded Debt Incurrence Proceeds**” means the proceeds of any Debt Incurrence by the Borrower that:

- (a) are applied towards funding the trading activities of the Group in its ordinary course of business;
 - (b) are applied towards payment of the Acquisition Consideration that is not funded by the Facility;
 - (c) are on lent to a Group Member (by way of shareholder’s loan or entrustment loan) provided that the aggregate amount on lent to all Group Members out of the proceeds of such Debt Incurrence shall not exceed US\$150,000,000; or
 - (d) are used for the purposes of payment of dividend to its shareholders provided that the aggregate amount paid to its shareholders out of the proceeds of such Debt Incurrence shall not exceed US\$300,000,000.
- (b) The Borrower shall apply all Debt Incurrence Proceeds towards prepayment of the Loans within five (5) Business Days from the date on which the Borrower receives such Debt Incurrence Proceeds. Such prepayment shall not be subject to any Break Cost.

7.4 Voluntary cancellation

The Borrower may, if it gives the Lender (i) not less than three (3) Business Days (or such shorter period as the Lender may agree) prior notice and (ii) prior to or at the same time as the giving of such notice, a written confirmation from the Financial Advisers stating that it has consented to the proposed reduction of the Available Commitment, reduce the Available Commitment to zero or by such amount as the Borrower may specify in such notice (being a minimum amount of US\$10,000,000 and integral multiples of US\$1,000,000).

7.5 **Voluntary prepayment of Loans**

- (a) The Borrower may, if it gives the Lender not less than three (3) Business Days (or such shorter period as the Lender may agree) prior notice, prepay on the last day of the Interest Period applicable thereto the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of US\$10,000,000 and integral multiples of US\$1,000,000).
- (b) A Loan may be prepaid only after the last day of the Availability Period (or, if earlier, the day on which the Available Commitment is zero).

7.6 **Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and Break Costs (if any) without premium or penalty.
- (c) The Borrower shall not repay or prepay all or any part of any Loan or reduce all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.
- (d) If any Commitment is reduced in accordance with this Agreement, the amount of such reduction may not be subsequently reinstated.
- (e) Unless a contrary indication appears in this Agreement, any part of the Facility which is repaid or prepaid may not be reborrowed.
- (f) If all or part of a Loan is repaid or prepaid, an amount of the Commitment will be deemed to be cancelled on the date of repayment or prepayment. Any cancellation under this paragraph (f) shall reduce the Commitment of the Lender.

SECTION 5
COSTS OF UTILISATION

8. INTEREST

8.1 Calculation of interest

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

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

8.2 Payment of interest

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period applicable to that Loan.

8.3 Default interest

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date to the date of actual payment (both before and after judgment) at a rate which is, subject to paragraph (b) below two (2) per cent. per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted the Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Lender (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Lender.
- (b) If any Unpaid Sum consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to such Loan:
 - (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the Unpaid Sum during that first Interest Period shall be two (2) per cent. per annum higher than the rate which would have applied if the Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

8.4 Notification of rates of interest

The Lender shall promptly notify the relevant Party of the determination of a rate of interest under this Agreement.

9. INTEREST PERIODS

9.1 Selection of Interest Periods

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Loan is irrevocable and must be delivered to the Lender by the Borrower not later than three (3) Business Days prior to the expiry of the preceding Interest Period.
- (c) If the Borrower fails to deliver a Selection Notice to the Lender in accordance with paragraph (b) above, the relevant Interest Period will be one (1) Month.
- (d) Subject to this Clause 9, the Borrower may select an Interest Period of two weeks, 1, 2 or 3 Months or any other period agreed between the Borrower and the Lender.
- (e) An Interest Period for any Loan shall not extend beyond the Final Repayment Date.
- (f) Each Interest Period for a Loan shall start on the relevant Utilisation Date or (if such Loan has already been made) on the last day of the preceding Interest Period of such Loan.

9.2 Non-Business Days

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

9.3 Consolidation and division of Loans

If the Interest Periods of two or more Loans end on the same date, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by noon (London time) on the Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

10.2 Market disruption

- (a) Subject to any alternative basis agreed and consented to as contemplated by paragraphs (a) and (b) of Clause 10.3 (*Alternative basis of interest or funding*), if a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on that Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and

- (ii) the percentage rate per annum notified to the Borrower by the Lender, as soon as practicable and in any event not later than five Business Days before interest is due to be paid in respect of that Interest Period, as the cost to the Lender of funding its participation in that Loan from whatever source(s) it may reasonably select.
- (b) In relation to a Market Disruption Event under paragraph (c)(ii) below, if the percentage rate per annum notified by the Lender pursuant to paragraph (a)(ii) above shall be less than LIBOR, the cost to the Lender of funding the relevant Loan for the relevant Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.
- (c) In this Agreement "**Market Disruption Event**" means:
 - (i) at or about noon on the Quotation Day for the relevant Interest Period LIBOR is to be determined by reference to the Reference Banks and none or only one of the Reference Banks supplies a rate to the Lender to determine LIBOR for US dollars for the relevant Interest Period; or
 - (ii) at 5 p.m. on the Business Day immediately following the Quotation Day for the relevant Interest Period, the Lender notifies the Borrower that the cost to it of obtaining matching deposits in the London interbank market would be in excess of LIBOR.

10.3 **Alternative basis of interest or funding**

- (a) If a Market Disruption Event occurs and the Lender or the Borrower so requires, the Lender and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) For the avoidance of doubt, in the event that no substitute basis is agreed at the end of the thirty day period, the rate of interest shall continue to be determined in accordance with the terms of this Agreement.

10.4 **Break Costs**

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

11. **FEES**

11.1 **Ticking Fee**

The Borrower shall pay to the Lender a ticking fee in an amount of 0.1% of the Commitment (as at the date of this Agreement) within seven (7) days from the date of this Agreement.

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS-UP AND INDEMNITIES

12.1 Tax definitions

- (a) In this Clause 12:

"**Tax Credit**" means a credit against, relief or remission for, or repayment of any Tax.

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

"**Tax Payment**" means an increased payment made by the Borrower to the Lender under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

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

12.2 Tax gross-up

- (a) All payments to be made by the Borrower to the Lender under the Finance Documents shall be made free and clear of and without any Tax Deduction unless the Borrower is required to make a Tax Deduction, in which case the sum payable by the Borrower (in respect of which such Tax Deduction is required to be made) shall be increased to the extent necessary to ensure that the Lender receives a sum net of any deduction or withholding equal to the sum which it would have received had no such Tax Deduction been made or required to be made.
- (b) The Borrower shall promptly upon becoming aware that the Borrower must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, the Lender shall notify the Borrower on becoming so aware in respect of a payment payable to the Lender.
- (c) If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (d) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lender evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 Tax indemnity

- (a) Without prejudice to Clause 12.2 (*Tax gross-up*), if the Lender is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under the Finance Documents (including any sum deemed for purposes of Tax to be received or receivable by the Lender whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against the Lender, the Borrower shall, within three Business Days of demand of the Lender, promptly indemnify the Lender against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith, provided that this Clause 12.3 shall not apply to:
- (i) any Tax imposed on and calculated by reference to the net income actually received or receivable by the Lender (but, for the avoidance of doubt, not including any sum deemed for purposes of Tax to be received or receivable by the Lender but not actually receivable) by the jurisdiction in which the Lender is incorporated; or
 - (ii) any Tax imposed on and calculated by reference to the net income of the Facility Office of the Lender actually received or receivable by the Lender (but, for the avoidance of doubt, not including any sum deemed for purposes of Tax to be received or receivable by the Lender but not actually receivable) by the jurisdiction in which its Facility Office is located.
- (b) If the Lender intends to make a claim under paragraph (a), it shall notify the Borrower of the event giving rise to the claim.

12.4 Tax Credit

If the Borrower makes a Tax Payment and the Lender determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) the Lender has obtained and utilised that Tax Credit,

the Lender shall pay an amount to the Borrower which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

12.5 Stamp taxes

The Borrower shall:

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

12.6 Indirect Tax

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

13. INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Lender, pay the amount of any Increased Costs incurred by the Lender or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement. The terms "law" and "regulation" in this paragraph (a) shall include any law or regulation concerning capital adequacy, prudential limits, liquidity, reserve assets or Tax.
- (b) In this Agreement "**Increased Costs**" means:
 - (i) a reduction in the rate of return from the Facility or on the Lender's (or its Affiliate's) overall capital (including as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by the Lender);
 - (ii) an additional or increased cost; or
 - (iii) a reduction of any amount due and payable under any Finance Document,

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

13.2 Increased cost claims

- (a) If the Lender intends to make a claim pursuant to Clause 13.1 (*Increased costs*), it shall notify the Borrower of the event giving rise to the claim.
- (b) The Lender shall, as soon as practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

- (a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
- (i) attributable to a Tax Deduction required by law to be made by the Borrower;
 - (ii) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because the exclusion in paragraph (a) of Clause 12.3 (*Tax indemnity*) applied); or
 - (iii) attributable to the wilful breach by the relevant Lender or its Affiliates of any law or regulation.
- (b) In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 12.1 (*Tax definitions*).

14. MITIGATION BY THE LENDER

14.1 Mitigation

- (a) The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*) or Clause 12 (*Tax Gross-up and Indemnities*), including:
- (i) providing such information as the Borrower may reasonably request in order to permit the Borrower to determine its entitlement to claim any exemption or other relief (whether pursuant to a double taxation treaty or otherwise) from any obligation to make a Tax Deduction; and
 - (ii) in relation to any circumstances which arise following the date of this Agreement, transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

14.2 Limitation of liability

- (a) The Borrower shall promptly indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 14.1 (*Mitigation*).
- (b) The Lender is not obliged to take any steps under Clause 14.1 (*Mitigation*) if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it.

14.3 Conduct of business by the Lender

No provision of any Finance Document will:

- (a) interfere with the right of the Lender to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;

- (b) oblige the Lender to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige the Lender to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

15. OTHER INDEMNITIES

15.1 Currency indemnity

- (a) If any sum due from the Borrower under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
 - (i) making or filing a claim or proof against the Borrower; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

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

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

15.2 Other indemnities

The Borrower shall, within three Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by the Lender as a result of:

- (a) the occurrence of any Event of Default;
- (b) any written information produced or approved by the Borrower being or being alleged to be misleading and/or deceptive in any respect;
- (c) any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Borrower or with respect to the transactions contemplated or financed under this Agreement;
- (d) funding, or making arrangements to fund, any Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone); or
- (e) any Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

15.3 **Indemnity to the Lender**

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

- (a) investigating any event which the Lender reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which the Lender reasonably believes to be genuine, correct and appropriately authorised; or
- (c) exercising any of the rights, powers, discretions, authorities or remedies vested in it under any Finance Document or by law.

16. **COSTS AND EXPENSES**

16.1 **Transaction expenses**

The Borrower shall, within ten Business Days of demand, pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing and execution of:

- (a) this Agreement and any other documents referred to in this Agreement; and
- (b) any other Finance Documents executed after the date of this Agreement.

16.2 **Amendment costs**

If (a) the Borrower requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 24.5 (*Currency of account*), the Borrower shall, within ten Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 **Enforcement costs**

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

SECTION 7
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

The Borrower makes the representations and warranties set out in this Clause 17 to the Lender on the date of this Agreement.

17.1 Status

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

17.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered in accordance with Clause 4 (*Conditions of Utilisation*), legal, valid, binding and enforceable obligations.

17.3 Non-conflict with other obligations

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

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

17.4 Power and authority

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

17.5 Validity and admissibility in evidence

- (a) All Authorisations required or necessary:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
 - (ii) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,
- have been obtained or effected and are in full force and effect.

- (b) All Authorisations necessary for the conduct of business, trade and ordinary activities of the Group Members have been obtained or effected and are in full force and effect except where failure to do so would not and would not be reasonably likely to have any Material Adverse Effect.

17.6 Governing law and enforcement

Subject to any matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered under this Agreement, any:

- (a) irrevocable submission under the Finance Documents to the jurisdiction to which it is stated to be subject;
- (b) agreement as to the governing law of any Finance Document; and
- (c) agreement not to claim any immunity to which it or its assets may be entitled,

will be recognised and enforced in the Relevant Jurisdictions.

17.7 Deduction of Tax

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

17.8 No filing or stamp taxes

Except for: any filing or registration of a Finance Document as specifically referred to in any legal opinion delivered in accordance with Clause 4 (*Conditions of Utilisation*), under the law of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar Tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except Cayman Islands stamp duty which will be payable on any Finance Document executed in, brought into or produced before a court of the Cayman Islands.

17.9 No default

- (a) No Event of Default is continuing or might reasonably be expected to result from entry into of, or the performance of any transaction contemplated by, any Finance Document.
- (b) No other event or circumstance is continuing which constitutes a default under any other agreement or instrument which is binding on it or any of its assets are subject to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect.

17.10 No misleading information

- (a) Any written factual information contained in or provided by or on behalf of it to the Lender in connection with the Facility and/or the Acquisition was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.

- (b) Any written financial projections provided by it to the Lender in connection with the Facility and/or the Acquisition have been prepared on the basis of recent historical information and on the basis of assumptions which are believed by the Borrower to be reasonable.
- (c) No information has been given or withheld that results in the information provided by it to the Lender being untrue or misleading in any material respect.
- (d) Each expression of opinion, expectation, intention or policy contained in the information provided by it to the Lender in connection with the Facility and/or the Acquisition was made after careful consideration and enquiry and is believed by the Borrower to be fair and reasonable as at the date at which it is stated to be given and can be properly supported.
- (e) All other written information supplied by it to the Lender in connection with the Facility and/or the Acquisition was true, complete and accurate in all material respects as at the date it was given and was not misleading in any respect,

provided that the representations and warranties under this Clause 17.10, to the extent that they relate to information concerning member of the Target Group that is provided to the Lender prior to the date on which the Target becomes a Subsidiary of the Borrower shall be made to the best of the knowledge of the Borrower.

17.11 **Financial statements**

- (a) Its financial statements most recently supplied to the Lender (which, at the date of this Agreement, are the Original Financial Statements) were prepared in accordance with IFRS consistently applied save to the extent expressly disclosed in such financial statements.
- (b) Its financial statements most recently supplied to the Lender (which, at the date of this Agreement, are the Original Financial Statements) give a true and fair view and represent its financial condition and operations consolidated during the relevant financial year save to the extent expressly disclosed in such financial statements.
- (c) Save as matters disclosed in the public announcements issued by the Borrower on the website of the HKSE, there has been no material adverse change in its business or financial condition or the business or consolidated financial condition of the Group since the date to which the Original Financial Statements were drawn up.

17.12 **Pari passu ranking**

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

17.13 **No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a

Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against the Borrower or any of its Material Subsidiaries.

17.14 Authorised Signatures

Any person specified as its authorised signatory under Schedule 1 (*Conditions Precedent*) or paragraph (d) of Clause 18.4 (*Information: miscellaneous*) is authorised to sign Utilisation Requests and other notices on its behalf.

17.15 No Immunity

In any proceedings taken in a Relevant Jurisdiction in relation to the Finance Documents, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

17.16 Private and commercial act

The execution of the Finance Documents by it 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.

17.17 Anti-bribery conduct

Neither it nor or any of its directors or officers:

- (a) has violated or is in violation of any applicable anti-corruption and anti-bribery laws in the Relevant Jurisdictions;
- (b) has violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977 ("**FCPA**") or The Bribery Act 2010 of the United Kingdom (the "**UK Bribery Act**") to the extent applicable; or
- (c) has made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment prohibited under any applicable law or regulation equivalent to the FCPA or the UK Bribery Act.

17.18 Money Laundering Laws

Its operations are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements and money laundering statutes in Hong Kong and of all jurisdictions in which it conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Agency (collectively, "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or Governmental Agency, authority or body or any arbitrator involving it with respect to Money Laundering Laws is pending and, to the best of its knowledge, no such actions, suits or proceedings are threatened or contemplated.

17.19 U.S. Office of Foreign Assets Control

Neither it nor any of its joint ventures or any director, officer, agent, employee or affiliate of it or its joint ventures (or any other persons acting on any of their behalf):

- (a) is currently

- (i) subject to any Sanctions or listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on, any Sanctions List;
 - (ii) located in, incorporated under the laws of, or owned or (directly or indirectly) controlled by, or acting on behalf of, a person located in or organized under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions; or
 - (iii) otherwise a target of Sanctions ("**target of Sanctions**" signifying a person with whom a US person or other national of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities); or
- (b) has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to Sanctions by any Sanctions Authority, and it will not use the proceeds of the Facility for any purpose other than for the purpose as specified in Clause 3.1 (*Purpose*).

17.20 **No breach of laws**

- (a) It has not (and none of its Material Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of the knowledge and belief of the Borrower, threatened against any Group Member which have or are reasonably likely to have a Material Adverse Effect.

17.21 **Taxation**

- (a) It is not (and, to the best of the knowledge and belief of the Borrower, none of its Material Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Material Subsidiaries is) overdue in the payment of any amount in respect of Tax except where: (i) such payment is being contested in good faith; (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them in accordance with the IFRS; and (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have and would not reasonably be expected to have a Material Adverse Effect.
- (b) To the best of its knowledge and belief, no claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Material Subsidiaries) with respect to Taxes, which, if adversely determined, would or would reasonably likely to have a Material Adverse Effect.

17.22 **Material Subsidiaries**

As of the date of this Agreement, the Material Subsidiaries are Inner Mongolia Mengniu Dairy (Group) Co., Ltd. and Yashili International Holdings Ltd.

17.23 **Good title to assets**

It and each of its Material Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted (in each case where failure to have such

title, leases or licenses or Authorisations would have or would reasonably be expected to have a Material Adverse Effect).

17.24 Offer and Related Documents

- (a) The Offer Document and all ancillary documents thereto (which ancillary documents are consistent in all material respects with the terms of the Public Announcement) issued by or on behalf of the Borrower to holders of the Target Shares in relation to the Offer contain all the terms of the Offer and reflect the terms of the Public Announcement in all material respects.
- (b) Except as permitted under the Takeovers Code and with prior written consent of the Financial Advisers, none of the Relevant Documents or the terms of the Offer has been amended, varied or modified, and the Borrower has not waived any of its rights under or pursuant to any of the Relevant Documents or the terms of the Offer.
- (c) The Borrower has not assigned, transferred or otherwise disposed of any of its rights or obligations under any of the Relevant Documents.

17.25 Repetition

- (a) The representations and warranties set out in this Clause are made by the Borrower on the date of this Agreement.
- (b) Each representation and warranty (other than Clauses 17.7 (*Deduction of Tax*), 17.8 (*No filing or stamp taxes*), 17.9 (*No default*), paragraph (e) of 17.10 (*No misleading information*), paragraph (c) of 17.11 (*Financial statements*), 17.13 (*No proceedings pending or threatened*), 17.14 (*Authorised Signatures*) and 17.20 (*No breach of laws*)) is deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request, each Utilisation Date and the first day of each Interest Period.

18. INFORMATION UNDERTAKINGS

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

18.1 Financial statements

The Borrower shall supply to the Lender:

- (a) as soon as the same become available, but in any event within 120 days after the end of each of its financial years its audited consolidated financial statements for that financial year; and
- (b) as soon as the same become available, but in any event within 90 days after the end of the first half of each of its financial years its unaudited consolidated financial statements for that financial half year.

18.2 Compliance Certificate

- (a) The Borrower shall supply to the Lender, with each set of financial statements delivered pursuant to Clause 18.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 19 (*Financial covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate delivered pursuant to paragraph (a) above shall be signed by one director or company secretary of the Borrower.

18.3 Requirements as to financial statements

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

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

18.4 Information: miscellaneous

The Borrower shall supply to the Lender:

- (a) all documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are despatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it, and which might, if adversely determined, have a Material Adverse Effect;

- (c) within 10 Business Days of request, such further information regarding the financial condition, business and operations of the Borrower as the Lender may reasonably request; and
- (d) promptly, notice of any change in its authorised signatories signed by one of its directors or company secretary accompanied by specimen signatures of any new authorised signatories.

18.5 **Notification of Default**

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

18.6 **"Know your customer" checks**

The Borrower shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or on behalf of any prospective New Lender) in order for the Lender, or any prospective New Lender to conduct any "know your customer" or other similar procedures under applicable laws and regulations.

19. **FINANCIAL COVENANTS**

19.1 **Definitions**

In this Agreement:

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

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

- (a) before deducting any Finance Charges in respect of that period;
- (b) not including any accrued interest owing to any Group Member;
- (c) after adding back any amount attributable to the amortisation or depreciation of assets of the Group Members;
- (d) before taking into account any exceptional, one-off, non-recurring or extraordinary items;
- (e) after deducting the amount of any profit (or adding back the amount of any loss) for that period of any Group Member which is attributable to minority interests (that is, any interest in any Subsidiary of the Borrower that is held or owned by any person that is not a Group Member);

- (f) after deducting the amount of any profit of any Non-Group Entity to the extent that the amount of such profit included in the consolidated financial statements of the Group exceeds the amount actually received in cash by the Group Members during such period through distributions by such Non-Group Entity;
- (g) before taking into account any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis); and
- (h) before taking into account any gain or loss arising from an upward or downward revaluation of any asset at any time after the Original Financial Statements of the Borrower,

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

"Finance Charges" means, for any period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and/or other finance payments in respect of Borrowings paid or payable by any Group Member (calculated on a consolidated basis) or capitalised in respect of that period:

- (a) including the interest (but not the capital) element of payments in respect of Finance Leases;
- (b) including any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any Group Member under any interest rate hedging arrangement;
- (c) if a Joint Venture (that is not a Group Member) is accounted for by the Group on a proportionate consolidation basis, after adding the Group's share of the finance costs of that Joint Venture for that period; and
- (d) taking no account of any unrealised gains or losses on any derivative instruments other than any derivative instruments which are accounted for on a hedge accounting basis.

"Finance Lease" means any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease.

"Indebtedness for Borrowed Money" means Financial Indebtedness (except any Financial Indebtedness falling within (a) paragraph (g) of the definition of "Financial Indebtedness" or (b) paragraph (i) of the definition of "Financial Indebtedness" (to the extent relating to any Financial Indebtedness falling within paragraph (g) of the definition of "Financial Indebtedness")).

"Interest Cover" means, in relation to any Measurement Period, the ratio of EBITDA to Finance Charges in respect of such Measurement Period.

"Joint Venture" means any joint venture entity, whether a company, unincorporated firm, undertaking, joint venture, association, partnership or other entity.

"Leverage" means, in respect of any Measurement Period, the ratio of Net Debt on the last day of that Measurement Period to EBITDA in respect of that Measurement Period.

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

"Net Debt" means, at any time:

(a) Total Debt at such time

less

(b) the aggregate cash held and beneficially owned by the Group Members (on a consolidated basis) at such time, provided that if such cash is subject to any Security Interest or Quasi-Security Interest (as defined in Clause 20.5 (*Negative pledge*)), such cash shall only be included in this paragraph to the extent of the amount of that portion of the Total Debt that is secured by such cash at such time.

"Non-Group Entity" means any investment or entity (which is not itself a Group Member (including associates and Joint Ventures)) in which any Group Member has an ownership interest.

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

(a) including (to the extent not otherwise included) any balance standing to the credit of the consolidated profit and loss account of the Borrower;

(b) deducting (to the extent not otherwise deducted) any debit balance on the consolidated profit and loss account of the Borrower;

(c) deducting any amount in respect of any interest of any person (that is not a Group Member) in any Subsidiary of the Borrower;

(d) deducting (to the extent otherwise included) any amount shown in respect of goodwill (including goodwill arising only on consolidation) or other intangible assets (excluding land-use rights) of the Group or any member thereof;

(e) deducting (to the extent otherwise included) any amount set aside for taxation, deferred taxation or bad debts;

(f) deducting (to the extent otherwise included) any amounts arising from an upward revaluation of assets made at any time after the date of the Original Financial Statements of the Borrower; and

(g) deducting any amount in respect of any dividend or distribution declared, recommended or made by any Group Member to the extent that such dividend or distribution is payable to a person that is not a Group Member and is not provided for in and deducted from the most recent financial statements of the Group,

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

"Total Debt" means, at any time, the aggregate amount of all obligations of the Group Members for or in respect of Borrowings at that time but:

- (a) excluding any such obligations to any other Group Member; and
- (b) including, in the case of any Finance Lease only, its capitalised value; and
- (c) excluding, for the avoidance of doubt, any trade payable incurred by any Group Member in its ordinary course of trading provided that the payment terms of such trade payable are not longer than 90 days,

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

19.2 Interpretation

- (a) Except as provided to the contrary in this Agreement, an accounting term used in this Clause is to be construed in accordance with the principles applied in connection with the Borrower's Original Financial Statements.
- (b) No item may be credited or deducted more than once in any calculation under this Clause.

19.3 Tangible Net Worth

The Borrower must ensure that Tangible Net Worth is not at any time less than RMB8,000,000,000.

19.4 Leverage

The Borrower must ensure that the Leverage in respect of each Measurement Period shall not exceed 2.0:1.

19.5 Interest cover

The Borrower must ensure that the Interest Cover in respect of each Measurement Period shall not be less than 6.0:1.

20. GENERAL UNDERTAKINGS

20.1 General

The Borrower agrees to be bound by the undertakings set out in this Clause relating to it and, where an undertaking is expressed to apply to other the Group Members, the Borrower must procure that its relevant Subsidiaries perform that undertaking.

20.2 Authorisations

The Borrower must promptly:

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

any Authorisation required under any applicable law or regulation to enable it to perform its obligations under the Finance Documents and to ensure the legality,

validity, enforceability or admissibility in evidence in each of its Relevant Jurisdiction of any Finance Document.

20.3 Compliance with laws

- (a) The Borrower must (and must procure that each Material Subsidiary shall) comply in all respects with all laws to which it or that Material Subsidiary (as applicable) may be subject, where failure to comply would have or would be reasonably likely to have a Material Adverse Effect.
- (b) The Borrower must (and must ensure that each Group Member will) comply in all respect with all food safety laws to which any Group Member may be subject, if failure to comply would have or would reasonably likely to have a Material Adverse Effect.

20.4 Pari passu ranking

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

20.5 Negative pledge

- (a) In this Clause, **Quasi-Security Interest** means an arrangement or transaction described in paragraph (c) below.
- (b) Except as provided below, no Group Member may create or allow to exist any Security Interest over any of its assets.
- (c) Except as provided below, no Group Member may:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms where they are or may be leased to, re-acquired or acquired by a Group Member;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (d) Paragraphs (b) and (c) above do not apply to any Security Interest or Quasi-Security Interest listed below:
 - (i) any Security Interest or Quasi-Security Interest listed in Schedule 4 (*Existing Security*) except to the extent the principal amount secured by that Security Interest or Quasi-Security Interest exceeds the amount stated in that Schedule (including the refinancing thereof);

- (ii) any Security Interest or Quasi-Security Interest over any asset of any member of the Target Group which Security Interest or Quasi-Security Interest is subsisting as at the time when the Target becomes a member of the Group, provided that the principal amount secured by that Security Interest or Quasi-Security Interest is not increased at any time after the time when the Target becomes a member of the Group;
- (iii) any netting or set-off arrangement entered into by any Group Member in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (iv) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a Group Member for the purpose of:
 - (A) hedging any risk to which any Group Member is exposed in its ordinary course of trading; or
 - (B) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,

excluding, in each case, any Security Interest or Quasi-Security Interest under a credit support arrangement in relation to a hedging transaction;
- (v) any lien arising by operation of law and in the ordinary course of trading;
- (vi) any Security Interest or Quasi-Security Interest over or affecting any asset acquired by a Group Member after the date of this Agreement if:
 - (A) the Security Interest or Quasi-Security Interest was not created in contemplation of, or since, the acquisition of that asset by a Group Member;
 - (B) the principal amount secured has not been increased in contemplation of, or since, the acquisition of that asset by a Group Member; and
 - (C) the Security Interest or Quasi-Security Interest is removed or discharged within three Months of the date of acquisition of that asset;
- (vii) any Security Interest or Quasi-Security Interest over or affecting any asset of any company which becomes a Group Member after the date of this Agreement, where the Security Interest or Quasi-Security Interest is created before the date on which that company becomes a Group Member, if:
 - (A) the Security Interest or Quasi-Security Interest was not created in contemplation of the acquisition of that company;
 - (B) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and

- (C) the Security Interest or Quasi-Security Interest is removed or discharged within three Months of that company becoming a Group Member;
- (viii) any Security Interest or Quasi-Security Interest entered into pursuant to any Finance Document;
- (ix) any Security Interest created pursuant to any order of attachment, distraint, garnishee order or injunction restraining disposal of assets or similar legal process arising in connection with court proceedings, when aggregated with all outstanding Security Interest expressly permitted under this paragraph, does not exceed US\$25,000,000 at any time;
- (x) any Security Interest or Quasi-Security Interest arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a Group Member in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any Group Member;
- (xi) any Security Interest or Quasi-Security Interest securing Taxes and other governmental levies and arising by statute but only if the Taxes and levies are being contested in good faith by appropriate proceedings and where adequate reserves with respect thereto are maintained on the books of the Borrower in conformity with IFRS;
- (xii) any Security Interest or Quasi-Security Interest arising as a result of any disposal that is expressly permitted under this Agreement;
- (xiii) any Security Interest or Quasi-Security Interest created with the prior written consent of the Lender; or
- (xiv) any Security Interest securing or Quasi-Security Interest relating to indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of a Security Interest or Quasi-Security Interest given by any Group Member other than any permitted under paragraphs (i) to (xiii) above does not exceed US\$100,000,000 or its equivalent in another currency or currencies at any time.

20.6 Disposals

- (a) Except as provided below, no Group Member may, either in a single transaction or in a series of transactions and whether related or not, dispose of any asset.
- (b) Paragraph (a) above does not apply to any disposal which is made on arm's length terms:
 - (i) made in the ordinary course of trading of the disposing entity;
 - (ii) of assets in exchange for other assets comparable or superior as to type, value and quality;
 - (iii) constituted by the investment of cash (that is not immediately required in the Group's business) in short term cash equivalent investments or the

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

- (iv) by a Group Member of obsolete inventories, vehicles, plant and equipment no longer required in the business of the relevant Group Member for cash;
 - (v) of assets by the Borrower to another Group Member;
 - (vi) that any Group Member is under any legally binding commitment to make, provided that such commitment is subsisting as at the date of this Agreement;
 - (vii) constituted by the making by a Group Member of the declaration and payment of any lawful dividend in cash to its shareholders;
 - (viii) constituted by any sale to any person (other than a Group Member) of any Target Shares by the Borrower for a consideration in cash only, provided that such sale is required to maintain the listing status of the Target on the Main Board of the HKSE and the aggregate number of Target Shares so sold (whether on one or more occasions) does not exceed the minimum number of Target Shares that are required to be disposed of by the Borrower in order to maintain the listing status of the Target on the Main Board of the HKSE in accordance with the Listing Rules;
 - (ix) of assets that arises as a direct result of any transaction expressly permitted under Clause 20.5 (*Negative pledge*) or Clause 20.7 (*Mergers*); or
 - (x) where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other disposal not allowed under the preceding paragraphs) does not exceed ten per cent. of the total assets of the Borrower in any financial year of the Borrower.
- (c) Paragraph (a) above does not apply to any disposal of assets by a Group Member (other than the Borrower) to another Group Member.

20.7 Mergers

Neither the Borrower nor any Material Subsidiary may enter into any amalgamation, demerger, merger or corporate reconstruction (a **Reorganisation**) other than a Reorganisation that is on a solvent basis and with another Group Member provided that:

- (a) if the Borrower is part of such Reorganisation, the Borrower is the surviving entity; and
- (b) such Reorganisation will not and is not reasonably expected to have a Material Adverse Effect.

20.8 Change of business

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

20.9 Acquisitions

- (a) Except as provided below, no Group Member may acquire any business, shares or other ownership interests in any other person.
- (b) Paragraph (a) above does not apply to:
 - (i) Acquisition;
 - (ii) any transaction which has been announced by the Borrower prior to the date of this Agreement;
 - (iii) an acquisition of assets or business which is in the same nature and of the same scope as the business of the Borrower as conducted on the date of this Agreement, provided that (i) such acquisition will not and is not reasonably expected to have a Material Adverse Effect and (ii) the terms of such acquisition is made on arm's length basis; and
 - (iv) acquisitions where the consideration (when aggregated with the consideration of any other acquisition not allowed under the preceding paragraphs) does not exceed ten per cent. of the total assets of the Borrower in any financial year of the Borrower.

20.10 Environmental matters

- (a) In this Clause:

Environmental Approval means any Authorisation required under any Environmental Law for the operation of the business of any Group Member conducted on or from properties owned or used by any Group Member.

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

Environmental Law means any applicable law or regulation which relates to:

- (i) the pollution or protection of the environment;
 - (ii) the harm to or the protection of human health;
 - (iii) the conditions of the workplace; or
 - (iv) any emission or substance capable of causing harm to any living organism or the environment.
- (b) Each Group Member must:
 - (i) comply with all Environmental Law;

- (ii) obtain, maintain and ensure compliance with all requisite Environmental Approvals; and
- (iii) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so would have or would be reasonably likely to have a Material Adverse Effect or result in any liability for the Lender.

- (c) The Borrower must, promptly upon becoming aware, notify the Lender of:
 - (i) any Environmental Claim started, or to its knowledge, threatened; or
 - (ii) any circumstances reasonably likely to result in an Environmental Claim,

which has or, if substantiated, would be reasonably likely to or would have a Material Adverse Effect or result in any liability for the Lender.

20.11 Insurance

Each of the Borrower and the Material Subsidiaries must insure its business and assets with insurance companies to such an extent and against such risks as companies engaged in a similar business in a similar market normally insure.

20.12 Dividend payment

The Borrower must ensure that there are no restrictions on any Group Member, whether in its corporate policies, constitutional documents, any agreement or otherwise, on the dividend payment or income distribution to its Holding Company or the Borrower save those that are imposed by statutory laws, or those do not or are not expected to have a material adverse effect on the ability of the Borrower to perform its obligations under any Finance Documents.

20.13 Subordination

The Borrower must procure that:

- (a) all present and future loans or other advances made to it by any of its shareholders; and
- (b) all present and future loans or other advances made to it by any other Group Member, unless not exceeding US\$500,000,000 in aggregate at any time,

shall be subordinated to the Facility pursuant to a Subordination Deed.

20.14 Arm's length basis

- (a) The Borrower may not, and no Group Member may, enter into any transaction with any Affiliate except on arm's length terms (or terms which are more favourable to it than arm's length terms) and for value that is not less favourable to it than full market value.
- (b) Paragraph (a) above does not apply to:

- (i) any disposal expressly permitted under Clause 20.6 (*Disposals*);
- (ii) the payment of dividend by a Group Member to another Group Member; or
- (iii) the payment of dividend by a Group Member (other than the Borrower) which is not a wholly-owned Subsidiary to all holders of any class of shares of such Group Member (such person, a **Relevant Shareholder**) on pro-rata basis or, to the extent permitted under all applicable laws, on terms more favourable to a Relevant Shareholder which is a Group Member.

20.15 **Appointment**

The Borrower shall appoint DBS Bank Ltd., Hong Kong Branch as the Joint Financial Adviser for the Acquisition and the Offer.

20.16 **First right of refusal**

The Borrower shall give the Lender a first right of refusal to provide services to the Borrower in connection with its debt and equity transactions, including, without limitation, to act as the Borrower's (i) placing agent in connection with any bond or note issuance and sale of securities by the Borrower, (ii) lender for any bilateral facility for the Borrower and (iii) arranger and/or bookrunner for any syndicated facility for the Borrower, in each case for a period of 16 Months from the date of this Agreement.

21. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in the following sub-clauses of this Clause 21 (other than Clause 21.18 (*Acceleration*)) is an Event of Default.

21.1 **Non-payment**

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless its failure to pay is caused by administrative or technical error and the payment is made within three (3) Business Days of its due date.

21.2 **Breach of the financial covenants**

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

21.3 **Other obligations**

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*) and Clause 19 (*Financial covenants*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within fifteen (15) Business Days of the earlier of (A) the Lender giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

21.4 **Misrepresentation**

Any representation, warranty or statement made or deemed to be made by the Borrower in the Finance Documents or in any other document delivered by or on behalf of the

Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

21.5 **Cross default**

- (a) Any Financial Indebtedness of any Group Member is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Group Member is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Group Member is cancelled or suspended by a creditor of such Group Member as a result of an event of default (however described).
- (d) Any creditor of any Group Member becomes entitled to declare any Financial Indebtedness of such Group Member due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 21.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than US\$50,000,000 (or its equivalent in any other currency or currencies).

21.6 **Insolvency**

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

21.7 **Insolvency proceedings**

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

- (a) the suspension of payments, a moratorium of any indebtedness, bankruptcy, winding-up, dissolution, administration, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower or any Material Subsidiary other than a solvent liquidation or reorganisation of any Material Subsidiary;
- (b) a composition or arrangement with any creditor of the Borrower or any Material Subsidiary, or an assignment for the benefit of creditors generally of the Borrower or any Material Subsidiary or a class of such creditors;

- (c) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager, provisional supervisor or other similar officer in respect of the Borrower or any Material Subsidiary or any of their respective assets; or
- (d) enforcement of any Security over any assets of the Borrower or any Material Subsidiary,

or any analogous procedure or step is taken in any jurisdiction.

This Clause 21.7 shall not apply to any proceedings or winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement.

21.8 Creditors' process

Any expropriation, attachment, sequestration, distress, execution or analogous event affects any asset or assets of the Borrower or any Material Subsidiary having an aggregate value of at least US\$25,000,000 and is not discharged within 15 Business Days.

21.9 Unlawfulness

It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.

21.10 Cessation of business

The Borrower or any Material Subsidiary suspends or ceases to carry on all or a material part of its business.

21.11 Repudiation

The Borrower repudiates a Transaction Document or evidences an intention to repudiate a Transaction Document.

21.12 Material adverse change

An event or series of events occur which, in the opinion of the Lender, has or is reasonably likely to have a Material Adverse Effect.

21.13 Expropriation

The authority or ability of the Borrower or any Material Subsidiary to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or any action by or on behalf of any governmental, regulatory or other authority or other person in relation to the Borrower or any Material Subsidiary or any asset of the Borrower or any Material Subsidiary.

21.14 Audit qualification

The auditors of the Group qualify the audited annual consolidated financial statements of the Borrower.

21.15 Borrower's shares

- (a) The Borrower Shares cease to be listed on the HKSE.

- (b) Other than any suspension required in connection with the Acquisition or pending any clearance from the HKSE of any announcement or circular in respect of any solvent merger or acquisition transaction of the Borrower or any Group Member, the trading of the Borrower Shares on the Main Board of the HKSE has been suspended for more than 10 consecutive HKSE Trading Days.
- (c) For the purpose of this Clause, **HKSE Trading Day** means a day on which the HKSE is generally open for trading of securities.

21.16 Ownership

- (a) COFCO does not or ceases to beneficially own (directly or indirectly) at least 15 per cent. of the entire issued share capital of the Borrower.
- (b) COFCO does not or ceases to control at least 20 per cent. of the voting capital of the Borrower, whether through direct or indirect ownership, by contract or otherwise.
- (c) COFCO is not or ceases to be the single largest shareholder of the Borrower.
- (d) The Borrower does not or ceases to beneficially own (directly or indirectly) at least 51 per cent. of Equity Interest (of each class) in each Material Subsidiary, or does not or ceases to Control each Material Subsidiary.
- (e) For the purpose of this Clause:
 - (i) **COFCO** means COFCO Corporation, a limited liability company incorporated under the laws of the PRC; and
 - (ii) **Control** means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise;
 - (iii) **Equity Interest** means in relation to any person:
 - (A) any shares of any class or capital stock of or equity interest in such person or any depositary receipt in respect of any such shares, capital stock or equity interest;
 - (B) any securities convertible or exchangeable (whether at the option of the holder thereof or otherwise and whether such conversion is conditional or otherwise) into any such shares, capital stock, equity interest or depositary receipt, or any depositary receipt in respect of any such securities; or
 - (C) any option, warrant or other right to acquire any such shares, capital stock, equity interest, securities or depositary receipts referred to in paragraphs (A) and/or (B) above; and
 - (iv) **single largest shareholder** of the Borrower means a person whose beneficial interest (whether direct or indirect) in each class of shares of the Borrower (expressed as a percentage of such class of shares of the Borrower) is larger than the beneficial interest of any other person in such class of shares of the Borrower (expressed as a percentage of such class of shares of the Borrower), provided that for such purposes the

beneficial interest in shares of the Borrower held by persons acting in concert (other than COFCO and persons acting in concert with COFCO) shall be aggregated and deemed to be held by a single person.

21.17 Investment grade

The Borrower does not or ceases to maintain a long term credit rating of at least:

- (a) Baa3 by the Moody's; or
- (b) BBB– by S&P.

21.18 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Lender may, by notice to the Borrower:

- (a) without prejudice to any Loan then outstanding:
 - (i) cancel the Commitment (and reduce them to zero), whereupon they shall immediately be cancelled (and reduced to zero); or
 - (ii) cancel any part of any Commitment (and reduce such Commitment accordingly), whereupon the relevant part shall immediately be cancelled (and the relevant Commitment shall be immediately reduced accordingly); and/or
- (b) declare that all or part of any Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of any Loan be payable on demand, whereupon it shall immediately become payable on demand by the Lender; and/or
- (d) exercise any or all of its rights, remedies and powers under any of the Finance Documents.

Any such notice will take effect accordance with its terms.

SECTION 8
CHANGES TO PARTIES

22. CHANGES TO THE LENDER

22.1 Assignments and transfers by the Lender

Subject to the other provisions of this Clause 22, the Lender (the "**Existing Lender**") may:

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

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

22.2 Conditions of assignment or transfer

The Lender may assign or transfer any of its rights or obligations under any Finance Documents to any person, bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets without the prior consent of the Borrower, except that during the Certain Funds Period, unless a Certain Funds Default is continuing or the transfer or assignment is made to an Affiliate of the Existing Lender, the prior consent of the Borrower and the Financial Advisers shall be obtained. The Borrower must take all such action as the Lender requires (acting reasonably) to transfer or assign (including by way of novation) any of its rights and obligations or to facilitate such transfer or assignment. For the avoidance of doubt, this obligation requires the Borrower to execute any relevant documentation in order to effect such transfer or assignment (including by way of novation).

22.3 Limitation of responsibility of Existing Lender

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of the Borrower;
 - (iii) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and

its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

- (ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
- (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 22; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

22.4 Existing consents and waivers

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

22.5 Assignments and transfers by the Borrower

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

23. DISCLOSURE OF INFORMATION

The Lender may disclose:

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as the Lender shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is made aware in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any

other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and to any of that person's Affiliates, Representatives and professional advisers;

- (iii) appointed by the Lender or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 26.2 (*Addresses*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) who is a Party; or
- (viii) with the consent of the Borrower,

in each case, such Confidential Information as the Lender shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and b(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(v) and (b)(vi) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such

Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;

- (c) to any person appointed by the Lender or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of Confidentiality Undertaking agreed between the Borrower and the Lender;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

The Borrower may not, without the prior written consent of the Lender, disclose to any third party the terms or any related information of the Finance Documents, except to its professional advisers or where required by applicable laws or regulations (including but not limited to the Takeovers Code and the Listing Rules).

SECTION 9
ADMINISTRATION

24. PAYMENT MECHANICS

24.1 Payments

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

24.2 Partial payments

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
 - (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Lender under the Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee (other than as provided in (i) above) or commission due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Lender may vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

24.3 No set-off by the Borrower

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

24.4 Business Days

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

- (b) During any extension of the due date for payment of any principal or Unpaid Sum under paragraph (a) above, interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

24.5 Currency of account

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

25. SET-OFF

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

26. NOTICES

26.1 Communications in writing

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

26.2 Addresses

- (a) Except as provided below, the contact details of each Party for any communication to be made or delivered under or in connection with the Finance Documents are those as set out under their names in the signature pages.
- (b) Any Party may change its contact details by giving five Business Days' notice to the other Parties.

26.3 Delivery

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

and, if a particular department or officer is specified as part of its address details provided under Clause 26.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication to be made or delivered to the Lender will be effective only when actually received by the Lender.
- (c) Any communication which would otherwise become effective on a non-working day or after business hours in the place of receipt shall be deemed only to become effective on the next working day in that place.

26.4 **Electronic communication**

- (a) Any communication to be made between any of the Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the relevant Parties:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their electronic mail address or any other such information supplied by them.
- (b) For the purposes of the Finance Documents, an electronic communication will be treated as being in writing.
- (c) Any electronic communication made between the Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
- (d) Any electronic communication which would otherwise become effective on a non-working day or after business hours in the place of receipt shall be deemed only to become effective on the next working day in that place.

26.5 **English language**

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

27. CALCULATIONS AND CERTIFICATES

27.1 Accounts

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

27.2 Certificates and determinations

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

27.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days.

28. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents 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.

29. REMEDIES AND WAIVERS

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

30. AMENDMENTS AND WAIVERS

Any term of the Finance Documents may be amended or waived only with the consent of the Lender and the Borrower and any such amendment or waiver will be binding on all Parties.

31. COUNTERPARTS

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

SECTION 10
GOVERNING LAW AND ENFORCEMENT

32. GOVERNING LAW

This Agreement is governed by the laws of Hong Kong.

33. ENFORCEMENT

33.1 Jurisdiction

- (a) The Hong Kong courts have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document.
- (b) The Hong Kong courts are the most appropriate and convenient courts to settle any such dispute in connection with any Finance Document. The Borrower agrees not to argue to the contrary and waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with any Finance Document.
- (c) This Clause is for the benefit of the Lender only. To the extent allowed by law the Lender may take:
 - (i) proceedings in any other court; and
 - (ii) concurrent proceedings in any number of jurisdictions.
- (d) References in this Clause to a dispute in connection with a Finance Document includes any dispute as to the existence, validity or termination of that Finance Document.

33.2 Waiver of immunities

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

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

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

SCHEDULE 1
CONDITIONS PRECEDENT

1. Borrower

- (a) A copy of the following constitutional documents of the Borrower:
 - (i) Certificate of Incorporation;
 - (ii) Certificate of Incorporation on change of name (if any); and
 - (iii) Memorandum and Articles of Association.
- (b) A certified extract of the minutes of a meeting of the board of Directors:
 - (i) authorising any one Director or the company secretary of the Borrower to execute, sign or affix the common seal of the Borrower to and/or deliver the Finance Documents to which it is a party on its behalf; and
 - (ii) authorising any one Director or the company secretary of the Borrower to execute, sign or affix the common seal of the Borrower to and/or deliver the relevant agreement/documents under or in connection with the Finance Documents for and on behalf of the Borrower.
- (c) A certificate of good standing from the Register of Companies in the Cayman Islands in respect of the Borrower.
- (d) A certificate of an authorised signatory of the Borrower:
 - (i) enclosing a specimen of the signature of the persons authorised by the resolution referred to in paragraph (b) above;
 - (ii) confirming that borrowing the Commitment would not cause any borrowing, guaranteeing or similar limit binding on it to be exceeded; and
 - (iii) certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. Finance Documents

This Agreement duly executed by the parties thereto.

3. Legal opinions

- (a) A legal opinion of King & Wood Mallesons, legal advisers in Hong Kong to the Lender, addressed to the Lender.
- (b) A legal opinion of Ogier, legal advisers in the Cayman Islands to the Lender, addressed to the Lender.

SCHEDULE 2
REQUESTS

Part I
Utilisation Request

From: CHINA MENGNIU DAIRY COMPANY LIMITED

To: [name of Lender]

Dated:

Dear Sirs

CHINA MENGNIU DAIRY COMPANY LIMITED – US\$650,000,000 Facility Agreement dated [] 2017 (as amended from time to time, the "Facility Agreement")

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

Proposed Utilisation Date:	[] (or, if that is not a Business Day, the next Business Day)
Amount:	[] or, if less, the Available Commitment
First Interest Period:	[]
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to the following Designated Account:

[account number]
5. This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for
CHINA MENGNIU DAIRY COMPANY LIMITED D

Part II
Selection Notice

From: CHINA MENGNIU DAIRY COMPANY LIMITED

To: [name of Lender]

Dated:

Dear Sirs

CHINA MENGNIU DAIRY COMPANY LIMITED – US\$650,000,000 Facility Agreement
dated [] (the "Facility Agreement")

1. We refer to the Facility Agreement. This is a Selection Notice. Terms defined in the Facility Agreement shall have the same meaning in this Selection Notice.
2. We refer to the following Loan[s] with an Interest Period ending on []*.
3. We request that the next Interest Period for the above Loan[s] be [].
4. This Selection Notice is irrevocable.

Yours faithfully

.....
authorised signatory for
CHINA MENGNIU DAIRY COMPANY LIMITED

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

SCHEDULE 3
FORM OF COMPLIANCE CERTIFICATE

To: DBS Bank Ltd., Hong Kong Branch

From: China Mengniu Dairy Company Limited

Dated:

Dear Sirs

CHINA MENGNIU DAIRY COMPANY LIMITED – US\$650,000,000 Facility Agreement
dated [] (the "Facility Agreement")

1. We refer to the Facility Agreement. This is a Compliance Certificate. Terms used in the Facility Agreement shall have the same meaning in this Compliance Certificate.
2. We confirm that: [Insert details of covenants to be certified including calculations]
3. [We confirm that no Default is continuing.]

Signed:

Director/Company Secretary
of
[*Borrower*]

[*insert applicable certification language*]

.....
for and on behalf of
China Mengniu Dairy Company Limited

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

SCHEDULE 4
EXISTING SECURITY

Member of the Group	Details of security	Maximum principal amount secured
Hebei Leyuan Farming Co., Ltd. (河北乐源牧业有限公司)	Land use right , Plant and Equipment (net book value as 30 November 2016:approximately RMB66 million)	Up to RMB70 million
Shijiazhuang Junlebao Dairy Co., Ltd. (石家庄君乐宝乳业有限公司)	Land use right ,Plant and equipment (net book value as 30 November 2016:approximately RMB468 million)	Up to RMB500 million
Jiangsu Junlebao Dairy Co., Ltd. (江苏君乐宝乳业有限公司)	Land use right ,Plant (net book value as 30 November 2016:approximately RMB52 million)	Up to RMB25 million
Jiangsu Junlebao Dairy Co., Ltd. (江苏君乐宝乳业有限公司)	Land use right ,Plant, Construction in progress and Equipment (net book value as 30 November 2016:approximately RMB12 million)	Up to RMB15 million
Shijiazhuang Yongxheng Dairy Co., Ltd. (石家庄永盛乳业有限公司)	Plant and equipment (net book value as of 30 November 2016: approximately RMB66 million)	Up to RMB95 million
Yashili International Group Ltd. (雅士利國際集團有限公司)	Letter of credit cash collateral (net book value as of 30 November 2016: approximately RMB100 million)	In connection with any trade financing or receivable financing of the security provider or subsidiaries thereof
Shijiazhuang Junlebao Dairy Co., Ltd. (石家庄君乐宝乳业有限公司)	Bills cash collateral (net book value as of 30 November 2016: approximately RMB28 million)	In connection with any trade financing or receivable financing of the security provider or subsidiaries thereof
Shijiazhuang Junlebao Dairy Co., Ltd. (石家庄君乐宝乳业有限公司)	Letter of credit cash collateral (net book value as of 30 November 2016: approximately RMB150,000)	In connection with any trade financing or receivable financing of the security provider or subsidiaries thereof
Jiangsu Junlebao Dairy Co., Ltd. (江苏君乐宝乳业有限公司)	Bills cash collateral (net book value as of 30 November 2016: approximately RMB31 million)	In connection with any trade financing or receivable financing of the security provider or subsidiaries thereof

Inner Mongolia Mengniu Dairy (Group) Co., Ltd. (內蒙古蒙牛乳業(集團)股份有限公司)	Bills cash collateral (net book value as of 30 November 2016: approximately RMB48 million)	In connection with any trade financing or receivable financing of the security provider or subsidiaries thereof
Inner Mongolia Mengniu Dairy (Group) Co., Ltd. (內蒙古蒙牛乳業(集團)股份有限公司)	Letter of credit cash collateral (net book value as of 30 November 2016: approximately RMB8 million)	In connection with any trade financing or receivable financing of the security provider or subsidiaries thereof
Yashili International Group Ltd. (雅士利國際集團有限公司)	Letter of credit cash collateral (net book value as of 30 November 2016: approximately RMB84 million)	In connection with any trade financing or receivable financing of the security provider or subsidiaries thereof
Yashili International Group Ltd. (雅士利國際集團有限公司)	Bank deposit (net book value as of 30 November 2016: approximately RMB637 million)	In connection with any trade financing or receivable financing of the security provider or subsidiaries thereof
China Mengniu Dairy Co.,Ltd (中國蒙牛乳業有限公司)	Bank deposit (net book value as of 30 November 2016: approximately RMB12 million)	In connection with any trade financing or receivable financing of the security provider or subsidiaries thereof
Hebei Junlebao Junyuan Dairy Co., Ltd. 河北君乐宝君源乳業有限公司	Land use right , Plant and Equipment (net book value as 30 November 2016:approximately RMB304 million)	Up to RMB100 million

SIGNATURE PAGE

The Borrower

CHINA MENGNIU DAIRY COMPANY LIMITED

By:



Address: Suite 801-2, 8th Floor WFCO Tower, 262 Gloucester Road,

Fax: (852) 2180 9039

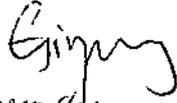
Causeway Bay, Hong Kong

Email: luminfang@mengniu.cn

As Lender

DBS BANK LTD., HONG KONG BRANCH

By:



Name = Einger Cheng
Title = Managing Director

Address:

15th Floor, The Center, 99 Queen's Road Central, Central, HK

Fax:

2259 9139

Email:

zingercheng@dbb.com