

日期：2012年11月22日

载于本协议附表1之人士

(“出售方”)

及

PROFIT ICON INVESTMENTS LIMITED

(“购买方”)

及

GOLDPOLY NEW ENERGY HOLDINGS LIMITED

(金保利新能源有限公司)

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有关  
出售及购买招商新能源控股有限公司  
之  
92.17%已发行股份的买卖协议

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本协议由以下各方于 2012 年 11 月 22 日签署：

- (1) 载于本协议附表 1之人士 (“**出售方**”，任何出售方为“**各出售方**”)；
- (2) PROFIT ICON INVESTMENTS LIMITED，一家根据英属维尔京群岛法律注册成立的公司，其注册地址为 the Office of the first Registered Agent at AMS Trustee Limited, Sea Meadow House, Blackburne Highway, (P.O. Box 116), Road Town, Tortola, British Virgin Islands (“**购买方**”)；及
- (3) GOLDPOLY NEW ENERGY HOLDINGS LIMITED (金保利新能源有限公司)，一家根据百慕达法律注册成立的公司，其香港总办事处及主要营业地点位于香港中环皇后大道 99 号中环中心 63 楼 6301 室 (“**金保利**)。

鉴于：

- (A) 招商新能源控股有限公司 (China Merchants New Energy Holdings Limited) (“**目标公司**”) 为一家于英属维尔京群岛注册成立的有限责任公司。于本协议，目标公司的法定股本为 20,000,000 美元，共分为 2,000,000,000 股，每股面值 0.01 美元的普通股股份，于本协议日已发行 575,000,000 股，其详情载于本协议之附表 2。
- (B) 于本协议日，出售方合共持有目标公司 92.17% 的已发行股权(详情载于本协议之附表 1)。
- (C) 各出售方同意出售其持有目标公司之已发行股权予购买方。
- (D) 金保利乃根据百慕达法律注册成立，其股份 (定义见下文) 于香港联合交易所有限公司主板上市 (股份编号为 0686)，其为购买方之唯一股东。
- (E) 本协议各方经友好协商下同意，根据本协议所载的条款及条件，由购买方向出售方购买有关目标公司之销售股份 (定义见下文)，对价将为港币 2,119,910,000 元 (可按本协议第 3 条之条款进行调整)，支付方法由金保利发行代价股份 (定义见下文) 及可换股债券 (定义见下文) 予出售方或其指定人士。

- (F) 于本协议日,金保利之法定股本为港币 500,000,000 元,分为 5,000,000,000 股普通股,每股面值港币 0.1 元,其中 881,908,389 股股份已发行及缴足。另外,根据金保利采纳的购股权计划,金保利于本协议日仍有可转换成 1,225,191 股股份(行使价港币 0.6624 元)及 2,800,000 股股份(行使价港币 1.434 元)的已授出但尚未行使之购股权;以及金保利现存有于 2015 年 10 月 24 日到期的总值港币 850,000,000 元的可换股票据,每股行使价为港币 0.538 元,倘行使,金保利需发行约 1,579,925,651 股股份。
- (G) 为完成本协议项下之交易,金保利将需要举行股东大会及通过股东决议案,以增加金保利的法定股本及颁授特别授权,用以发行代价股份(定义见下文)及可换股债券(定义见下文)。于本协议交割时,金保利之法定股本将由港币 500,000,000 元,分为 5,000,000,000 股普通股,每股面值港币 0.1 元,增加至港币 1,000,000,000 元,分为 10,000,000,000 股普通股,每股面值港币 0.1 元。

本协议各方现达成如下协议:

## 1. 定义及释义

1.1 于本协议内,除非另有明确规定或文义另有所指,以下用语具有以下涵义:

“交割帐目” 指目标集团截至交割日之根据香港公认会计原则编制的未经审计的资产负债表及于交割日为止年度之根据香港公认会计原则编制未经审计的收入损益表;

“本协议” 指不时补充或修订的本协议及其附表;

“目标集团业务” 指目标集团现时之业务及于交割前不时进行之实质业务,包括但不限于太阳能电站,包括地面及屋顶太阳能电站及系统的设计、发展、管理和运营;太阳能组件的生产与销售、太阳能技术研发、技术成果转让及综合利用、太阳能系统工程设计与安装;新能源技术研发、技术咨询、技术服务等;

“营业日”	指香港的银行一般开业经营的日子，不计星期六及星期日或香港于上午 9 时正及下午 5 时正期间任何时间悬挂八号或以上热带气旋警告讯号或“黑色”暴雨警告讯号的当天；
“中央结算系统”	即由香港中央结算有限公司设立并运作的中央结算系统；
“公司条例”	指香港法例第 32 章《公司条例》；
“交割”	指根据 <u>第 5 条</u> 进行的交割；
“交割日”	即最后一项条件获满足或豁免之日后的第五(5)个营业日，或本协议方可能书面同意的其它日子，当天将完成 <u>第 5.2 条</u> 所载的事项；
“中国”	指中华人民共和国，为本协议之目的不包括香港和澳门特别行政区以及台湾地区；
“对价”	指本协议 <u>第 3 条</u> 所载之对价；
“代价股份”	指金保利将按照本协议 <u>第 3 条</u> 向出售方或其指定人士配发的合共 959,462,250 股普通股股份，每股面值为港币 0.1 元，每股认购价为港币 1.00 元，各出售方之获配详情载于 <u>附表 1</u> ；
“可换股债券”	指金保利将按照本协议 <u>第 3 条</u> 向出售方或其指定人士发行的可换股债券，合共本金为港币 1,160,447,750 元，各出售方之获配详情载于 <u>附表 1</u> ，而可换股债券中受托管可换股债券之条款载于本协议之 <u>附表 5 (B)</u> ，其余可换股债券之条款载于本协议之 <u>附表 5 (A)</u> ；
“转换价”	指按可换股债券之条款，转换至每一股股份之初始价格港币 1.00 元；

“转换股份”	指根据可换股债券及转换价，共可转换之金保利的 1,160,447,750 股普通股股份；
“员工持股计划”	指目标公司董事会于 2012 年 7 月 31 日通过的员工持股计划（包括其不时通过的修改）；
“先决条件”	指 <u>第 4 条</u> 所载的先决条件；
“出售方披露”	指于出售方披露函所披露于尽职调查文件中公平及适当披露并提供予购买方及金保利或其专业顾问的所有资料及事宜；
“出售方披露函”	指于交割日之出售方向购买方所交付的披露函，作为针对出售方的保证之披露，其将成为尽职调查的一部份，其内容及形式需获购买方合理满意；
“弥偿契据”	指于交割日或之前，由出售方作为弥偿方向购买方及金保利就目标集团提供的弥偿契据，其大体格式和内容如 <u>附表 6</u> ；
“尽职调查”	指有关目标集团的资产、负债、营运、税项、帐目、公司记录及法律方面的尽职调查；
“产权负担”	指任何按揭、抵押、质押、留置权、担保契约、负担或任何其它抵押安排；任何期权、衡平权利、索偿、负面利益或任何第三方之权利(包括优先权)；或任何合约上的抵销权利，包括任何产生或促使产生或容许或使之产生或发生上述任何一项之协议或承诺；

“托管代理”	指由购买方及出售方及金保利根据 <u>第 3.2 条</u> 及托管协议的条款及条件，共同委托以托管可换股债券的托管代理，即金杜律师事务所或根据托管协议任命的任何继任托管代理(按情形而定)；
“托管协议”	指购买方及出售方及金保利根据 <u>第 3.2 条</u> 与托管代理将会签署有关委任托管代理托管可换股债券服务的托管协议，其大体格式与内容如 <u>附表 7</u> ；
“托管期”	指由受托管可换股债券发行之日开始至托管代理根据托管协议解除对受托管可换股债券的托管之日终止的期间；
“受托管可换股债券”	指 <u>第 3.2 条</u> 所述之受托管可换股债券，其条款载于本协议之 <u>附表 5 (B)</u> ；
“香港”	指中国香港特别行政区；
“港币/港元”	指港元，香港之法定货币；
“上市规则”	指联交所证券上市规则；
“证照”	就目标公司而言，指其进行现时业务而需要取得的所有牌照、证照、准许、批准、授权、许可、同意及登记；
“最后完成日”	指 2013 年 3 月 31 日或本协议方以书面同意之其它日期，作为完成或豁免先决条件的最后限期；
“协议方”	指本协议之各方及“任何协议方”指任何一位协议方；
“溢利”	指 <u>第 8.1 条</u> 所述之溢利；



“利润保证”	指 <u>第 8.1 条</u> 所述之利润保证；
“买方经审核帐目”	指买方集团刊登于联交所网站之经审计的合并财务报表，即截至 2011 年 12 月 31 日之资产负债表及至 2011 年 12 月 31 日为止财政年度之收入损益表；
“买方披露函”	指于交割日之购买方向出售方所交付的披露函，包含针对买方保证进行披露的各项事宜，其内容及形式需获出售方合理满意；
“买方集团”	指金保利及其附属公司；
“购买方保证”	指载于 <u>第 7 条</u> 及 <u>附表 4</u> 所载的由购买方及金保利所作出的声明、承诺及保证，而本用语的单数则指金保利的各项保证；
“销售股份”	指目标公司已发行及缴足之 530,000,000 股股份(即合共目标公司于本协议之日及交割日 92.17%的已发行股权)，每股面值 0.01 美元；
“高级管理人员”	就某一目标集团或买方集团的成员而言，指该成员的总经理、副总经理和财务总监；
“证监会”	指香港证券及期货事务监察委员会；
“股份”	指金保利股本中之普通股，每股面值港币 0.1 元；
“特别授权”	指金保利拟寻求独立股东于股东特别大会上就发行及配发代价股份及可换股债券项下之转换股份授予董事之特定授权；
“联交所”	指香港联合交易所有限公司；

“出售方的保证”	指载于 <u>第 6 条及附表 3</u> 的声明、承诺、契诺及保证；而本用语的单数则指各项出售方的保证；
“附属公司”	按上市规则赋予的定义；
“主要股东”或“大股东”	按上市规则赋予的定义，就某公司而言，指有权在该公司股东大会上行使或控制行使 10%或以上投票权的人士；
“收购守则”	指香港证券及期货事务监察委员会之《公司收购及合并守则》；
“目标公司”	指招商新能源控股有限公司(China Merchants New Energy Holdings Limited)；
“目标集团”	指目标公司持有权益或股权的公司，该等公司于本协议签署日的详情载于本协议 <u>附表 2</u> ；
“经审核帐目”	指目标集团的经审核合并财务报表，包括截至 2012 年 6 月 30 日之资产负债表及于 2012 年 6 月 30 日为止年度之收入损益表；
“经审核帐目日期”	指 2012 年 6 月 30 日；
“税项”及“税务”	指任何国家的机关征收的所有形式之课税、税项、征费、税项优惠或减免获取消或修改或其它税务征收，包括任何有关之滞纳金、利息、罚款、收费及费用；
“美元”	指美国的法定货币；
“%”	指百分比；

- “联系人”
- (a) 就任何法人团体而言，指直接或间接控制该法人团体、被该法人团体直接或间接控制，或与该法人团体在直接或间接的共同控制下的任何法人团体、非法人实体或个人；以及
  - (b) 就任何个人而言，指他/她的亲属，或指直接或间接控制该名个人或他/她的亲属、被该名个人或他/她的亲属直接或间接控制、或与该名个人或他/她的亲属在直接或间接的共同控制下的任何法人团体、非法人实体或个人。

1.2 前言、条款及附表，是指本协议的前言、条款及附表，并构成本协议之一部份，具有相同效力及影响，犹如载于本协议之内文一样，本协议将包括前言、条款及附表。

1.3 本协议中，单数词语包括复数的含义，反之亦然，一个词性的词语包括每一个性别，人包括任何公共机构、团体、组织及合伙公司（不论是否拥有独立法人地位）。

1.4 本协议的条款标题只为方便阅读而加插，并不影响本协议的解释。

1.5 本协议中（除非另有所指），任何法律、法定条文、规则或规例（不论是否有法律效力）均包括经不时（不论于本协议日期之前或之后）修改、变更、修订、合并、或重新制定的该等法律、法定条文、规则或规例，以及据法定条文制定之附属法律。任何综合法律之条款均包括（倘文义有所要求或适用）任何综合法律之前身条文。

## 2. 出售销售股份

2.1 按本协议之条款及条件，出售方作为销售股份的法定及实益权益持有人（详情见于附表 1），同意向购买方出售销售股份及销售股份于交割日依法享有或附带的全部权利和权益（包括但不限于交割日当日或之后由目标公

司所宣布、作出或支付的所有红利、股息及分配)；且销售股份(及相关的依法享有或附带的全部权利和权益)不受任何索偿、债务负担、留置权、抵押权、权利主张及任何其它第三者权利的产权负担影响。

- 2.2 各出售方均在此不可撤销及无条件地(i)同意其他出售方按照本协议规定处置附表 1 中所列与其名称相对应的各自的销售股份，并(ii)放弃对任何其他出售方处置的销售股份所享有的优先购买权、共同出售权或任何其他类型的优先权。
- 2.3 除非全部销售股份可于交割日进行交割(或根据第 5.4(b)条延迟交割)，否则，任何协议方并没有责任对销售股份进行部份交割。

### 3. 销售股份之对价

- 3.1 销售股份之对价为港币 2,119,910,000 元，倘载于第 8.1 条之利润保证不能达标，则按照受下列第 3.3 条的作出调整。
- 3.2 于交割时，由购买方支付出售方合共对价港币 2,119,910,000 元，支付方法将由金保利向出售方发行合共 959,462,250 股代价股份(入账列为缴足)及本金合计为港币 1,160,447,750 元的可换股债券，详情如下：
- (a) 由金保利向 China Green Holdings Limited (中国绿色控股有限公司) 或其指定之人士发行 39,974,000 股代价股份，以及本金合计为港币 159,896,000 元的可换股债券；
  - (b) 由金保利向 China Merchants New Energy Group Limited (招商新能源集团有限公司) 或其指定之人士发行 467,538,250 股代价股份，以及本金合计为港币 632,551,750 元的可换股债券；
  - (c) 由金保利向 Ease Soar Limited 或其指定之人士发行 239,982,000 股代价股份，以及本金合计为港币 159,988,000 元的可换股债券；

- (d) 由金保利向 Hyatt Servicing Limited 或其指定之人士发行 72,036,000 股代价股份，以及本金合计为港币 48,024,000 元的可换股债券；
- (e) 由金保利向 Talesun Solar Hong Kong Limited (腾晖电力香港有限公司)或其指定之人士发行 119,922,000 股代价股份，以及本金合计为港币 79,948,000 元的可换股债券；及
- (f) 由金保利向 Sino Arena Investment Limited 或其指定之人士发行 20,010,000 股代价股份，以及本金合计为港币 80,040,000 元的可换股债券。

惟各出售方须就其以上各自获取的等同于销售股份对价之 40%的可换股债券（即本金合计为港币 847,964,000 元的可换股债券）（“**受托管可换股债券**”）按托管协议，交予托管代理托管及允许金保利按照下列**第 3.3 条**作出调整。为避免疑虑，该批受托管的可换股债券在根据**第 3.4 条**的规定发予出售方或其指定人士之前，均不可转换为股份、不可转让，不可以赎回，但在发生受托管可换股债券条款提及之违约事项时，可以要求清还，唯金保利待托管期届满之后的第二日才需要清还。

3.3 倘目标集团未能达到**第 8.1 条**所述之在利润保证期的利润保证，则**第 3.1 条**所述的对价须透过下调**第 3.2 条**所述之受托管可换股债券的本金额而予以调整，调整公式如下：

$$AC = OC \times AP / PG$$

“AC” 该批受托管可换股债券经调整后的本金额，或对每一出售方或其指定人士而言，该出售方按照**第 3.2 条**交予托管代理的可换股债券经调整后的本金额(视情形而定)

“OC” 该批受托管可换股债券于调整前原本的本金额，或对每一出售方或其指定人士而言，该出售方按照**第 3.2 条**交予托管代理的可换股债券于调整前的本金额(视情形而定)

“AP” 指**第 8.1 条**所指之溢利。倘 AP 高于**第 8.1 条**所指之保证利润，则“AP”应当相等于利润保证

“PG” 指第 8.1 条所指之利润保证期的利润保证

3.4 受限于托管协议的规定，购买方及金保利须于利润保证期账目(如本协议第 8.1 条定义)出具之日起十 ( 10 ) 个营业日内，按照托管协议：

- (a) 于溢利不少于利润保证的情况下，指示托管代理将受托管可换股债券按照其原本的本金额(详情载于附表 1)发放予各出售方或其指定人士；或
- (b) 于溢利低于利润保证及该批受托管可换股债券的本金额须根据第 3.3 条作出调整的情况下，指示托管代理将该批受托管可换股债券发放予金保利，而金保利须在收回该批受托管可换股债券后五(5)个营业日内将等值于根据第 3.3 条作出下调部分的本金额的受托管可换股债券注销，并按照根据第 3.3 条调整后的本金额重新发放受托管可换股债券予各出售方或其指定人士。

3.5 代价股份于发行及配发时，须于发行时与金保利股本中的当时所有已发行股份于所有方面均享有同等权益。同时，行使可换股债券之转换权所得的转换股份，将于转换股份日与金保利股本中的当时已发行股份于所有方面均享有同等权益。

3.6 出售方须于相关之代价股份发行及配发的三(3)个营业日之前，知会金保利有关代价股份之股票面值及数目及提供一切所需及合理要求之详情，以便金保利之过户处发出股票。

#### 4. 先决条件

4.1 交割乃受限于下列先决条件：

- (a) 金保利之(i)独立股东 ( 即根据上市规则获准投票之该等股东 ) 于股东特别大会上以投票表决方式通过有关本协议及其项下拟进行之交易(包括购买销售股份、发行代价股份及可换股债券及颁发特别授权以发行代价股份及转换股份)，通过 China

Merchants New Energy Group Limited (招商新能源集团有限公司) 提名之四人于交割时获委任为金保利之董事 (其中两人为执行董事而另外两人为非执行董事), 以及批准交割后金保利与相关出售方或其联系人之间可能发生并根据上市规则需要金保利股东批准的持续关联交易; 及 (ii) 股东于股东特别大会上以投票表决方式批准金保利之法定股本由港币 500,000,000 元, 分为 5,000,000,000 股普通股, 每股面值港币 0.1 元, 增加至港币 1,000,000,000 元, 分为 10,000,000,000 股普通股, 每股面值港币 0.1 元 (“增加法定股本”);

- (b) 联交所批准代价股份及转换股份之上市及买卖及其有关上市及买卖批准于交割日并无撤回;
- (c) 本协议及其项下之交易并没有被联交所视为构成上市规则中所指的反向收购;
- (d) 各出售方已经向所有有权责之政府或监管机关 (包括但不限于中国政府或监管机关) 或其股东或任何第三者就本协议及其项下之交易取得所有需要的批准、授权、同意、登记及备案 (如适用);
- (e) 购买方及金保利获得出售方提供出售方披露函及完成有关 (其中包括) 目标集团资产、负债、营运、税项、帐目、公司记录以及法律方面之尽职调查且对结果表示合理满意;
- (f) 购买方及金保利取得由其委聘之合资格估值师出具有关目标集团直至 2015 年将拥有或计划收购的部份地面和屋顶太阳能电站项目之开发及经营权估值不低于港币 2,600,000,000 元的估值报告, 其形式及内容须获金保利感到合理满意;
- (g) 购买方及金保利取得由其委聘之合资格中国执业律师, 从中国法律角度, 对本协议及其项下之交易, 以及对目标集团中于中国成立的公司之股权结构、合法存续、出资到位、业务、税务、资产合法性、环境保护、批文及证照等方面出具法律意见书, 其内容须获金保利感到合理满意;

- (h) 出售方已向购买方提交目标公司及目标集团中于英属维尔京群岛成立的公司之公司存续证明书 (Certificate of Good Standing) 及董事在职证明书 (Certificate of Incumbency), 而上述证书之日期不可早于交割日前十 ( 10 ) 个营业日 ;
- (i) 由出售方向购买方及金保利就目标集团提供弥偿契据 , 其内容须获出售方、购买方及金保利同意 ;
- (j) 由购买方、金保利、出售方及托管代理妥善签署托管协议 ;
- (k) 自本协议签署日起至交割日期间 :
  - (i) 目标集团之业务、资产、财务或营运状况并无任何逆转 , 且金保利及购买方合理认为对本协议及其项下之交易而言属重大者 ;
  - (ii) 概无任何具司法管辖权之法院、审裁处或仲裁处或任何政府机关提出之任何进行中、未了结或对目标集团构成威胁之任何调查、诉讼、仲裁、指控或其它法律程序 , 且金保利及购买方合理认为对本协议及其项下之交易而言属重大者 ;
  - (iii) 概无发生任何事件或存在任何情况以致本协议所载之任何出售方的保证在任何重大方面失实或不准确 , 且概无金保利及购买方合理认为很可能导致目标集团之经营、资产或财务状况出现重大不利变动 ; 及
  - (iv) 概无任何机关建议、颁布或执行任何法例、规则、命令、判令或通知或裁定禁止、限制或严重阻延任何出售方签署及履行本协议及其项下交易 ;



- (l) 于交割时，出售方以书面向购买方及金保利确认第 4.1(d) 条及第 4.1 (k) 条(如尚未取得金保利及购买方的豁免)已经获得满足；
- (m) 出售方获得购买方提供的买方披露函并完成有关对买方集团资产、负债、营运、税项、帐目、公司记录以及法律方面之尽职调查且对结果表示合理满意；
- (n) 自本协议签署日起至交割日期间，概无发生任何事件或存在任何情况以致在合理的情况下可能对买方集团之业务、经营、资产或财务状况产生重大不利影响或禁止、限制或严重阻延购买方或金保利签署及履行本协议及其项下交易，且不存在金保利的股份在联交所停牌交易超过连续五(5)个交易日的情形(由于签署本协议引起的除外)；及
- (o) 购买方及金保利应于交割时以书面向出售方确认本第 4.1(n)条已经获得满足(如尚未取得出售方的豁免)。

除金保利及购买方可于任何时间自行全权酌情以书面通知出售方豁免第 4.1(k)条规定的先决条件；以及出售方可于任何时间自行全权酌情以书面通知购买方及金保利豁免第 4.1 (n)条外，任何协议方均无权豁免任何先决条件。

4.2 各协议方须竭尽所能于最后完成日当天或之前(除按照第 4.2 条被豁免，如适用)完成或促使完成先决条件(就该协议方应负责履行之先决条件而言)，而其他相关协议方应竭尽所能向该协议方提供一切合理的协助)，惟第 4.1(l)条和第 4.1(o)条可以与交割同时间发生。

4.3 倘任何一项先决条件未能于最后完成日之前或当天完成(或如适用，按照第 4.2 条豁免)，则：-

- (a) 没有任何协议方有责任继续出售及购买销售股份；以及
- (b) 除第 11 条、第 17 条及第 23 条须继续全面有效外，本协议将自动随之终止及失效，各协议方再无权就本协议之事项向对方索

偿（惟针对其他协议方之前已违反本协议的相关索偿则不受影响）。

## 5. 交割

5.1 于完成先决条件后（或按照第 4.2 条豁免后），交割将于交割日当天办公时间内，于购买方之法律代表办公室或各协议方书面同意的其它地方举行。

5.2 交割时，金保利及 / 或购买方须：

(a) 向各出售方或其指定之人士按照载于第 3.2 条及附表 1的详情配发代价股份；并促使金保利的过户处登记出售方或出售方指定之人士（视乎情况而言）为金保利之股东；并于交割日后的二（2）个营业日内：

(i) 将代价股份之股票存放至香港中央结算(代理人)有限公司，以拨入出售方于交割前三（3）个营业日前书面通知金保利之中央结算系统参与者的账户内或出售方指定之人士持有的账户内；或

(ii) 倘没有上述第(i)点之通知，则代价股份会以股票方式及出售方名义或其指定之人士之名义发给出售方；

出售方须于交割前三（3）个营业日前通知金保利每张相关股票面值及数目。倘出售方没有在规定时间内发出该等通知，则所有代价股份会以一张股票的方式向出售方发出。

(b) 受限于第 3.2 条及托管协议的规定，向出售方或其指定之人士发行及交付第 3.2 条及附表 1所述的可换股债券及其项下之票据；

(c) 向出售方交付经金保利董事核证之金保利有关的董事会决议案，批准本协议及其项下之交易，包括购买销售股份、发行代价股份、可换股债券及可转换股份、签署弥偿契据及托管协议、委任 China Merchants New Energy Group Limited (招商新能源

集团有限公司) 提名之四人为金保利之董事 ( 其中两人为执行董事而另外两人为非执行董事 ), 以及所有为履行本协议而须签署的相关文件 ;

- (d) 向出售方交付经金保利董事核证之金保利有关的股东决议案 , 批准本协议及其项下之交易 , 包括购买销售股份、增加法定股本、授出特别授权之决议案发行代价股份及可转换股份、向出售方或其指定之人士发行及配发代价股份及发行可换股债券 ;
- (e) 向出售方交付经购买方董事核证之购买方有关的董事会决议案 , 批准本协议及其项下之交易 , 包括购买销售股份、签署弥偿契据及托管协议 ;
- (f) 向出售方交付金保利的董事名册 , 显示已委任由 China Merchants New Energy Group Limited (招商新能源集团有限公司) 提名的两名人士为金保利之执行董事及两名人士为金保利的非执行董事 ;
- (g) 向出售方及托管代理提供经购买方妥为签署的托管协议 ;
- (h) 向出售方提供第 4.1(o)条所指的确认函 ; 及
- (i) 向出售方提供买方披露函。

5.3 于金保利妥为履行第 5.2 条之条款的同时 , 各出售方须 : -

- (a) 向购买方交付经其董事核证之董事会决议案 , 批准本协议及其项下之交易 , 包括出售其持有之销售股份及登记购买方或购买方之指定人士为销售股份之股东、认购代价股份、认购与其相关之可换股债券、签署弥偿契据及托管协议 , 以及所有为履行本协议而须签署的相关文件 ;
- (b) 向购买方交付经目标公司董事核证之目标公司董事会决议 , 批准目标公司向购买方或其指定人士签发和交付关于销售股份的新的股票并登记购买方或其指定人士为销售股份之股东 ;

- (c) 向购买方交付显示购买方或购买方之指定人士为销售股份之股东的股份证书、相关之妥为签署的转让文据、目标公司之更新的股东名册显示购买方或购买方之指定人士为与其相关销售股份之股东，以及使购买方或其指定人士成为销售股份唯一合法实益拥有人所需要的任何资料及文件；
- (d) 向购买方及金保利交付经出售方妥为签署的弥偿契据（若尚未交付）；
- (e) 向购买方及托管代理提供经出售方妥为签署的托管协议（若尚未提供），将**第 3.2 条**所述的受托管可换股债券交予托管代理托管；
- (f) 向购买方提供**第 4.1(1)条**所指的确认函；
- (g) 向购买方提供目标集团的所有法定簿册、记录、资料 and 文件，包括但不限于帐目、账册、记录、申报表、批文、通讯、业务资料、印章、钢印、所有合同，以及银行账户文件；及
- (h) 向购买方提供出售方披露函。

5.4 于无损另一协议方的索偿权益下，倘任何协议方于交割日期并没有遵守**第 5.2 至 5.3 条**，则无过错的一方可以自行全权酌定选择：

- (a) 就其可行情况，尽量进行交割，但无损其于本协议项下之权利；  
或
- (b) 延迟交割，至不多于根据**第 5 条**交割日后的 30 天内；或
- (c) 终止本协议，并无须对缺失一方负任何责任，本协议之条款自该日起随即无效（除**第 11 条**、**第 17 条**及**23 条**须继续全面生效外），各协议方均无须承担责任（但无损于任何一方就追讨之前违反本协议条款之权利）。

## 6. 出售方的声明、保证及承诺

6.1 为避免疑义，出售方在本协议中的任何声明，保证及承诺，是各出售方人个别地而非共同（仅就与其相关的而言）向购买方及金保利作出的，而各出售方将按照该出售方在出售股份中所占的出售比例承担个别而非连带的责任。

6.2 各出售方就其本身向购买方及金保利承诺，自本协议的日期起至交割日（包括该两日）期间的任何时候：

- (a) 其拥有签署及履行本协议项下义务所需的权力及授权（为避免疑虑，除于第 4 条之先决条件另有所述外）；及本协议一经签署及交付，即属有效，并对其具有约束力；
- (b) 其会全力协助购买方及金保利对目标集团进行尽职调查，并于合理时间内向购买方及金保利提供其合理要求的关于目标集团业务的所有资料，包括但不限于有关集团的所有法定登记册、帐簿、所有合同、所有保险保单及收据、证照、批文、抵押及担保；
- (c) 就于本协议及其项下交易，按照购买方及金保利的合理要求或相关监管机构之要求，向购买方及金保利提供一切其所知或合理查询下应知的资料，以便协助购买方及金保利遵守香港法律、联交所或证监会之所有合理要求；
- (d) 遵守所有由于本协议及其项下交易适用于出售方的香港法律、英属维尔京群岛、中国或其它司法权区的法律；
- (e) 将会促使每个目标集团成员之业务一如以往般如常运作，除非取得购买方之事先书面同意，并不会就非日常业务作出行为或不行为（或容许作出行为或不行为）；

- (f) 除非取得购买方及金保利之事先书面同意 ( 不得无理地拒绝 ), 必须促使每个目标集团成员 :
- (i) 不可发行或同意发行任何股份或贷款股本或授出或同意授出任何购股权或收购或认购任何股份或贷款股本的权利 ;
  - (ii) 不可修改任何公司组织章程大纲及/或细则或相同文件 ;
  - (iii) 不可委任任何董事或高级管理人员 , 并保持董事会及高级管理人员大致稳定 ;
  - (iv) 除在日常业务经营中或为履行本协议及其项下交易之外不可订立任何交易、协议或合同、贸易或进行业务以收购或出售任何资产中的任何利益, 及不可终止或出售业务或其中重要部份 , 或设立或作出任何资本承担或开支 , 或作出实际或或然责任或类似之责任 ;
  - (v) 除在日常业务经营中或为履行本协议及其项下交易之外 , 不可设立或容许产生任何按揭、押记( 浮动或固定 )、留置权、质押、其它形式的抵押或产权负权或不论任何性质的权益 ;

- (vi) 不可向其股東作出或支付或宣派任何股息或其他分派；
- (vii) 除在日常业务经营中或为履行本协议及其项下交易之外，不可引致任何责任（包括但不限于债务或任何管理协议）或订立任何交易、协议或安排；
- (viii) 除在日常业务经营中或为履行本协议及其项下交易之外，不可向任何人士作出任何预支款项或其它信贷，或提供任何担保或弥偿，或担当担保人，或为任何人士的责任或义务而提供抵押或接受任何直接或间接责任；
- (ix) 除在日常业务经营中或为履行本协议及其项下交易之外，不可修改任何融资/借贷文件或抵押安排的条款；
- (x) 不可违反该目标集团成员所订立的任何合同及合同项下的职能及义务（包括付款义务）从而引致该目标集团成员必须承担有关合同项下的重大违约责任；
- (xi) 不可提出、妥协、和解、解除、释放或综合任何民事、刑事、仲裁或其它程序或任何责任、索偿、法律行动、要求或争议或放弃有关以上任何事宜的任何权利；

- (xii) 除在日常业务经营中或为履行本协议及其项下交易之外，不可终止任何协议或放弃其项下的任何权利；
- (xiii) 不可设立任何退休金、退休计划、购股权计划、分享利润或花红计划或任何其它福利计划（出售方披露函中披露的目标公司已设立或即将设立员工激励计划除外）；
- (xiv) 除在日常业务经营中或为履行本协议及其项下交易之外，不可解除、妥协或撇除任何目标集团成员帐目入帐中的任何目标集团成员之任何债务人所欠的任何款项；
- (xv) 不可进行目标集团业务范围以外的其它业务；及
- (xvi) 不可处置根据任何适用法律、法规或规则而须备存的任何公司或其它簿册或纪录的所有权、管有权、监管权或控制。



- (g) 就每个目标集团成员签署的任何合同或文件，而其涉及之金额或任何性质之责任将超过港币 2,000,000 元(以单一事项计)，则出售方必须以书面形式通知购买方及金保利，并提供购买方及金保利合理要求的相关资料及文件。
- (h) 如目标公司或其他目标集团成员作出任何重大资本承担或开支，则出售方必须以书面形式通知购买方及金保利，取得金保利的同意。
- 6.3 各出售方须及时向购买方及金保利书面提供于本协议日期起直至交割日期间出现而影响目标集团的财务、税务、业务、运作及前景的每项重大事项的合理详情。
- 6.4 在不影响本条规定的情况下，各出售方向购买方及金保利声明及保证，除已经于出售方披露函披露者外，本第 6 条及附表 3 所载的各项出售方的保证于本协议日期至交割日，均为真实、完整、正确，且在任何重大方面均无误导。
- 6.5 各出售方的保证应被视为于交割日再次重复，犹如提及本协议日期的字眼乃指交割日。
- 6.6 除非文义明确另有所指，否则各出售方作出的各项保证均为独立分开，不应因提及或推想到任何其它有关出售方的保证或本协议的任何其它条款而受到限制。
- 6.7 各出售须在本协议日期之后及在交割前知悉而可能出现或其知道与其保证不一致或使其于任何方面造成重大误导、或严重影响目标集团的业绩或其履行本协议项下其任何责任、承诺或契诺的能力的任何事宜、事件或情况之后，须迅速向购买方及金保利作出书面披露。
- 6.8 受限于本协议第 6.13 条，购买方及金保利对于各项出售方的保证的权利，于交割后仍然全面有效。
- 6.9 各出售方确认及作出契诺，购买方及金保利倚赖出售方的保证，签署本协议。

6.10 以下的定义及诠释规则适用于第 6.11 条至第 6.13 条

“**索偿**”是指因任何出售方违反本协议或弥偿契据而产生的一项索偿；

“**被确立的索偿**”是指一项索偿，而相关责任获提出该等索偿所针对的协议方所承认，或者该等索偿已获有权的司法管辖区的法院所判定确认，而且没有上诉权依附于上述判定，或当事方因时间的经过或其他因素而失去上诉的资格；及

一项索偿与另一项索偿或被确立的索偿相连，倘若他们都是因同一事件的发生而产生或与同一对象相关。

6.11 各出售方就合在一起的所有被确立的索偿总计的责任不得超过港币 2,119,910,000 元。

6.12 购买方及金保利不可对出售方提出索偿，除非该项索偿或一系列相连索偿所涉及的索偿金额超过港币 1,000,000 元。

6.13 购买方及/或金保利如就出售方的保证之违反而要求索偿，须于交割日后起计两（2）个完整年份之内，向出售方以书面形式提出。

6.14 无论本协议是否有任何其他规定，出售方就任何一项出售方的保证在出售方披露函已作披露的范围内不承担任何责任。

**7. 购买方及金保利的声明、保证及承诺**

7.1 购买方及金保利个别及共同向出售方声明及保证，除在买方披露函中已经披露者外，本第 7 条及附表 4所载的各项于本协议日期至交割日，及于任何重大方面均为真实、完整、正确及无误导。

7.2 购买方及金保利向出售方声明、保证及承诺，按本协议配发及发行之代价股份，与配发及发行时金保利股本中的已发行股份于所有方面均享有同等权益，包括收取所有其后宣布、作出或支付股息及其它分派的权利（有关

除净日需在配发日期当日或之后), 惟代价股份受限于金保利的组织章程细则。

- 7.3 购买方及金保利向出售方声明、保证及承诺, 于交割时会按照本协议发行可换股债券, 并按照可换股债券的条文, 将构成金保利之直接、无条件责任, 且行使可换股债券之转换权所得的转换股份, 将于转换日与金保利股本中的已发行股份于所有方面均享有同等权益, 惟可换股债券受限于金保利的组织章程细则。
- 7.4 购买方及金保利向出售方承诺, 自本协议的日期起至交割日( 包括该两日 ) 期间的任何时候 :
- (a) 其拥有签署及履行本协议项下义务所需的权力及授权 ( 为避免疑虑, 除于第 4 条之先决条件另有所述外 ); 及本协议一经签署及交付, 即属有效, 并对其具有约束力;
  - (b) 其会全力协助出售方对买方集团进行尽职调查, 并在不违反买方集团受规限的任何保密承诺及上市规则的情况下, 于合理时间内向出售方提供其合理要求的关于买方集团业务的所有资料, 包括但不限于有关集团的所有法定登记册、所有合同、所有保险保单及收据、证照、批文、抵押及担保;
  - (c) 遵守所有由于本协议及其项下交易适用于买方集团的香港法律、百慕达、英属维尔京群岛、中国或其它司法权区的法律;
  - (d) 未经出售方书面同意前(不得无理地拒绝), 除非为执行本协议条款所需, 金保利不可增加或减少其法定股本, 不可发行或同意发行任何股份或贷款股本(除由于本协议日或之前已存在之任何可换股债券及购股权计划而导致的发行外)或授出或同意授出任何购股权或收购或认购任何股份或贷款股本的权利;
  - (e) 未经出售方书面同意前(不得无理地拒绝), 金保利不可实质性修改任何公司组织章程大纲及/或细则或相同文件; 及

- (f) 将会促使每个买方集团成员之业务一如以往般如常运作，并且除非取得出售方之事先书面同意(不得无理地拒绝)，不会：
- (i) 除非为遵守适用法律、法规或上市规则的要求，委任任何董事，并保持董事会大致稳定；
  - (ii) 除在日常业务经营中或为履行本协议及其项下交易之外，作出任何超过港币 2,000,000 元的资本承担或开支；
  - (iii) 除在日常业务经营中或为履行本协议及其项下交易之外，引致任何责任(包括但不限于债务或任何管理协议)或订立任何交易、协议或安排；及
  - (iv) 不可设立任何退休金、退休计划或购股权计划。

7.5 购买方及金保利在遵守及符合上市规则要求的前题下，须及时向出售方书面提供于本协议日期起直至交割日期间出现而影响买方集团的财务、税务、业务、运作及前景的每项重大事项的合理详情。

7.6 购买方及金保利确认及作出契诺，出售方因倚赖购买方及金保利的保证而签署本协议。

7.7 购买方及金保利的保证应被视为于交割日再次重复，犹如提及本协议日期的字眼乃指交割日。

7.8 除非文义明确另有所指，否则各项购买方及金保利的保证均为独立分开，不应因提及或推想到任何其它购买方及金保利的保证或本协议的任何其它条款而受到限制。

7.9 购买方及金保利须在本协议日期之后及在交割前知悉而可能出现或购买方及金保利知道与购买方及金保利的保证不一致或使其于任何方面造成误导、或影响投购买方及金保利履行本协议项下其任何责任、承诺或契诺的能力的任何事宜、事件或情况之后，须迅速向出售方书面披露。

7.10 受限于第 7.14 条，出售方对于各项购买方及金保利的保证的权利，于交割后仍然全面有效。

7.11 以下的定义及诠释规则适用于 第 7.12 条至第 7.14 条

“**索偿**”是指因购买方或金保利任何违反本协议而产生的一项索偿；

“**被确立的索偿**”是指一项索偿，而相关责任获提出该等索偿所针对的协议方所承认，或者该等索偿已获有权的司法管辖区的法院所判定确认，而且没有上诉权依附于上述判定，或当事方因时间的经过或其他因素而失去上诉的资格；及

一项索偿与另一项索偿或被确立的索偿相连，倘若他们都是因同一事件的发生而产生或与同一对象相关。

7.12 购买方及金保利就合在一起的所有被确立的索偿总计的责任不得超过港币 2,119,910,000 元。

7.13 出售方不可对购买方及金保利提出索偿，除非该项索偿或一系列相连索偿所涉及的索偿金额超过港币 1,000,000 元。

7.14 出售方如就购买方及金保利的保证之违反而要求索偿，须于交割日后起计两（2）个完整年份之内，向购买方及金保利以书面形式提出。

7.15 无论本协议是否有任何其他规定，购买方及金保利就任何一项买方保证在买方披露函已作披露的范围内不承担任何责任。

## 8. 利润保证及交割后保证

8.1 各出售方向购买方及金保利承诺及保证，目标集团于利润保证期由目标集团所产生之溢利将不少于港币 495,000,000 元（“**利润保证**”）。为避免疑义，各方同意，违反本条的唯一补偿，是按第 3.3 条调整受托管可换股债券的本金额。就此条而言：

“**利润保证期**”是指 2013 年 1 月 1 日起截至 2015 年 12 月 31 日止之三个财政年度，但倘于 2013 年 1 月 1 日起截至 2014 年 12 月 31

日止之二个财政年度，利润保证已经达标，则金保利的董事会有权但没有义务自行酌定选择将“利润保证期”缩短至自 2013 年 1 月 1 日起 2014 年 12 月 31 日止之二个财政年度。

“溢利”是指由金保利委任之属于全球四大会计师事务(即德勤·关黄陈方会计师事务所、安永会计师事务所、毕马威会计师事务所、罗兵咸永道会计师事务所)之一的核数师根据香港公认会计原则及惯例审核目标集团在利润保证期的账目(“利润保证期账目”)所显示之目标集团于利润保证期内在未计利息、税项、折旧及摊销前的累积溢利；同时，利润保证期帐目中所显示的由于目标集团实施员工持股计划而产生的累计成本和费用亦不应从溢利中扣除。

- 8.2 第 8.1 条所述的利润保证期账目，将由金保利委任之属于全球四大会计师事务(即德勤·关黄陈方会计师事务所、安永会计师事务所、毕马威会计师事务所、罗兵咸永道会计师事务所)之一的核数师准备，出售方承诺及保证，须提供一切合理协助，以便金保利于第 8.1 条所述的利润保证期完结后三(3)个月内(或出售方及金保利同意之合理延期内)，完成出具目标集团的利润保证期帐目。
- 8.3 出售方必须于交割日后九十(90)日内，向购买方及金保利提供由金保利认可的交割帐目。
- 8.4 China Merchants New Energy Group Limited (招商新能源集团有限公司)向购买方及金保利不可撤销地承诺及同意其就本协议项下取得之代价股份均于交割日计起 24 个月之内，不能直接或间接出售、转让或抵押予任何人士或设置任何产权负担；以及其他各出售方向购买方及金保利不可撤销地承诺及同意其就本协议项下取得之代价股份，均于交割日计起 12 个月之内，不能直接或间接出售、转让或抵押予任何人士或设置任何产权负担。
- 8.5 各出售方向购买方及金保利不可撤销地承诺及同意其就本协议项下取得之可换股债券(除第 3.2 条及第 3.3 条提述之受托管可换股债券另有规定外)，受限于该批可换股债券的票据所载的适用于该批可换股债券的条款和条件，均于交割日计起 12 个月之内，其持有人不能行使当中的转换股份权。

## 9. 可分割性

如本协议一项或多项条款于任何时间在任何方面变为或成为无效、不能执行或不能履行，概在任何方面皆不影响或损害本协议其它条款的有效性、合法性、可执行性或履行。

## 10. 进一步承诺

10.1 各方向另一方作出承诺将尽其合理的努力向金保利及时提供资料，并向联交所提供根据主板上市规则、向证监会提供根据收购守则，及所有其它适用规则、守则及规例（不论与准备所有通函、报告、独立意见有关或关于签订本协议及在此预期交易）资料 and 文件。各方向另一方承诺其应向联交所及证监会提供所有由本身保管的所有相关资料及文件，并签订联交所、证监会或任何其它监管机构可能合理地要求的所有相关申请、文件和其它事项。

10.2 购买方及金保利向招商新能源集团有限公司承诺，在交割后立即变更招商新能源控股有限公司(China Merchants New Energy Holdings Limited)及招商新能源（深圳）有限公司的公司名称及商标。

10.3 购买方及金保利向招商新能源集团有限公司承诺，如在交割后的任何时间，买方集团成员（即金保利集团成员）拟在其名称中使用“招商”、“招商局”或“China Merchants”的商号、商标或其他商业标识，须事先取得招商局集团有限公司的书面同意。

## 11. 保密

11.1 受限于第 11.2 条，各方因商讨、订立或履行本协议而收到或获得有关本协议的内容、商讨、题述事宜或另一方的所有资料（「**保密资料**」）须严格保密，不可向任何其它人士披露或导致、允许或容许任何相关保密资料被披露，除非另一方事先书面同意作出披露。

11.2 本第 11 条所载条文不适用于各方向其各自的专业顾问披露的任何保密资料，或非因其违约而已进入公共领域的保密资料，或按照任何相关政府机构或监管机构、或任何法律或具司法管辖权法院的命令披露的保密资料。

## 12. 公告

- 12.1 按照第 12.2 条，除非得到另一方的事先书面批准，否则任何一方不得发出有关本协议条文或题述事项或载有关于另一方任何资料的任何公告。
- 12.2 如果法律或联交所、证监会或任何其它证券交易所或具司法管辖权的监管机构或政府机构要求（不论具法律效力与否）作出公告，第 12.1 条将不适用，但作出相关公告的一方须于发出公告前向另一方提供相关公告的草稿及咨询另一方。

## 13. 进一步保证

各方向另一方承诺在任何时间和不时收到另一方的合理要求下及属合法及属其本身权力范围内执行下或以使本协议条文及本协议预期交易具法律效力的情况下，将会签订所有相关文件及作出所有相关行动和事项。

## 14. 持续效力

除有关已履行的事项以外，本协议的所有条文只要能够履行或遵守将不论交割继续具十足效力及作用。

## 15. 整体协议

本协议列明各方有关本协议预期交易的整体协议及谅解，并且在任何方面取代及注销各方订立有关本协议题述事项（不论书面或口头）的一切过往意向书、临时协议、通讯、谅解、协议及承诺（如有）。

## 16. 放弃及其它权利

- 16.1 任何一方的单一次或部份行使或未能或延迟行使根据本协议项下赋予的任何权利、权力、索偿或补偿将不会影响、损害或构成该一方放弃其该等或任何其它权利、权力、索偿或补偿。
- 16.2 本协议项下明确赋予任何一方的任何权利、权力、索偿或补偿应在所有其它权利、权力、索偿或补偿之外的额外权利、权力、索偿或补偿，并不影响该一方根据本协议或法律下的任何其它权利、权力、索偿和补偿。



## 17. 通知

- 17.1 任何根据本协议发出的通知或其它通讯，应以书面形式，并应以专人送递或预付邮递或传真方式送递。任何通知或通讯应送递致所列明的另一方。任何发出或提出的通知或其它通讯根据本协议应以专人送递或预付邮递或传真方式送往另一方以下所载的地址或传真号码（或收件人于事先五(5) 个工作日前以书面方式通知另一方的其它地址或传真号码）：

致 China Merchants New Energy Group Limited  
招商新能源集团有限公司

地址： 香港干诺道中 168-200 号信  
德中心西翼 10 楼 1011 室

传真号码： (852) 31128410

致： 卢振威先生

致 China Green Holdings Limited  
中国绿色控股有限公司

地址： 香港干诺道中 168-200 号信  
德中心西翼 10 楼 1010 室

传真号码： (852) 31128410

致： 李原先生

致 Ease Soar Limited  
逸昇有限公司

地址： 香港九龙柯士甸道西一号  
环球贸易广场 17 楼  
1703-1706 室

传真号码： (852) 25267638

致： 于宝东先生

致 Hyatt Servicing Limited

地址： 香港湾仔港湾道 6-8 号瑞安

中心 16 楼 1608-1611 室  
传真号码： (852) 25451036  
致： 陈鹏程先生

致 Talesun Solar Hong  
Kong Limited  
腾晖电力香港有限公司  
地址： 香港铜锣湾勿地臣街 1 号时  
代广场二座 36 楼  
传真号码： (86-512) 82355588  
致： 胡常青先生

致 Sino Arena Investments  
Limited  
地址： 香港干诺道中 168-200 号信  
德中心西翼 10 楼 1011 室  
传真号码： (852) 31128410  
致： 曾祥义先生

致 购买方  
地址： 香港中环皇后大道中 99 号  
中环中心 63 楼 6301 室  
传真号码： (852) 2411 5838  
致： 林浩辉先生

致 金保利  
地址： 香港中环皇后大道中 99 号  
中环中心 63 楼 6301 室

传真号码： (852) 2411 5838

致： 林浩辉先生

17.2 任何通知、要求或其它通讯，在下述情况下均被视为已经妥为送达：(a) 若在香港范围内以邮递形式发出或提出，在邮寄后两 (2) 个营业日即为送达；(b) 若在香港以外发出或作出，在邮寄后七 (7) 个营业日即为送达；及 (c) 如用传真方式发出或提出，则在发送时以发送记录为凭证即为送达。

**18. 时间**

时间为本协议要件，对于本协议特别提及的日期及期限以及各方或各方代表可能书面协议的任何替代日期及期间皆如此。

**19. 独立法律顾问**

出售方确认知道金杜律师事务所只是购买方及金保利之代表律师，出售方有权就本协议及其项一交易，聘请独立的法律顾问。

**20. 转让**

除本协议另有规定，任何一方不得在未有另一方的事先书面同意前转让其在本协议项下的任何权利或义务。

**21. 成本及费用**

各方须各自承担因商讨、准备、签订和完成本协议而产生的所有法律和专业费用、成本及开支。

**22. 协议份数及语言**

本协议可以一式多份签订，且任何订约方可分开签订，每份分开签订及交付的文本均为正本，而所有签订的文本将构成一份相同协议。

23. 管轄法律及司法权区

本协议以及各方的权利和义务均受香港法律管辖并按香港法律诠释和解释。各方在此不可撤销地同意接受香港法院的非专属管辖。

附表 1

出售方

名称	成立地点	地址	出售股份数目	占目标公司所有已发行股份之比例	对价	
					金保利股份	可换股债券面值
China Green Holdings Limited 中国绿色控股有限公司	British Virgin Islands	P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands	50,000,000	8.69%	39,974,000	159,896,000 (其中受托管可换股债券面值为: 79,948,000)
China Merchants New Energy Group Limited 招商新能源集团有限公司	British Virgin Islands	Trident Chambers, P.O. Box 146, Road Town, Tortola, British Virgin Islands	275,000,000	47.83%	467,538,250	632,551,750 (其中受托管可换股债券面值为: 440,036,000)
Ease Soar Limited 逸昇有限公司	British Virgin Islands	P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands	100,000,000	17.39%	239,982,000	159,988,000 (其中受托管可换股债券面值为: 159,988,000)
Hyatt Servicing Limited	British Virgin Islands	Sea Meadow House, Blackburne Highway, P.O. Box 116, Road Town, Tortola, British Virgin Islands	30,000,000	5.22%	72,036,000	48,024,000 (其中受托管可换股债券面值为: 48,024,000)
Talesun Solar Hong Kong Limited 腾晖电力香港有限公司	Hong Kong	36/F Tower Two, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong	50,000,000	8.69%	119,922,000	79,948,000 (其中受托管可换股债券面值为: 79,948,000)
Sino Arena Investments Limited	British Virgin Islands	P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands	25,000,000	4.35%	20,010,000	80,040,000 (其中受托管可换股债券面值为: 40,020,000)
合共			530,000,000	92.17%	959,462,250	1,160,447,750 (其中受托管可换

						股债券面值 为:847,964,000)
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## 附表 2

### 目标集团的详情

#### 目标公司

1. 公司名称 : China Merchants New Energy Holdings Limited (招商新能源控股有限公司) (前称 Sinofield Group Limited (中田集团有限公司))
2. 公司编号 : 1385327
3. 注册地点 : 英属维尔京群岛
4. 注册日期 : 2007 年 2 月 8 日
5. 注册地址 : P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands
6. 董事 : 李原  
卢振威  
杨百千  
于宝东  
邱萍
7. 注册资本 : 20,000,000 美元, 分为 2,000,000,000 股普通股, 每股 0.01 美元  
已发行 575,000,000 股 (已缴足)
8. 附属公司 : China Technology New Energy Limited (中国科技新能源有限公司) (100%)  
Faster Assets Limited (100%)  
招商局漳州开发区创达太阳能科技有

限公司 (91.6%)

招商局漳州开发区博新太阳能科技有  
限公司 (91.6%) (间接持有)

厦门创日新能源科技有限公司(91.6%)  
(间接持有)

New Light Technology Limited (100%)  
(间接持有)

招商新能源(深圳)有限公司) (100%)  
(间接持有)

Sino Delight Developments Limited  
(100%) (间接持有)

Fortune Wheel Holdings Limited (100%)  
(间接持有)

Upper Light Limited (上光有限公司)  
(100%) (间接持有)

Profit Giant Holdings Limited (喜顺控  
股有限公司) (100%) (间接持有)

天津创达新能源有限公司(100%) (间  
接持有)

## 9. 股东

: China Green Holdings Limited (中国绿  
色控股有限公司) (8.69%)

China Merchants New Energy Group  
Limited (招商新能源集团有限公司)  
(47.83%)

Ease Soar Limited (17.39%)

Profit Icon Investments Limited (7.83%)



Hyatt Servicing Limited (5.22%)

Talesun Solar Hong Kong Limited (腾晖  
电力香港有限公司) (8.69%)

Sino Arena Investments Limited (4.35%)

10. 业务

: 投资控股

## 目标公司之附属公司

### China Technology New Energy Limited (中国科技新能源有限公司)

1. 公司名称 : China Technology New Energy Limited  
(中国科技新能源有限公司) (前称 Clear Sun Group Limited (晴旭集团有限公司))
2. 公司编号 : 1456439
3. 注册地点 : 英属维尔京群岛
4. 注册日期 : 2008 年 1 月 8 日
5. 注册地址 : P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands
6. 董事 : 李原
7. 注册资本 : 50,000 美元, 分为 50,000 股普通股, 每股面值 1.00 美元  
已发行 1 股 (已缴足)
8. 附属公司 : New Light Technology Limited (100%)  
  
招商新能源(深圳)有限公司 (100%)  
(间接持有)  
  
天津创达新能源有限公司(100%) (间接持有)
9. 股东 : China Merchants New Energy Holdings Limited (招商新能源控股有限公司) (100%)

10. 业务 : 投资控股

## Faster Assets Limited

1. 公司名称 : Faster Assets Limited
2. 公司编号 : 1377857
3. 注册地点 : 英属维尔京群岛
4. 注册日期 : 2007 年 1 月 3 日
5. 注册地址 : Trident Chambers, P.O. Box 146, Road Town, Tortola, British Virgin Islands
6. 董事 : 李原  
卢振威
7. 注册资本 : 50,000 美元 , 分为 50,000 股普通股 ,  
每股面值 1.00 美元  
已发行 1 股 (已缴足)
8. 附属公司 : Sino Delight Developments Limited (100%)  
  
Fortune Wheel Holdings Limited (100%)  
(间接持有)  
  
Upper Light Limited (上光有限公司)  
(100%)  
  
Profit Giant Holdings Limited (喜顺控  
股有限公司) (100%)(间接持有)
9. 股东 : China Merchants New Energy Holdings  
Limited (招商新能源控股有限公司)  
(100%)
10. 业务 : 投资控股

## 招商局漳州开发区创达太阳能科技有限公司

1. 公司名称 : 招商局漳州开发区创达太阳能科技有限公司(前称“招商局漳州开发区英诺森生物科技有限公司”)
2. 工商注册号 : 350600400010066
3. 注册地点 : 中国
4. 注册日期 : 2006年12月22日
5. 注册地址 : 漳州开发区汤洋工业区三号通用厂房一楼
6. 董事 : 李原(法定代表人)  
卢振威  
姜维
7. 注册资本 : 32,750,000 港元  
已支付股本 32,750,000 港元
8. 附属公司 : 厦门创日新能源科技有限公司 (100%)  
  
招商局漳州开发区博新太阳能科技有限公司 (100%)
9. 股东 : China Merchants New Energy Holdings Limited (招商新能源控股有限公司) (91.6%)  
  
北京银保弘迪股权投资管理中心(有限合伙) (8.4%)
10. 业务范围 : 太阳能产品的生产与销售、太阳能技术研发、技术成果转让及综合利用、太阳能系统工程设计与安装

## 招商局漳州开发区博新太阳能科技有限公司

1. 公司名称 : 招商局漳州开发区博新太阳能科技有限公司
2. 工商注册号 : 350600400002648
3. 注册地点 : 中国
4. 注册日期 : 2007年6月25日
5. 注册地址 : 漳州开发区汤洋工业园3号通用厂房三楼
6. 董事 : 李原(法定代表人)
7. 注册资本 : 人民币13,710,000元  
已支付股本人民币13,710,000元
8. 附属公司 : 没有
9. 股东 : 招商局漳州开发区创达太阳能科技有限公司(100%)
10. 业务范围 : 太阳能产品的生产、太阳能技术研发、技术成果转让及综合利用

### 厦门创日新能源科技有限公司

1. 公司名称 : 厦门创日新能源科技有限公司
2. 工商注册号 : 350203200281654
3. 注册地点 : 中国
4. 注册日期 : 2011 年 8 月 26 日
5. 注册地址 : 厦门火炬高新区(翔安)产业区翔安北路 3699 号高新大厦 203 室
6. 董事 : 李原(法定代表人)
7. 注册资本 : 人民币 500,000 元  
已支付股本人民币 500,000 元
8. 附属公司 : 没有
9. 股东 : 招商局漳州开发区创达太阳能科技有限公司 (100%)
10. 业务范围 : 新能源技术研发、技术咨询、技术服务

### New Light Technology Limited

1. 公司名称 : New Light Technology Limited
2. 公司编号 : 1368773
3. 注册地点 : 香港
4. 注册日期 : 2009年9月1日
5. 注册地址 : Flat/Rm 10-11, 10/F, West Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong
6. 董事 : 李原
7. 注册资本 : 10,000 港币, 分为 10,000 股普通股, 每股面值 1.00 港币  
已发股 10,000 股 (已缴足)
8. 附属公司 : 招商新能源(深圳)有限公司 (100%)  
天津创达新能源有限公司(100%) (间接持有)
9. 股东 : China Technology New Energy Limited (中国科技新能源有限公司) (100%)
10. 业务 : 投资控股管理



## 招商新能源(深圳)有限公司

1. 公司名称 : 招商新能源(深圳)有限公司
2. 工商注册号 : 440301503426546
3. 注册地点 : 中国
4. 注册日期 : 2012年4月27日
5. 注册地址 : 深圳市南山区临海大道前海湾保税港区(园区)招商保税前海三号仓3501室
6. 董事 : 李原(法定代表人)  
卢振威  
邱萍
7. 注册资本 : 65,000,000 港元  
已支付股本 55,000,000 港元
8. 附属公司 : 天津创达新能源有限公司
9. 股东 : New Light Technology Limited (100%)
10. 业务范围 : 太阳能工程系统设计与安装、太阳能技术及产品研发、技术成果转让及推广、节能和环保技术的研发及技术维护、电力业务

### **Sino Delight Developments Limited**

1. 公司名称 : Sino Delight Developments Limited
2. 公司编号 : 1715418
3. 注册地点 : 英属维尔京群岛
4. 注册日期 : 2012 年 5 月 31 日
5. 注册地址 : P.O. Box 957, Offshore Incorporations  
Centre, Road Town, Tortola, British  
Virgin Islands
6. 董事 : 李原  
卢振威
7. 注册资本 : 50,000 美元, 分为 50,000 股普通股,  
每股面值 1.00 美元  
已发行 10,000 股 (已缴足)
8. 附属公司 : Fortune Wheel Holdings Limited (100%)
9. 股东 : Faster Assets Limited (100%)
10. 业务 : 投资控股

**Fortune Wheel Holdings Limited**

1. 公司名称 : Fortune Wheel Holdings Limited
2. 公司编号 : 1732228
3. 注册地点 : 香港
4. 注册日期 : 2012 年 4 月 19 日
5. 注册地址 : Flat/Rm 10-11, 10/F, West Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong
6. 董事 : 李原  
卢振威
7. 注册资本 : 10,000 港币 , 分为 10,000 股普通股 ,  
每股面值 1.00 港币  
已发股 1 股 (已缴足)
8. 附属公司 : 没有
9. 股东 : Sino Delight Developments Limited  
(100%)
10. 业务 : 投资控股

**Upper Light Limited (上光有限公司)**

1. 公司名称 : Upper Light Limited (上光有限公司)
2. 公司编号 : 1732113
3. 注册地点 : 英属维尔京群岛
4. 注册日期 : 2012 年 9 月 6 日
5. 注册地址 : P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands
6. 董事 : 李原  
卢振威
7. 注册资本 : 50,000 美元, 分为 50,000 股普通股, 每股面值 1.00 美元  
已发行 10,000 股 (已缴足)
8. 附属公司 : Profit Giant Holdings Limited (喜顺控股有限公司)
9. 股东 : Faster Assets Limited (100%)
10. 业务 : 投资控股

**Profit Giant Holdings Limited**

**(喜顺控股有限公司)**

1. 公司名称 : Profit Giant Holdings Limited(喜顺控股有限公司)
2. 公司编号 : 1806408
3. 注册地点 : 香港
4. 注册日期 : 2012年9月27日
5. 注册地址 : Unit 10-11, 10/F., West Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong
6. 董事 : 李原  
卢振威
7. 注册资本 : 10,000 港元, 分为 10,000 股普通股, 每股面值 1.00 港元  
已发行 10,000 股 (已缴足)
8. 附属公司 : 没有
9. 股东 : Upper Light Limited (上光有限公司)(100%)
10. 业务 : 投资控股

### 天津创达新能源有限公司

1. 公司名称 : 天津创达新能源有限公司
2. 工商注册号 : 120116000140599
3. 注册地点 : 中国
4. 注册日期 : 2012年11月5日
5. 注册地址 : 天津生态城动漫中路482号创智大厦  
204室-160
6. 董事 : 姜维(法定代表人)
7. 注册资本 : 1,000,000元人民币  
已支付股本 1,000,000元人民币
8. 附属公司 : 没有
9. 股东 : 招商新能源(深圳)有限公司(100%)
10. 业务范围 : 太阳能工程系统设计与安装、太阳能  
技术及产品研发、技术成果转让及推  
广、节能和环保技术的研发及技术维  
护、货物及技术进出口

### 附表 3

#### 出售方的保证

除本附表所指事宜及於出售方披露函披露者外，各出售仅此个别而非共同地（仅就与其相关的而言）向购买方及金保利声明、保证及承诺，本附表所载或以其它形式载于本协议的所有事实声明及陈述在本协议日期至交割日，于所有重大方面均为及将为真实，完整及正确，且概无误导。

#### 1. 目标集团的一般资料及权力

1.1 向购买方及金保利的律师、核数师、评估师或顾问所提供的有关目标集团或其业务、财务、资产、税务或法律方面的所有资料于提供之时及现时在所有方面于重大层面上均为真实、完备及准确，且在任何重大方面均不存在误导。

1.2 有关目标集团的业务、财务、资产、税务或法律状况的任何事实或情况概无未能全面及公平地书面披露予购买方及金保利的律师、核数师、评估师或顾问，而对本协议文意而言属重大，或如果获披露，可合理预期会严重影响购买方及金保利签署本协议或按其条款签署本协议的决定。

1.3 本协议前言（A）至（C）项所载之信息在所有重大方面都是完整和准确的。

#### 2. 股本

2.1 载于附表 2的目标集团资料均是全部真实正确且并无误导成分，目标集团概无亦不会：

- (a) 规定目前或将来发行、配发或转让、或授予任何人可要求发行、配发或转让目标集团成员的任何股份或借贷资本的权利（不论有条件或以其它方式）而仍然有效的任何协议、购股权或类似计划或安排（包括任何购股权或优先或转换权利）；或

(b) 加诸于任何目标集团成员任何已发行或未发行股份的任何产权负担，且于任何该等协议、安排或产权负担中获授得权利的任何人士均无作出任何索偿。

2.2 目标集团成员于任何时间概无购买或偿还其任何股本、或提供或同意提供涉及收购其或任何其它公司股本的任何非法协助。

### 3. 财务事宜

3.1 出售方提供予购买方及金保利之目标集团经审计帐目：

(a) 乃根据香港公认的会计准则编制，并符合适用于香港公司的现行的会计实务准则；

(b) 符合所有相关适用法律（包括公司条例）及规定的要求；

(c) 于所有重大方面是完备和准确的，正确及公平地反映目标集团的财务状况、其目标集团成员各自业务状况、各自的盈利或亏损，适当为目标集团的所有坏账和呆帐进行拨备，及对所有或然负债及所有资本承担作出适当拨备或加上附注；

(d) 根据附注所载的准则，就截至相关帐目日期为止期间目标集团所有应评估或可能须负担的税务作出适当拨备或储备；

(e) 全面披露目标集团截至目标集团经审核帐目日期为止的所有资产；  
及

(f) 没有受到任何异常或非经常性项目的影响，且并无包括相关目标集团成员一般不会进行的交易（该帐目中已披露者除外）。

3.2 目标集团经审核帐目中包括的有关任何资产（不论固定或往来）的金额概无超过于经审核帐目日期当日的采购价或其净变现价值或其折旧或分摊销帐价值或其公允价值（视乎情况而定）。



3.3 除目标集团经审核帐目所披露者或自目标集团经审核帐目日期后于日常业务过程中所产生者外，目标集团概无任何仍未清还的债项（包括但不限于或然负债）。

3.4 直至交割日的所有时间及于交割日，各目标集团成员均有足够流动资本，以维持日常运作。

#### 4. 公司事项

4.1 自目标集团经审核帐目日期起，目标集团均无对其组织大纲及章程作出任何修改。

4.2 不论在香港、中国、英属维尔京群岛或任何其它适用司法权区，根据公司条例或任何相关法例而任何目标集团成员需备案、公证或注册的所有报表、详细资料、决议案及文件均已适当备案、公证及注册，并于所有重大方面均已符合所有相关法律法规的要求。

4.3 目标集团成员已适当维持所有必需的帐目（符合良好会计基准）、会议记录簿、登记册及财务及其它纪录。所有纪录：

(a) 均按日常业务准则及良好会计基准全面、适当及正确保存及完成，并于所有重大方面符合所有适用要求及准则；

(b) 并无载有任何重大不正确或不一致的资料；及

(c) 提供并反映正确的买卖交易、财务、合约及买卖情况（并无收到、亦无人提出任何该等资料不正确或应予修订的通知或指控），

且属于目标集团成员或应由其管有的有关纪录及所有其它契约及文件（包括所有权契约及文件）及公司印章均由目标集团成员或其代理保管。

4.4 目标集团成员的股东登记册及其它法定登记册均获妥善保存，并载有正确及应包括的完整记录事项。

4.5 目标集团成员的董事会会议及股东会议的会议纪录册均载有董事及股东各自通过的所有决议案的全面及正确的纪录，概无任何获董事或股东通过的决议案没有记录在相关的会议纪录册上。

- 4.6 各目标集团成员均根据其成立地的法律正式注册成立并有效存在，有权按其目前的方式拥有资产及经营业务。
- 4.7 除目标集团的经审核帐目所披露者外，各目标集团成员概无任何其它附属公司、联属公司、分支、代理或办事处。
- 4.8 概无作出任何有关任何目标集团清盘的命令或决议案，亦无任何未解除的：
- (a) 有关任何目标集团成员清盘的呈请或命令；
  - (b) 针对任何目标集团成员的全部或任何部份业务或资产的接管命令；
  - (c) 针对任何目标集团成员的管理的呈请或命令；或
  - (d) 任何目标集团成员与其任何债权人之间的自愿安排。
- 4.9 出售方概无知悉可使任何人士有权提出将目标集团成员清盘或接管、或针对目标集团成员全部或任何部份业务或资产而委任接管人的呈请的任何情况。

## 5. 业务

- 5.1 自目标集团经审核帐目的日期起：
- (a) 目标集团按其日常正常业务、并按之前的方式持续经营；
  - (b) 下列事项概无出现任何重大逆转：
    - (i) 任何目标集团成员的营业额、财务或交易情况或业务；或
    - (ii) 目标集团的综合净赤字（按经审核帐目所采用的基准）；
  - (c) 目标集团的业务领域概无任何重大转变；

- (d) 于本协议日期,概无出现据出售方的合理意见可能会导致任何目标集团成员的业务或财务状况于可见将来出现重大不利转变而并无披露及要购买方及金保利注意的任何重大事件;
  - (e) 任何目标集团成员并无作出或遗漏作出任何事情以致损害其商誉、业务关系或信誉;
  - (f) 任何目标集团成员概无重大供货商或客户停止、或表示有意停止供应或与其业务往来,或严重减少其供应或业务往来水平,或改变其打算供应或业务往来的条款(正常价格调整除外),或表示有意减少或改变;
  - (g) 目标集团的业务概无受到重要协议的终止或条款改变或影响同类公司的异常因素的重大不利影响,而出售方亦不知悉任何可能对任何目标集团成员各自业务造成影响的事实或重大不利情况;及
  - (h) 目标集团的成员已经根据信贷条款向其债权人支付;任何目标集团成员概无拖欠任何款项逾期超过三(3)个月。
- 5.2 除由于本协议的规定而应购买方及/或金保利之要求,概无任何情况以致出售方相信,不论由于现行的协议或安排或其它原因,任何目标集团成员的任何重要客户将会停止,或有权停止与之交易,或将会减少目前的业务往来,或将会更改其与任何目标集团成员业务往来的条款。
- 5.3 尽出售方所知及所信,概无客户或任何目标集团成员与之有业务往来的其它人士,出现或可能会在财务、业务或其它方面出现困难,以致已经或可能会对任何目标集团成员或其业务、交易及财务状况、或前景造成影响。概无与任何目标集团成员订立协议或任何责任安排的一方违反有关协议或责任安排,亦无任何情况可能导致该等违约。
- 5.4 不论在香港、中国、英属维尔京群岛或任何其它司法权区,目标集团成员概无提供任何触犯任何适用法律、法规、标准或要求的任何服务或产品。
- 5.5 除法律所隐含或标准业务条款所载或在日常业务过程中以其它方式所作出的条件或保证外,任何目标集团成员概无作出有关提供或同意提供服务

的任何担保、条件或保证或作出声明，或接受可能会在提供服务或产品后会引致法律责任的义务。

- 5.6 除了根据本协议**第 6.2(f)条**已取得购买方及金保利书面同意者以及根据本协议**第 6.3 条**已向购买方及金保利书面提供合理详情者外，任何目标集团成员并无订立任何协议以致成为任何合营公司、协会、合伙人商号或其它未注册成立的组织的成员，或成为分享佣金或其它收入的任何协议或安排的协议方。

## 6. 财务

- 6.1 除于日常业务过程外（如适用），于目标集团经审核帐目日期，目标集团成员概无任何未了结的资本承担，且自目标集团经审核帐目日期起，任何目标集团成员概无作出或同意作出任何资本支出，或产生或同意产生任何资本承担，亦无出售或变现任何资产或当中的任何利益。
- 6.2 任何目标集团成员概无任何尚未行使，或已同意设定或发行任何借贷资本，亦无代理融通其任何债项或从事无需呈现或反映于经目标集团经审核帐目的融资。
- 6.3 任何目标集团成员概无接到任何贷款人向其发出的通知，要求其于到期日之前还款或威胁执行贷款人可能持有对其任何资产的任何抵押。
- 6.4 除于日常业务过程中出现者外，任何目标集团成员并无借出可能不获偿还的金钱或拥有任何债项（不论是否到期偿还），而任何目标集团成员并无作出违反任何适用法律或法规（不论在香港、中国、英属维尔京群岛、开曼群岛或任何其它适用司法权区）的贷款或类似贷款。
- 6.5 自目标集团经审核帐目日期起，任何目标集团成员概无任何股息或分派入帐或可被视为入帐或计划入帐、宣布、作出或支付任何股息或分派。

## 7. 资产

- 7.1 任何目标集团成员法定及实益拥有并管有目标集团经审核帐目所载的所有资产及其所有权，且除于其后在日常业务过程中出售或变现的往来资产外，仍然拥有及占有该等重大资产并持有其良好的所有权。任何目标集团

成员法定及实益拥有并管有目标集团经审核帐目日期之后收购而并无如前述般在之前出售或变现的所有资产并持有其良好的所有权。

- 7.2 目标集团成员所拥有的资产及根据租赁收购、出租或租赁协议所持有的资产（如有）是其以此方式持有的资产。
- 7.3 除于目标集团经审核帐目所披露者及于日常业务过程中出现者外，目标集团成员并无(i)就目标集团经审核帐目所载的任何资产、业务、商誉或未催缴股本，设定、授出或同意设定或授出任何产权负担；或(ii)自经目标集团经审核帐目日期之后收购或同意收购任何资产。
- 7.4 目标集团经审核帐目所载或其后于任何目标集团成员的帐目中入帐的任何债务人所欠的任何款项概不涉及任何安排，惟于任何目标集团成员的日常业务过程中所作出者除外。

## 8. 法律责任及负债

- 8.1 除经目标集团经审核帐目所披露的法律责任、义务及负债外，任何目标集团成员概无承担或招致或同意承担或招致任何性质（包括根据担保或弥偿下的法律责任及其它或然法律责任）的法律责任、义务或负债。
- 8.2 目标集团成员并非任何担保的协议方亦毋须承担其法律责任（包括但不限于或然性质）。
- 8.3 任何目标集团成员概无代理融通其任何债项或从事无需呈现或反映于目标集团经审核帐目的融资。
- 8.4 目标集团成员的借贷金额（按相关文件的条文所载为准）并无超逾其组织章程细则或对其具约束力的任何债券或其它契约或文件的限制规定。
- 8.5 任何目标集团成员概无任何未偿还债务由于任何目标集团成员违约而变为需予支付或偿还，亦概无出现或即将出现任何事件，以致随着时效已过或完成任何条件或发出通知或符合任何正式手续后，该等负债便可能需于到期日前或于要求时支付或偿还。

## 9. 合规事项

- 9.1 目标集团成员有权利、权力及授权，并且拥有正式资格经营其于所有司法权区经营的所有业务，并且已经取得经营其业务而需任何人士、当局或机构所发出的所有牌照、同意及审批，而该等牌照、同意及审批均属有效、仍然存在并适当取得；目标集团成员并无违反该等牌照、同意及审批的任何条款或条件，亦无出现损害任何该等牌照、同意及审批继续存在或续期而免受削弱及修改的任何因素。
- 9.2 就出售方所知及所信，目标集团成员均于所有重大方面根据所有适用法律（不论在香港、中国、英属维尔京群岛或任何其它适用司法权区）经营业务。
- 9.3 在香港、中国、英属维尔京群岛或任何其它适用司法权区，概无任何司法权区的任何政府或监管机构对目标集团成员进行任何调查、聆讯或纪律程序，就出售方所知及所信现在亦概无任何即将进行或胁迫进行的该等调查、聆讯或纪律程序，也不存在可能会导致该等调查、聆讯或纪律程序的任何事实或情况。
- 9.4 概无有关任何目标集团成员的事务而在香港、中国、英属维尔京群岛或任何其它适用司法权区与政府官员、部门、机构或团体存在任何争议。
- 9.5 目标集团成员于所有时间于所有重大方面均根据其各自当时有效的组织章程大纲及细则及其现在或以前作为协议方的任何其它文件经营其业务及推行事务。
- 9.6 任何法例所要求有关目标集团成员就其成立、存续及业务需向目标集团成员的成立地的任何当局呈交的所有备案文件、报表、详细资料、决议案及文件均已经妥善呈交并属正确。
- 9.7 以目标集团成员为受惠人的所有产权负担、担保及弥偿均有效、具有约束力，及可以根据其条款强制执行，而在适用情况下，倘其性质属可以登记，则已经根据任何其它适用法律（不论在香港、中国、英属维尔京群岛或任何其它适用司法权区）的要求进行登记及在其它方面符合其要求。

9.8 目标集团成员在重大方面已经遵守个人资料(私隐)条例下对其适用的义务、要求及原则。

## 10. 协议

10.1 概无任何目标集团成员是以下合同、文书、交易、安排、实务、责任或义务(或要约、投标或计划书)的协议方：

- (a) 不寻常或异常或非交易性质，或超出日常及正当业务范围以外；
- (b) 并非于日常业务过程中出现的、属长期性质(即按照其条款，于其订立或同意之日起计超过两年，不大可能得到充分执行)；
- (c) 除日常业务的协议外，不能轻易地按时完成或履行，或需经过度、不寻常的金钱、精力与人力上的支出，才能完成或履行；
- (d) 任何性质的掉期、期货或衍生工具合约，或涉及按零售或股票的指数、任何其它指数、任何证券、商品或任何其它东西的价格、任何性质的任何其它指标或任何货币的兑换率的波动而支付款项；
- (e) 属租购合约，或透过信用出售或有条件出售或以分期付款的方式购买的合约；
- (f) 限制目标集团成员在全球任何地方以其认为适当的方式自由经营任何业务或使用其资产；
- (g) 根据任何司法权区的有关竞争、反垄断、公平贸易和类似事宜的法律或规定而被禁止、无效、非法或不能执行，或产生任何后果(包括披露、登记或通知的适用要求)；或
- (h) 由于其性质或规模而涉及或很可能涉及义务或责任，而应合理地知会购买方及金保利。

10.2 概无未完结的要约、投标书、计划书或经其它人士、商号或公司接受或作出其它行为即造成任何集团成员的责任的类似事宜(于日常业务过程中出现者除外)。

- 10.3 概无目标集团成员于其日常业务过程之外及并非完全基于公平性质而订立任何合约、交易或安排，或其于本协议日期之前的年度期内的盈利或财务状况曾经受到该等合约、交易或安排的影响。
- 10.4 目标集团成员概无违反任何协议、文书或对其具约束力的责任；亦无根据任何目标集团成员作为协议方的任何协议、文书或安排，而作出或威胁作出的涉及失责的索偿；也概不存在任何该等协议、文书或安排会变为无效，或可被任何其它协议方提前终止、撤销、废除或遭卸除的任何情况；且也没有收到任何该等协议方有该等意图的通知；就出售方所知及所信，概无任何该等协议方致力终止、撤除、废除或卸除任何该等协议、文书或安排。
- 10.5 签署本协议或遵守其条款均不会：
- (a) 抵触、导致违反、或可构成违反任何目标集团成员作为协议方的任何协议、文书、其它承诺或票据的任何条款、条件或规定、任何目标集团成员的组织章程大纲及细则的任何规定，或对任何目标集团成员的任何资产有约束力或制约的任何产权负担、租约、合约、命令、裁决、判决、禁制令、规定或任何形式或性质的其它限制；
  - (b) 解除任何人士对于任何目标集团成员所需负的任何责任(不论合约或其它方式)，或使任何人士能决定任何责任、或任何目标集团成员可享有的任何权利或利益，或使其可以行使任何权利，而不论基于与目标集团成员之间的协议或以其它方式与目标集团成员有关；
  - (c) 据出售方所知及所信，损害任何目标集团成员的客户、供货商、贷款人及雇员的态度；
  - (d) 导致任何目标集团成员的资产产生、被施加、具体化或强制执行任何方式的产权负担；
  - (e) 使目标集团成员的债项或其它信贷变为到期要偿还，或可在列明的到期日之前宣布到期需支付；或



(f) 除本协议第 4.1 条规定外，需任何目标集团成员取得任何人士、机构或当局的同意或批准，而不论出于监管、合约、其它规定或期望所需（正式或非正式）。

10.6 任何目标集团成员并无签立任何仍然有效的授权书，亦概无授权任何人士可代任何目标集团成员签署任何合约或承诺采取任何行动而尚可行使的任何授权，惟授权其雇员于其履行职务过程中签署日常买卖合同则除外。

## 11. 诉讼及清盘

11.1 目标集团成员并未作为任何法律程序（包括诉讼、仲裁、起诉或其它方式）的原告、被告或其它方式的一方，据出售方所知及所信，并不存在任何未定的或有威胁的上述法律程序。

11.2 没有任何命令、呈请或决议，要求对目标集团成员进行清盘；目标集团成员概无任何财物被扣押、执行判决或其它仍未解除的程序；不存在对目标集团成员任何未履行或未完成的法庭判决或命令。

## 12. 资产的所有权和利益

12.1 关于目标集团成员拥有的资产权利和利益，目标集团成员拥有其资产的妥善的所有权或其任何权利或利益，且概无任何性质的产权负担或限制任何该等资产的利益、条件、命令、规定或其它限制，或以其它方式影响目标集团成员运用或发展或享用任何该等资产的能力的限制，而对于目标集团成员以租赁或特许权的形式持有的任何资产，均不受任何违约、争议或索偿的限制。

12.2 对于在正常或审慎情况下需由独立或专家承包方保养的资产及根据任何租赁或类似协议，目标集团成员负责保养或维修的所有资产，其保养合约仍然生效并具有十足效力，且所有该等资产均按良好的技术标准，根据相同类型的资产一般需遵从的安全规定及按任何适用的租赁或类似协议的条款及条件，进行定期保养。

### 13. 知识产权

13.1 目标集团成员在进行目前的日常及一般业务过程中，没有侵犯任何第三者的知识产权，或引致任何佣金、使用费或类似的费用，或需要任何牌照、同意、批准、授权、许可、放弃、命令或豁免。

本**第 13 条**中，“知识产权”是指： -

- (a) 专利、商标、服务标记、注册外观设计、上述各项的申请、商品及商业名称、未经注册商标名称或标记和服务标记、版权、设计权和发明权，其中包括互联网域名和计算器软件的权利；
- (b) 根据特许使用权、同意、命令、法例或于其它方面与上文分段所述事宜有关的权利；及
- (c) 与上述分段 ( a ) 和 ( b ) 项事宜的作用或性质相同或类似的权利或事项，

而于任何情况下，涵盖全世界任何地方。

### 14. 租赁

14.1 目标集团的租赁及租务协议 ( 如有 )，具有十足效力，且目标集团概无成员违反任何有关条款。概无收到有关租赁及租务协议下的业主发出的终止租赁或违约通知，而涉及本协议的交割亦毋须取得相关业主的任何同意或作出通知。本协议的交割不会触发该等租赁或租务协议下的任何违约事项或导致违反其任何条款。

14.2 租赁及租务协议已适当缴付印花税 ( 如有 )，且在需要注册及如不注册则会对目标集团的财务状况造成重大影响的情况下，已经注册。

## 15. 僱傭

- 15.1 自目標集團經審核帳目的日期起或( 如在該等期間開始之後才開始獲聘任或擔任職位 ) 自獲聘任或擔任職位的日期起 :
- (a) 任何目標集團成員的任何高級管理人員的薪金、酬金或退休金利益均無變動 ( 或同意作出變動 ); 及/或
  - (b) 任何目標集團成員的高級管理人員的任何其它聘用條款均無變動。
- 15.2 除向任何目標集團成員的任何高級管理人員或僱員支付有關薪金、酬金或退休金利益外, 目標集團成員毋須或無慣例支付任何金錢或其它利益, 特別是概無仍然運作的任何花紅、購股權、獎勵或其它該等計劃或任何僱員、高級管理人員或其它人士有權據此而按目標集團成員的營業額、盈利或銷售額獲得任何形式的任何佣金、薪金或酬金的任何計劃, 或與前述事宜有關的任何協議或安排。
- 15.3 任何目標集團成員作為協議方的所有現行僱傭合約均可以隨時以三個月或較短的通知終止, 而不會引致任何損失或賠償的索償 ( 任何適用法律所規定的賠償除外 )。
- 15.4 自目標集團經審核日期起, 任何目標集團成員的高級行政人員或高級管理人員概無給予或接獲終止僱傭關係或職位的通知, 亦概無任何該等高級行政人員或高級管理人員由於本協議的任何條文而有權給予該等通知。
- 15.5 目標集團成員已經備存有關其各職員的僱傭的最新的、完整及正確的紀錄 ( 包括但不限於僱傭條款的詳情、法定權利的款項支付、稅項、假期、紀律、健康及安全事宜 ) 及其僱傭關係的終止。
- 15.6 目標集團成員與代表僱員的任何貿易公會或任何團體概無任何協議或其它安排 ( 不論是否具有法律約束力 )。
- 15.7 目標集團成員概無涉及其任何目前或以前的僱員、顧問或其它承包商的任何爭端, 或不受制於該等人士提出的任何索償, 而出售方亦不知悉任何可能引致任何爭端或索償的任何事實。

15.8 概无任何悬而未决或恐怕会发生的索偿，或可能引起任何雇员或工人或第三方所提出有关任何意外或受伤而针对任何目标集团成员且不获保险保障的任何索偿。

15.9 任何目标集团成员概无向任何雇员或高级管理人员作出提供贷款、预支款项(为履行工作职责而作出的预支款项除外)或财政援助而仍未清还。

15.10 目标集团成员在所有重大方面遵守有关目标集团成员就其雇员的待遇、健康及安全的所有适用法律规定的义务。

## 16. 退休金

16.1 除遵守适用法律规定外，目标集团成员无需根据合同或道德责任或义务，亦无作为任何特惠金安排或承诺的协议方，而需向其以前或目前的高级管理人员、雇员或其供养人或其它人士或以其利益而需支付任何退休或死亡或伤残福利、退休金、恩恤金、年金、离职津贴或同类款项。

## 17. 保险

17.1 目标集团成员有权享有其已购买的保险的全面利益。概无任何行为或不行为导致任何该等保单变成或可能变成无效或可使无效。

17.2 有关目标集团成员的资产的任何保单概无受制于任何特殊或不寻常的条款或限制，或需支付超逾正常保费的任何保险费。

17.3 概无任何根据有关目标集团成员的资产的任何保单而尚未了结或可能会提出的索偿，据出售方所知及所信，亦概无出现任何情况可能会引致该等索偿。

17.4 有关目标集团成员的资产的任何保单下到期应付的所有保险费或其它款项均已经支付或在目标集团经审核帐目（如适用）中累计入帐。

## 18. 环境事宜

18.1 遵守环境法律

目标集团成员于任何时间在任何重大方面均遵守所有有效、相关并适用于各目标集团成员的环境法律(不论在香港、中国、英属维尔京群岛或其它地方)。

#### 18.2 环境程序

概无由任何第三方(包括目标集团的雇员或政府、监管、监督或行政机构)接获任何通知、知照、要求、索取资料、传唤、传召、命令或投诉,亦无被评估任何罚款,也无任何政府当局或其它人士提出涉及目标集团成员而由任何环境事宜以引致的任何行动、诉讼或法律程序悬而未决或根据出售方所知及所信恐怕会出现(而根据出售方所知及所信,亦无任何调查或审核悬而未决)。

#### 18.3 环境调查

任何目标集团成员拥有、租赁或经营的任何物业或其它资产概无被列入,或据出售方所知及所信,计划被列入要求调查或清理的地点清单。

#### 18.4 环境责任

任何目标集团成员不存在由任何环境法律引致或有关的任何形式的责任,包括修复、维修、恢复或清理任何目标集团成员所拥有、占据、管有或使用的土地或其它资产的责任。

#### 18.5 就本条而言,以下名称具有下列涵义:

**"环境法律"**指有关污染或保障公众安全或环境安全的所有书面法律,以及集团成员可能会据此而需就在环境中释出或释放物质而负有责任的任何法律原则或任何适用法律;

## 附表 4

### 购买方及金保利的保证

除买方披露函及于联交所网站所披露者外,购买方及金保利仅此个别及共同向出售方声明、保证及承诺,本附表所载或以其它形式载于本协议的所有事实声明及陈述在本协议日期至交割日,于所有重大方面均为及将为真实,完整及正确,且概无误导。

#### 1. 买方集团的一般资料及权力

- 1.1 向出售方的律师或顾问所提供的有关买方集团或其业务、财务、资产、税务或法律方面的所有资料于提供之时及现时在所有方面于重大层面上均为真实、完备及准确,且在任何重大方面均不存在误导。
- 1.2 有关买方集团的业务、财务、资产、税务或法律状况的任何事实或情况概无未能全面及公平地书面披露予出售方的律师或顾问,而对本协议文意而言属重大,或如果获披露,可合理预期会严重影响出售方签署本协议或按其条款签署本协议的决定。
- 1.3 本协议前言(D), (F)和(G)项所载之信息在所有重大方面都是完整和准确的。

#### 2. 股本

- 2.1 买方集团概无亦不会:
  - (a) 除本协议前言(F)和(G)项所载之可换股债券及购股权计划,以及增加法定资本外,规定目前或将来发行、配发或转让、或授予任何人可要求发行、配发或转让买方集团成员的任何股份或借贷资本的权利(不论有条件或以其它方式)而仍然有效的任何协议、购股权或类似计划或安排(包括任何购股权或优先或转换权利);或
  - (b) 除进行正常业务以外,在任何买方集团成员的股权,加诸于任何产权负担,且于任何该等协议、安排或产权负担中获授得权利的任何人士均无作出任何索偿。

- 2.2 买方集团成员于任何时间概无购买或偿还其任何股本、或提供或同意提供涉及收购其或任何其它公司股本的任何非法协助。

### 财务事宜

- 3.1 购买方及金保利提供予出售方之买方经审核帐目：
- (a) 乃根据香港公认的会计准则编制，并符合适用于香港公司的现行的会计实务准则；
  - (b) 符合所有相关适用法律（包括公司条例）及规定的要求；
  - (c) 于所有重大方面是完备和准确的，正确及公平地反映买方集团的财务状况、买方集团成员各自业务状况、各自的盈利或亏损，适当为买方集团的所有坏账和呆帐进行拨备，及对所有或然负债及所有资本承担作出适当拨备或加上附注；
  - (d) 根据附注所载的准则，就截至相关帐目日期为止期间买方集团所有应评估或可能须负担的税务作出适当拨备或储备；
  - (e) 全面披露买方集团截至买方经审核帐目日期为止的所有资产；及
  - (f) 没有受到任何异常或非经常性项目的影响，且并无包括相关买方集团成员一般不会进行的交易（该帐目中已披露者除外）。
- 3.2 买方经审核帐目中包括的有关任何资产（不论固定或往来）的金额概无超过于经审核帐目日期当日的采购价或其净变现价值或其折旧或分摊销帐价值或其公允价值（视乎情况而定）。
- 3.3 除买方经审核帐目所披露者或自买方经审核帐目日期后于日常业务过程中所产生者外，买方集团概无任何仍未清还的债项（包括但不限于或然负债）。
- 3.4 直至交割日的所有时间及于交割日，各买方集团成员均有足够流动资本，以维持日常运作。

#### 4. 公司事项

- 4.1 自买方经审核帐目日期起，买方集团均无对其组织大纲及章程作出任何修改。
- 4.2 不论在香港、中国、英属维尔京群岛或任何其它适用司法权区，根据公司条例或任何相关法例而任何买方集团成员需备案、公证或注册的所有报表、详细资料、决议案及文件均已适当备案、公证及注册，并于所有重大方面均已符合所有相关法律法规的要求。
- 4.3 买方集团成员已适当维持所有必需的帐目（符合良好会计基准）、会议记录簿、登记册及财务及其它纪录。所有纪录：
- (a) 均按日常业务准则及良好会计基准全面、适当及正确保存及完成，并于所有重大方面符合所有适用要求及准则；
  - (b) 并无载有任何重大不正确或不一致的资料；及
  - (c) 提供并反映正确的买卖交易、财务、合约及买卖情况（并无收到、亦无人提出任何该等资料不正确或应予修订的通知或指控），
- 且属于买方集团成员或应由其管有的有关纪录及所有其它契约及文件（包括所有权契约及文件）及公司印章均由买方集团成员或其代理保管。
- 4.4 买方集团成员的股东登记册及其它法定登记册均获妥善保存，并载有正确及应包括的完整记录事项。
- 4.5 买方集团成员的董事会会议及股东会议的会议纪录册均载有董事及股东各自通过的所有决议案的全面及正确的纪录，概无任何获董事或股东通过的决议案没有记录在相关的会议纪录册上。
- 4.6 各买方集团成员均根据其成立地的法律正式注册成立并有效存在，有权按其目前的方式拥有资产及经营业务。
- 4.7 除买方经审核帐目所披露者外，各买方集团成员概无任何其它附属公司、联属公司、分支、代理或办事处。



4.8 概无作出任何有关任何买方集团清盘的命令或决议案，亦无任何未解除的：

- (a) 有关任何买方集团成员清盘的呈请或命令；
- (b) 针对任何买方集团成员的全部或任何部份业务或资产的接管命令；
- (c) 针对任何买方集团成员的管理的呈请或命令；或
- (d) 任何买方集团成员与其任何债权人之间的自愿安排。

4.9 购买方及金保利概无知悉可使任何人士有权提出将买方集团成员清盘或接管、或针对买方集团成员全部或任何部份业务或资产而委任接管人的呈请的任何情况。

## 5. 业务

5.1 自买方经审核帐目的日期起：

- (a) 买方集团按其日常正常业务、并按之前的方式持续经营；
- (b) 下列事项概无出现任何重大逆转：
  - (i) 任何买方集团成员的营业额、财务或交易情况或业务；或
  - (ii) 买方集团的综合净赤字（按经审核帐目所采用的基准）；
- (c) 买方集团的业务领域概无任何重大转变；
- (d) 于本协议日期，概无出现据购买方及金保利的合理意见可能会导致任何买方集团成员的业务或财务状况于可见将来出现重大不利转变而并无披露及要购买方及金保利注意的任何重大事件；
- (e) 任何买方集团成员并无作出或遗漏作出任何事情以致损害其商誉、业务关系或信誉；
- (f) 任何买方集团成员概无重大供货商或客户停止、或表示有意停止供应或与其业务往来，或严重减少其供应或业务往来水平，或改变其

打算供应或业务往来的条款 ( 正常价格调整除外 ), 或表示有意减少或改变;

(g) 买方集团的业务概无受到重要协议的终止或条款改变或影响同类公司的异常因素的重大不利影响, 而购买方及金保利亦不知悉任何可能对任何买方集团成员各自业务造成影响的事实或重大不利情况; 及

(h) 买方集团的成员已经根据信贷条款向其债权人支付; 任何买方集团成员概无拖欠任何款项逾期超过三 ( 3 ) 个月。

5.2 概无任何情况以致购买方及金保利相信, 不论由于现行的协议或安排或其它原因, 任何买方集团成员的任何重要客户将会停止, 或有权停止与之交易, 或将会减少目前的业务往来, 或将会更改其与任何买方集团成员业务往来的条款。

5.3 尽购买方及金保利所知及所信, 概无客户或任何买方集团成员与之有业务往来的其它人士, 出现或可能会在财务、业务或其它方面出现困难, 以致已经或可能会对任何买方集团成员或其业务、交易及财务状况、或前景造成影响。概无与任何买方集团成员订立协议或任何责任安排的一方违反有关协议或责任安排, 亦无任何情况可能导致该等违约。

5.4 不论在香港、中国、英属维尔京群岛或任何其它司法权区, 买方集团成员概无提供任何触犯任何适用法律、法规、标准或要求的任何服务或产品。

5.5 除法律所隐含或标准业务条款所载或在日常业务过程中以其它方式所作出的条件或保证外, 任何买方集团成员概无作出有关提供或同意提供服务的任何担保、条件或保证或作出声明, 或接受可能会在提供服务或产品后会引致法律责任的义务。

5.6 除了根据本协议第 7.4(f) 条已取得出售方书面同意者, 以及根据本协议第 7.5 条已向出售方书面提供合理详情者外, 任何买方集团成员并无订立任何协议以致成为任何合营公司、协会、合伙人商号或其它未注册成立的组织的成员, 或成为分享佣金或其它收入的任何协议或安排的协议方。

## 6. 财务

- 6.1 除于日常业务过程外 ( 如适用 ), 于买方经审核帐目日期, 买方集团成员概无任何未了结的资本承担, 且自买方经审核帐目日期起, 任何买方集团成员概无作出或同意作出任何资本支出, 或产生或同意产生任何资本承担, 亦无出售或变现任何资产或当中的任何利益。
- 6.2 任何买方集团成员概无任何尚未行使, 或已同意设定或发行任何借贷资本, 亦无代理融通其任何债项或从事无需呈现或反映于经买方经审核帐目的融资。
- 6.3 任何买方集团成员概无接到任何贷款人向其发出的通知, 要求其于到期日之前还款或威胁执行贷款人可能持有对其任何资产的任何抵押。
- 6.4 除于日常业务过程中出现者外, 任何买方集团成员并无借出可能不获偿还的金钱或拥有任何债项 ( 不论是否到期偿还 ), 而任何买方集团成员并无作出违反任何适用法律或法规 ( 不论在香港、中国、英属维尔京群岛、开曼群岛或任何其它适用司法权区 ) 的贷款或类似贷款。
- 6.5 自买方经审核帐目日期起, 任何买方集团成员概无任何股息或分派入帐或可被视为入帐或计划入帐、宣布、作出或支付任何股息或分派。

## 7. 资产

- 7.1 任何买方集团成员法定及实益拥有并管有买方经审核帐目所载的所有资产及其所有权, 且除于其后在日常业务过程中出售或变现的往来资产外, 仍然拥有及占有该等重大资产并持有其良好的所有权。任何买方集团成员法定及实益拥有并管有买方经审核帐目日期之后收购而并无如前述般在之前出售或变现的所有资产并持有其良好的所有权。
- 7.2 买方集团成员所拥有的资产及根据租赁收购、出租或租赁协议所持有的资产 ( 如有 ) 是其以此方式持有的资产。
- 7.3 除于买方经审核帐目所披露者及于日常业务过程中出现者外, 买方集团成员并无(i) 就买方经审核帐目所载的任何资产、业务、商誉或未催缴股本,

设定、授出或同意设定或授出任何产权负担；或(ii) 自经买方经审核帐目日期之后收购或同意收购任何资产。

- 7.4 买方经审核帐目所载或其后于任何买方集团成员的帐目中入帐的任何债务人所欠的任何款项概不涉及任何安排，惟于任何买方集团成员的日常工作过程中所作出者除外。

## 8. 法律责任及负债

- 8.1 除经买方经审核帐目所披露的法律责任、义务及负债外，任何买方集团成员概无承担或招致或同意承担或招致任何性质（包括根据担保或弥偿下的法律责任及其它或然法律责任）的法律责任、义务或负债。

- 8.2 买方集团成员并非任何担保的协议方亦毋须承担其法律责任（包括但不限于或然性质）。

- 8.3 任何买方集团成员概无代理融通其任何债项或从事无需呈现或反映于买方经审核帐目的融资。

- 8.4 买方集团成员的借贷金额（按相关文件的条文所载为准）并无超逾其组织章程细则或对其具约束力的任何债券或其它契约或文件的限制规定。

- 8.5 任何买方集团成员概无任何未偿还债务由于任何买方集团成员违约而变为需予支付或偿还，亦概无出现或即将出现任何事件，以致随着时效已过或完成任何条件或发出通知或符合任何正式手续后，该等负债便可能需于到期日前或于要求时支付或偿还。

## 9. 合规事项

- 9.1 买方集团成员有权利、权力及授权，并且拥有正式资格经营其于所有司法权区经营的所有业务，并且已经取得经营其业务而需任何人士、当局或机构所发出的所有牌照、同意及审批，而该等牌照、同意及审批均属有效、仍然存在并适当取得；买方集团成员并无违反该等牌照、同意及审批的任何条款或条件，亦无出现损害任何该等牌照、同意及审批继续存在或续期而免受削弱及修改的任何因素。

- 9.2 就购买方及金保利所知及所信，买方集团成员于所有重大方面根据所有适用法律（不论在香港、中国、英属维尔京群岛或任何其它适用司法权区）经营业务。
- 9.3 在香港、中国、英属维尔京群岛或任何其它适用司法权区，以前及现在概无任何司法权的任何政府或监管机构对买方集团成员进行任何调查、聆讯或纪律程序，就购买方及金保利所知及所信现在亦概无任何即将进行或胁迫进行的该等调查、聆讯或纪律程序，也不存在可能会导致该等调查、聆讯或纪律程序的任何事实或情况。
- 9.4 概无有关任何买方集团成员的事务而在香港、中国、英属维尔京群岛或任何其它适用司法权区与政府官员、部门、机构或团体存在任何争议。
- 9.5 买方集团成员于所有时间于所有重大方面均根据其各自当时有效的组织章程大纲及细则及其现在或以前作为协议方的任何其它文件经营其业务及推行事务。
- 9.6 任何法例所要求有关买方集团成员就其成立和存续及业务需向买方集团成员的成立地的任何当局呈交的所有备案文件、报表、详细资料、决议案及文件均已经妥善呈交并属正确。
- 9.7 以买方集团成员为受惠人的所有产权负担、担保及弥偿均有效、具有约束力，及可以根据其条款强制执行，而在适用情况下，倘其性质属可以登记，则已经根据任何其它适用法律（不论在香港、中国、英属维尔京群岛或任何其它适用司法权区）的要求进行登记及在其它方面符合其要求。
- 9.8 买方集团成员在重大方面已经遵守个人资料（私隐）条例下对其适用的义务、要求及原则。

## 10. 协议

- 10.1 概无任何买方集团成员是以下合同、文书、交易、安排、实务、责任或义务（或要约、投标或计划书）的协议方：

(a) 不寻常或异常或非交易性质，或超出日常及正当业务范围以外；

- (b) 并非于日常业务过程中出现的、属长期性质 ( 即按照其条款, 于其订立或同意之日起计超过两年, 不大可能得到充分执行 );
- (c) 除日常业务的协议外, 不能轻易地按时完成或履行, 或需经过度、不寻常的金钱、精力与人力上的支出, 才能完成或履行;
- (d) 任何性质的掉期、期货或衍生工具合约, 或涉及按零售或股票的指数、任何其它指数、任何证券、商品或任何其它东西的价格、任何性质的任何其它指标或任何货币的兑换率的波动而支付款项;
- (e) 属租购合约, 或透过信用出售或有条件出售或以分期付款的方式购买的合约;
- (f) 限制买方集团成员在全球任何地方以其认为适当的方式自由经营任何业务或使用其资产;
- (g) 根据任何司法权区的有关竞争、反垄断、公平贸易和类似事宜的法律或规定而被禁止、无效、非法或不能执行, 或产生任何后果 ( 包括披露、登记或通知的适用要求 ); 或
- (h) 由于其性质或规模而涉及或很可能涉及义务或责任, 而应合理地知会购买方及金保利。

10.2 概无未完结的要约、投标书、计划书或经其它人士、商号或公司接受或作出其它行为即造成任何集团成员的责任的类似事宜 ( 于日常业务过程中出现者除外 )。

10.3 概无买方集团成员于其日常业务过程之外及并非完全基于公平性质而订立任何合约、交易或安排, 或其于本协议日期之前的年度期内的盈利或财务状况曾经受到该等合约、交易或安排的影响。

10.4 买方集团成员概无违反任何协议、文书或对其具约束力的责任; 亦无根据任何买方集团成员作为协议方的任何协议、文书或安排, 而作出或威胁作出的涉及失责的索偿; 也概不存在任何该等协议、文书或安排会变为无效, 或可被任何其它协议方提前终止、撤销、废除或遭卸除的任何情况; 且也没有收到任何该等协议方有该等意图的通知; 就购买方及金保利所知及所

信，概无任何该等协议方致力终止、撤除、废除或卸除任何该等协议、文书或安排。

10.5 签署本协议或遵守其条款均不会：

- (a) 抵触、导致违反、或可构成违反任何买方集团成员作为协议方的任何协议、文书、其它承诺或票据的任何条款、条件或规定、任何买方集团成员的组织章程大纲及细则的任何规定，或对任何买方集团成员的任何资产有约束力或制约的任何产权负担、租约、合约、命令、裁决、判决、禁制令、规定或任何形式或性质的其它限制；
- (b) 解除任何人士对于任何买方集团成员所需负的任何责任(不论合约或其它方式)，或使任何人士能决定任何责任、或任何买方集团成员可享有的任何权利或利益，或使其可以行使任何权利，而不论基于与买方集团成员之间的协议或以其它方式与买方集团成员有关；
- (c) 据出售所知及所信，损害任何买方集团成员的客户、供货商、贷款人及雇员的态度；
- (d) 导致任何买方集团成员的资产产生、被施加、具体化或强制执行任何方式的产权负担；
- (e) 使买方集团成员的债项或其它信贷变为到期要偿还，或可在列明的到期日之前宣布到期需支付；或
- (f) 除本协议第 4.1 条规定外，需任何买方集团成员取得任何人士、机构或当局的同意或批准，而不论出于监管、合约、其它规定或期望所需（正式或非正式）。

10.6 任何买方集团成员并无签立任何仍然有效的授权书，亦概无授权任何人士可代任何买方集团成员签署任何合约或承诺采取任何行动而尚可行使的任何授权，惟授权其雇员于其履行职务过程中签署日常买卖合同则除外。

## 11. 诉讼及清盘

- 11.1 买方集团成员并未作为任何法律程序(包括诉讼、仲裁、起诉或其它方式)的原告、被告或其它方式的一方,据购买方及金保利所知及所信,并不存在任何未定的或有威胁的上述法律程序。
- 11.2 没有任何命令、呈请或决议,要求对买方集团成员进行清盘;买方集团成员概无任何财物被扣押、执行判决或其它仍未解除的程序;不存在对买方集团成员任何未履行或未完成的法庭判决或命令。

## 12. 资产的所有权和利益

- 12.1 关于买方集团成员拥有的资产权利和利益,买方集团成员拥有其资产的妥善的所有权或其任何权利或利益,且概无任何性质的产权负担或限制任何该等资产的利益、条件、命令、规定或其它限制,或以其它方式影响买方集团成员运用或发展或享用任何该等资产的能力的限制,而对于买方集团成员以租赁或特许权的形式持有的任何资产,均不受任何违约、争议或索偿的限制。
- 12.2 对于在正常或审慎情况下需由独立或专家承包方保养的资产及根据任何租赁或类似协议,买方集团成员负责保养或维修的所有资产,其保养合约仍然生效并具有十足效力,且所有该等资产均按良好的技术标准,根据相同类型的资产一般需遵从的安全规定及按任何适用的租赁或类似协议的条款及条件,进行定期保养。

## 13. 知识产权

- 13.1 买方集团成员在进行目前的日常及一般业务过程中,没有侵犯任何第三者的知识产权,或引致任何佣金、使用费或类似的费用,或需要任何牌照、同意、批准、授权、许可、放弃、命令或豁免。

本**第 13 条**中,“知识产权”是指: -

- (a) 专利、商标、服务标记、注册外观设计、上述各项的申请、商品及商业名称、未经注册商标名称或标记和服务标记、版权、设计权和发明权,其中包括互联网域名和计算器软件的权利;



- (b) 根据特许使用权、同意、命令、法例或于其它方面与上文分段所述事宜有关的权利；及
- (c) 与上述分段 ( a ) 和 ( b ) 项事宜的作用或性质相同或类似的权利或事项，

而于任何情况下，涵盖全世界任何地方。

#### 14. 租赁

- 14.1 买方集团的租赁及租务协议 ( 如有 )，具有十足效力，且买方集团概无成员违反任何有关条款。概无收到有关租赁及租务协议下的业主发出的终止租赁或违约通知，而涉及本协议的交割亦毋须取得相关业主的任何同意或作出通知。本协议的交割不会触发该等租赁或租务协议下的任何违约事项或导致违反其任何条款。
- 14.2 租赁及租务协议已适当缴付印花税 ( 如有 )，且在需要注册及如不注册则会对买方集团的财务状况造成重大影响的情况下，已经注册。

#### 15. 雇佣

- 15.1 自买方经审核帐目的日期起或 ( 如在该等期间开始之后才开始获聘任或担任职位 ) 自获聘任或担任职位的日期起：
  - (a) 任何买方集团成员的任何高级管理人员的薪金、酬金或退休金利益均无变动 ( 或同意作出变动 )；及/或
  - (b) 任何买方集团成员的高级管理人员的任何其它聘用条款均无变动。
- 15.2 除向任何买方集团成员的任何高级管理人员或雇员支付有关薪金、酬金或退休金利益外，买方集团成员毋须或无惯例支付任何金钱或其它利益，特别是概无仍然运作的任何花红、购股权、奖励或其它该等计划或任何雇员、高级管理人员或其它人士有权据此而按买方集团成员的营业额、盈利或销售额获得任何形式的任何佣金、薪金或酬金的任何计划，或与前述事宜有关的任何协议或安排。

- 15.3 任何买方集团成员作为协议方的所有现行雇佣合约均可以随时以三个月或较短的通知终止，而不会引致任何损失或赔偿的索偿（任何适用法律所规定的赔偿除外）。
- 15.4 自买方集团经审核日期起，任何买方集团成员的高级行政人员或高级管理人员概无给予或接获终止雇佣关系或职位的通知，亦概无任何该等高级行政人员或高级管理人员由于本协议的任何条文而有权给予该等通知。
- 15.5 买方集团成员已经备存有关其各职员的雇佣的最新的、完整及正确的纪录（包括但不限于雇佣条款的详情、法定权利的款项支付、税项、假期、纪律、健康及安全事宜）及其雇佣关系的终止。
- 15.6 买方集团成员与代表雇员的任何贸易公会或任何团体概无任何协议或其它安排（不论是否具有法律约束力）。
- 15.7 买方集团成员概无涉及其任何目前或以前的雇员、顾问或其它承包商的任何争端，或不受制于该等人士提出的任何索偿，而购买方及金保利亦不知悉任何可能引致任何争端或索偿的任何事实。
- 15.8 概无任何悬而未决或恐怕会发生的索偿，或可能引起任何雇员或工人或第三方所提出有关任何意外或受伤而针对任何买方集团成员且不获保险保障的任何索偿。
- 15.9 任何买方集团成员概无向任何雇员或高级管理人员作出提供贷款、预支款项(为履行工作职责而作出的预支款项除外)或财政援助而仍未清还。
- 15.10 买方集团成员在所有重大方面遵守有关集团成员就其雇员的待遇、健康及安全的所有适用法律规定的义务。

## 16. 退休金

- 16.1 除遵守适用法律规定外，买方集团成员无需根据任何合同或道德责任或义务，亦无作为任何特惠金安排或承诺的协议方，而需向其以前或目前的高级管理人员、雇员或其供养人或其它人士或以其利益而需支付任何退休或死亡或伤残福利、退休金、恩恤金、年金、离职津贴或同类款项。

## 17. 保險

- 17.1 买方集团成员有权享有其已购买的保险的全面利益。概无任何行为或不行为导致任何该等保单变成或可能变成无效或可使无效。
- 17.2 有关买方集团成员的资产的任何保单概无受制于任何特殊或不寻常的条款或限制，或需支付超逾正常保费的任何保险费。
- 17.3 概无任何根据有关买方集团成员的资产的任何保单而尚未了结或可能会提出的索偿，据购买方及金保利所知及所信，亦概无出现任何情况可能会引致该等索偿。
- 17.4 有关买方集团成员的资产的任何保单下到期应付的所有保险费或其它款项均已经支付或在买方经审核帐目（如适用）中累计入帐。

## 18. 环境事宜

### 18.1 遵守环境法律

买方集团成员于任何时间在任何重大方面均遵守所有有效、相关并适用于各买方集团成员的环境法律（不论在香港、中国、英属维尔京群岛或其它地方）。

### 18.2 环境程序

概无由任何第三方（包括买方集团的雇员或政府、监管、监督或行政机构）接获任何通知、知照、要求、索取资料、传唤、传召、命令或投诉，亦无被评估任何罚款，也无任何政府当局或其它人士提出涉及买方集团成员而由任何环境事宜以引致的任何行动、诉讼或法律程序悬而未决或根据购买方及金保利方所知及所信恐怕会出现（而根据购买方及金保利所知及所信，亦无任何调查或审核悬而未决）。

### 18.3 环境调查

任何买方集团成员拥有、租赁或经营的任何物业或其它资产概无被列入，或据购买方及金保利所知及所信，计划被列入要求调查或清理的地点清单。

#### 18.4 环境责任

任何买方集团成员不存在由任何环境法律引致或有关的任何形式的责任，包括修复、维修、恢复或清理任何买方集团成员所拥有、占据、管有或使用的土地或其它资产的责任。

#### 18.5 就本条而言，以下名称具有下列涵义：

**"环境法律"** 指有关污染或保障公众安全或环境安全的所有书面法律，以及集团成员可能会据此而需就在环境中释出或释放物质而负有责任的任何法律原则或任何适用法律。

附表 5

可换股债券

(A) 部分

Dated the            day of \_\_\_\_\_

**GOLDPOLY NEW ENERGY HOLDINGS LIMITED**  
**(金保利新能源有限公司\*)**  
**(as the Company)**

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**BOND INSTRUMENT**  
constituting the series A convertible bonds in the  
aggregate principal amount of HK\$[•] issued by  
**GOLDPOLY NEW ENERGY HOLDINGS LIMITED**  
**(金保利新能源有限公司\*)**  
due [•]

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\* for identification purposes only

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**THIS INSTRUMENT is made on \_\_\_\_\_**

**BY:-**

**GOLDPOLY NEW ENERGY HOLDINGS LIMITED (金保利新能源有限公司)**, a company incorporated under the laws of Bermuda with limited liabilities, whose registered office is at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda and whose principal place of business is situate at Room 6301, The Center, 99 Queen's Road, Central, Hong Kong and whose shares are listed on the main board of the Stock Exchange (the "**Company**").

**IN FAVOUR OF**

**THE PERSONS** for the time being and from time to time registered as holders of the Series A Bonds referred to below (the "**Series A Bondholders**")

**WHEREAS:-**

- (A) Pursuant to the agreement dated on [●] in relation to the sale and purchase of [92.17]% issued share capital of China Merchants New Energy Holdings Limited (招商新能源控股有限公司) entered into amongst the Company, Profit Icon Investments Limited as the purchaser, the vendors as named therein and the resolutions of the shareholders of the Company passed on the [●] day of [●], the Company is authorised to create and issue, among others, Series A Bonds in the principal amount of HK\$[●] which, at the option of the relevant Series A Bondholders, are convertible into Shares at the Conversion Price (subject to adjustments from time to time).
- (B) The Series A Bonds will be represented by individual Series A Bond Certificates. Each Series A Bondholder will be issued with a Series A Bond Certificate representing its entire holding of the Series A Bonds.
- (C) The board of directors of the Company has resolved to constitute the Series A Bonds by way of a deed poll.

**IT IS HEREBY AGREED AS FOLLOWS:-**

**1. INTERPRETATION**

1.1 In this Instrument, unless the context otherwise requires, the following expressions shall have the following meanings:-

"Affiliate"

means:

- (a) with respect to any body corporate, any other body corporate, unincorporated entity or person directly or indirectly Controlling, directly or indirectly Controlled by or under direct or indirect common control with, such body corporate; and



- (b) with respect to any individual, his/her relative or any body corporate, unincorporated entity or person directly or indirectly Controlling, directly or indirectly Controlled by or under direct or indirect common control with, such individual or his/her relative;

“Bonds”	means Series A Bonds and Series B Bonds;
“Bondholders”	means Series A Bondholders and Series B Bondholders;
“Bond Instrument” or “Instrument”	means this instrument executed by the Company by way of deed poll constituting the Series A Bond, as amended and/or supplemented from time to time;
“Business Day”	means a day on which banks are generally open for business in Hong Kong and the Cayman Islands, except a Sunday and a Saturday or a day on which a tropical cyclone warning signal no. 8 or above or a “black” rainstorm warning signal is hoisted in Hong Kong at any time between 9:00 a.m. and 5:00 p.m.;
“Conditions”	means the terms and conditions as set out in this Instrument (with such amendments thereto as the Company and the Series A Bondholders may mutually agree in writing), and a “ <b>Condition</b> ” refers to the relative numbered paragraph of the Conditions;
“Control”	means the power of a person to secure that the policies and affairs of another are conducted and decisions made directly or indirectly in accordance with the wishes of that person by means of: <ul style="list-style-type: none"><li>(a) in the case of a company, being the beneficial owner of more than 50 per cent. of either the issued share capital of that company or of the voting rights in that company, or having the right to appoint or remove a majority of the directors or otherwise control the votes at board meetings of that company by virtue of any powers conferred by the articles of association, shareholders’ agreement or any other document regulating the affairs of that company;</li></ul>

- (b) in the case of a partnership, being the beneficial owner of more than 50 per cent. of the capital of that partnership, or having the right to control the composition of or the votes to the majority of the management of that partnership by virtue of any powers conferred by the partnership agreement or any other document regulating the affairs of that partnership;

and “Controlled” shall be construed accordingly;

“Conversion Notice”	shall have the meaning ascribed to it pursuant to Condition 8.2 upon an exercise of its Conversion Rights, substantially in the form set out in Appendix 3 to this Instrument;
“Conversion Period”	means a period commencing from the day immediately after the end of the first anniversary of the date of this Instrument and ending on the Maturity Date;
“Conversion Price”	has the meaning ascribed to it pursuant to Condition 8 of this Instrument;
“Conversion Rights”	means the rights attached to the Series A Bond to convert any part of the principal amount thereof into Shares pursuant to Condition 8.1;
“Equity Share Capital”	means the issued share capital of the Company excluding any part thereof which does not either as respects dividends or as respects capital carry any right to participate beyond a specified amount or beyond an amount calculated by reference to a specified rate in a distribution;
“HK\$”	means Hong Kong dollars, the lawful currency of Hong Kong;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China;
“Maturity Date”	means the [●], being the date falling on the fifth anniversary of the issue date of the Series A Bonds or if such date is not a Business Day, the Business Day immediately following such date;

“Listing Rules”	means the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (as amended from time to time);
“Series A Bond”	means any of the convertible bonds to be issued by the Company in the aggregate principal amount of HK\$ [●] in the form of registered bonds by the Company as constituted by this Instrument, and the reference to the “Series A Bonds” shall be construed accordingly;
“Series A Bondholder(s)”	means person(s) who for the time being is the registered holder(s) of the Series A Bond(s);
“Series A Bond Certificate(s)”	means the certificates to be issued in respect of the Series A Bond in the form or set out in <b>Appendix 1</b> to this Instrument evidencing the title of the Series A Bondholder(s) to the Series A Bond and as may be modified or amended from time to time in accordance with the Conditions of this Instrument;
“Series B Bond”	means any of the convertible bonds to be issued by the Company in the aggregate principal amount of HK\$ [●] in the form of registered bonds by the Company as constituted by an instrument dated [*], and the reference to the “Series B Bonds” shall be construed accordingly;
Series B Bondholders	means person(s) who for the time being is the registered holder(s) of the Series B Bond(s);
“Shares”	means the shares of HK\$[0.10] each in the issued share capital of the Company existing on the date hereof and all other (if any) stock or shares from time to time and for the time being ranking pari passu therewith and all other (if any) shares or stock in the Equity Share Capital of the Company resulting from any sub-division, consolidation or re-classification of the Shares;
“Stock Exchange”	means The Stock Exchange of Hong Kong Limited;
“Takeovers Code”	means the Code on Takeovers and Mergers approved by the Securities and Futures Commission as amended from time to time;
“Transfer Form”	has the meaning ascribed to it pursuant to Condition 4.5; and

“%” means per cent.

- 1.2 For the purpose of these terms and conditions, in relation to the Series A Bonds, “**outstanding Series A Bonds**” refers to all the Series A Bonds issued other than:
- (a) those which have been redeemed or in respect of which Conversion Right has been exercised and which have been cancelled in accordance with the Conditions;
  - (b) those in respect of which the date for redemption in accordance with the Conditions has occurred and the redemption moneys have been duly paid to the relevant Series A Bondholder or on its behalf;
  - (c) those mutilated or defaced Series A Bonds which have been surrendered in exchange for replacement Series A Bonds pursuant to Condition [17];
  - (d) (for the purpose only of determining how many Series A Bonds are outstanding and without prejudice to their status for any other purpose) those Series A Bonds alleged to have been lost, stolen or destroyed and in respect of which replacement Series A Bonds have been issued pursuant to Condition [17]; or
  - (e) those which have been redeemed and cancelled as provided in Condition [7].
- 1.3 Except as otherwise expressly provided, expressions defined in the Companies Ordinance (Cap. 32 of the Laws of Hong Kong) as at the date hereof have the same meanings when used in this Instrument.
- 1.4 A reference to a statute or statutory provision includes a reference:-
- (a) to that statute or provision as from time to time modified or re-enacted;
  - (b) to any repealed statute or statutory provision which it re-enacts (with or without modification); and
  - (c) to any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.5 Unless the context otherwise requires:-
- (a) words in the singular include the plural, and vice versa;
  - (b) words importing any gender include all genders; and

- (c) a reference to a person includes a reference to a body corporate and to an unincorporated body of persons.
- 1.6 A reference to Recitals, a Condition, Sub-condition or Appendix is to the recitals, a condition and a sub-condition of or the schedule to this Instrument.
- 1.7 The headings are for convenience only and do not affect interpretation of this Instrument.

## 2. AMOUNT AND ISSUE OF THE SERIES A BONDS

- 2.1 The Series A Bonds are issued in registered form in denominations of HK\$1 million or integral multiples thereof (“**authorised denominations**”) or at the election of a Series A Bondholder in a global Bond representing all of its holding. A Series A Bond Certificate will be issued by execution in manual or facsimile form by a duly authorised officer of the Company to each Series A Bondholder in respect of its registered holding of each Series A Bond.
- 2.2 The Series A Bonds shall be issued at its full face value subject to the Conditions and shall be binding on the Company and shall enure for the benefit of the Series A Bondholders.

## 3. PERIOD

Subject as provided herein, the Series A Bond shall mature on the Maturity Date, and the Company shall repay the principal moneys of the outstanding under the Series A Bonds to the Series A Bondholders together with all interest (if any) accrued thereon up to and including the date of actual repayment on the Maturity Date amounts due and payable under these Conditions.

## 4. STATUS AND TRANSFER

- 4.1 The obligations of the Company arising under the Series A Bonds constitute general, unconditional and unsecured obligations of the Company and rank, and will rank equally among themselves and pari passu with all other present and future unsecured and unsubordinated obligations of the Company (including the Series B Bonds) except for obligations accorded preference by mandatory provisions of applicable law. No application will be made for a listing of the Series A Bond.
- 4.2 Each holder of the Series A Bond will (except as otherwise required by law) be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any interest in it or any writing on, or the theft or loss of, the Series A Bond Certificate issued in respect of it) and no person will be liable for so treating the holder. Every subsequent Series A Bondholder shall be recognised by the Company as entitled to its Series A Bonds free from any equity, set off or cross claim on the part of the Company against the original or any intermediate holder of such Series A Bonds.

- 4.3 Transfer or assignment of the Series A Bond shall be subject to the conditions, approvals, requirements and any other provisions of or under the Stock Exchange or their rules and regulations, the approval of listing in respect of the Shares which may fall to be issued upon the exercise of the Series A Bond and all applicable laws and regulations and the other provisions herein PROVIDED THAT save for a Permitted Transfer, no transfer or assignment may be made to a connected person of the Company (within the meaning of the Listing Rules) and unless the principal amount to be assigned or transferred shall be in an amount not less than HK\$1 million and in integral multiple of HK\$1 million. For the purpose of this Condition 4.3, a “Permitted Transfer refers to a transfer to a person who is an Affiliate of a Series A Bondholder and such transfer has been approved by the independent non-executive directors of the Company.
- 4.4 In the event that the prior consent of the Stock Exchange is required for transfer or assignment to any party, the Company shall use all reasonable endeavours to facilitate any such assignment or transfer of the Series A Bond, including making any necessary applications to the Stock Exchange for approval (if required).
- 4.5 The title to the Series A Bond will be passed when the transfer or assignment is registered in the register of the Series A Bondholders referred to in Condition 14. Subject to Condition 4.3 above, a Series A Bond (in an authorised denomination or multiples thereof) may be transferred by delivering the Series A Bond Certificates issued in respect of that Series A Bond (for cancellation) with the form of transfer in the form annexed to Appendix 2 of this Instrument or such other form of transfer approved by the directors of the Company from time to time (the “**Transfer Form**”) duly completed and signed (the Series A Bond Certificate(s) and the Transfer Form, together the “**Transfer Documents**”) and delivered to the principal office of the Company in Hong Kong for the time being for registration. The Company shall after receipt of the Transfer Documents forthwith register the transfer and make a notation on the Bond Register to the effect that the Series A Bond is registered in the name of the transferee specified in such form of transfer.

Each new Series A Bond Certificate to be issued upon a transfer of Series A Bonds will within five (5) Business Days of receipt by the Company of the Transfer Documents (including the duly completed Transfer Form), be sent at the expense of the Company by courier (if the address of the transferee is in Hong Kong) or by express mail (if the transferee’s address is outside Hong Kong) at the risk of the transferee entitled to the Series A Bonds to the address specified in the form of transfer.

Where only part of the principal amount of a Series A Bond (being an authorised denomination or multiples thereof) is to be transferred, converted or redeemed, a new Series A Bond Certificate in respect of the principal amount of the Series A Bonds not so transferred, converted or redeemed shall be issued and sent at the expense of the Company by courier (if the address of the Series A Bondholder entitled is in Hong Kong) or by express mail (if the Series A Bondholder’s address is outside Hong Kong) at the risk of that Series A Bondholder to the address specified in the Series A Bond Register, within five

(5) Business Days of deposit or surrender of the original Series A Bond Certificate.

- 4.6 Any legal and other costs and expenses which may be incurred by the Company in connection with any transfer or assignment of the Series A Bond or any request therefore shall be borne by the Company. For the avoidance of doubt, the stamp duty (if any) incurred in connection with any transfer or assignment of the Series A Bond shall be born by the transferor and the transferee themselves in accordance with their own agreement.
- 4.7 No Series A Bondholder may require the transfer of a Series A Bond to be registered after the Series A Bond Certificate in respect of such Series A Bond has been deposited for conversion pursuant to Condition [8].

## 5. INTEREST

The Series A Bond shall not bear any interest.

## 6. PAYMENT

- 6.1 Payment of the principal in respect of the Series A Bond will be made for value on the relevant due date by way of the Company's or any of the Company's subsidiary's cheque drawn on a licensed bank in Hong Kong to be delivered to the Series A Bondholders at the address as specified in the Series A Bond Register, subject in all cases to any fiscal or other laws and regulations applicable thereto. Cheques will be mailed to the address of the Bondholder appearing on the Bond Register at the expense of the Company by courier (if the address of the Bondholder is in Hong Kong) or by express mail (if the Bondholder's address is outside Hong Kong) at the risk of the Bondholder on the due date for payment of principal and any other amounts payable on the relevant Series A Bonds or such other manner as may be agreed between the Company and the relevant Series A Bondholders. The Series A Bond Certificates shall be surrendered to the Company forthwith upon the payment of the principal at maturity.
- 6.2 If the due date for payment of any amount in respect of the Series A Bond is not a Business Day, the Series A Bondholders will be entitled to the payment on the next following Business Day in the same manner together with interest accrued (if any) and other payment. For the avoidance of doubt, no further payment will be made as a consequence of the due date not being a Business Day.
- 6.3 All payments by the Company hereunder shall be made, not later than 4:00 p.m. (Hong Kong time) on the due date.
- 6.4 In the event of default, interest at the rate of [three(3)] per cent per annum over the principal in respect of the Series A Bond will be accrued from the relevant due date up to the date of actual payment (both dates inclusive) of the full amount (both before and after judgment).

## **7. REDEMPTION**

- 7.1 The Company shall be entitled to redeem in whole or in part of the principal amount of the outstanding Series A Bond at 100 per cent. of the principal amount thereof on any Business Day after the first anniversary of the issuance date of the Series A Bond, provided that:
- (a) the Company shall give the Series A Bondholders a written notice of redemption in accordance with Condition 16 and in the form annexed to Appendix 4, specifying the amount to be redeemed, the redemption date. The relevant Series A Bondholder shall deliver the relevant Series A Bond Certificate to the Company on the redemption date against payment by the Company of the full redemption amount;
  - (b) the redemption shall not take place earlier than the expiry of fourteen (14) days or later than the expiry of [twenty-one (21) days] after the date of the notice of redemption;
  - (c) the principal amount to be redeemed shall be in an amount not less than HK\$1 million and in integral multiple of HK\$1 million (save that if at any time, the principal outstanding amount of the Series A Bond is less than HK\$1 million, the whole (but not part only) of the principal outstanding amount of the Series A Bond shall be redeemed); and
  - (d) the amount to be redeemed is not already the subject of a proposed conversion as stipulated in a Conversion Notice served to the Company.
- 7.2 Any notice of redemption duly given by the Company to the Series A Bondholders shall be irrevocable and the Company shall be bound to make redemption in accordance therewith. All amounts payable on redemption shall be paid on the redemption date by way of a cheque drawn on a licensed bank. Cheques will be mailed to the address of the Bondholder appearing on the Bond Register at the expense of the Company by courier (if the address of the Series A Bondholder is in Hong Kong) or by express mail (if the Series A Bondholder's address is outside Hong Kong) at the risk of the Series A Bondholder on the due date for payment of principal and any other amounts payable on the relevant Series A Bonds or in any other manners as may be agreed between the Company and the relevant Series A Bondholders.

## **8. CONVERSION**

- 8.1 Subject as hereinafter provided and the provisions under the Listing Rules and the Takeovers Code, the Series A Bondholders will have the right to convert the outstanding principal amount of the Series A Bond in whole or in part (in an authorised denomination or multiples thereof) into duly authorised, validly issued, fully-paid and unencumbered Shares at any time and from time to time during the Conversion Period in amounts of not less than HK\$1 million and in integral multiples of HK\$1 million on each conversion, save that if at any time, the principal outstanding amount of the Series A Bond is less than HK\$1 million, the whole (but not part only) of the principal outstanding amount of the Series A



Bond may be converted. The price at which each Share shall be issued upon conversion shall be HK\$[1.00] subject to adjustment as hereafter described (the “**Conversion Price**”). No fraction of a Share will be issued on conversion but an equivalent payment in Hong Kong dollars will be made to the Series A Bondholders in respect of such fraction in such manner as the Company shall in its absolute discretion think fit. Shares issued upon conversion shall rank pari passu in all respects with all other existing Shares outstanding on the Conversion Date (as defined below) notice and shall be entitled to all dividends, bonuses and other distributions the record date of which falls on a date immediately after the Conversion Date (as defined below).

For the purpose of this Condition, “**Conversion Date**” means the date on which any Series A Bond Certificate and the original, signed Conversion Notice is received by the Company (or the next business day if the Conversion Notice is delivered to the principal place of business of the Company In Hong Kong after 4:30 p.m. on a Business Day).

- 8.2 The Conversion Rights may, subject as provided herein, be exercised on any Business Day during the Conversion Period by the Series A Bondholders delivering to the Company a written notice in accordance with Condition 16 stating the intention of the Series A Bondholders to convert together with the Series A Bond Certificates. The conversion notice shall be in the form annexed to Appendix 3 to this Instrument (the “**Conversion Notice**”). The Company shall be responsible for payment of all of its own expenses, all of the taxes and stamps, issue and registration duties (if any) and Stock Exchange levies and charges (if any) arising on the issue of Shares on conversion of the Series A Bonds.
- 8.3 The Shares to be issued on exercise of the Conversion Rights shall be allotted and issued by the Company to the Series A Bondholders or as it may direct within five (5) Business Days after, and with effect from, the Conversion Date and certificates for the Shares to which the Series A Bondholders shall become entitled in consequence of exercising its Conversion Rights shall be issued in board lots with one certificate for any odd lot of Shares and shall be made available for the collection of the Series A Bondholders at the principal place of business in Hong Kong, or upon request of the Series A Bondholders Register, shall be delivered to the Series A Bondholders at their address as specified in the register of Series A Bondholders, (if appropriate) together with an endorsement on the Series A Bond Certificates by a director of the Company for any balance of the Series A Bonds not converted, or in accordance with the Central Clearing and Settlement System account credit instructions as designated by the relevant Series A Bondholder in the relevant Conversion Notice or otherwise in writing by the relevant Series A Bondholder, if any; or make available such certificates at the Hong Kong branch share registrar of the Company for collection by the relevant Series A Bondholder, if any; or make available such certificates at the Hong Kong branch share registrar of the Company for collection by the relevant Series A Bondholder. If the relevant Series A Bondholder shall request the certificates for Shares to be delivered to it, all risks in connection with the delivery shall be borne by the Series A Bondholder.

## 9. CONVERSION RESTRICTIONS

9.1 The Series A Bondholder shall not have the right to convert the whole or part of the principal amount of the Series A Bonds into Shares to the extent that immediately after such conversion:-

- (a) the minimum public float requirement for the Shares as required under the Listing Rules could not be maintained; or
- (b) the Series A Bondholder (other than Hyatt Servicing Limited, its Affiliates and their parties acting in concert) whether alone or together with parties acting in concert with it will, directly or indirectly, control or be interested in 29.90% or more of the voting rights of the Company (or in such other percentage lower than 29.90% as may from time to time be specified in the Takeovers Code being the level for triggering a mandatory general offer); or

Hyatt Servicing Limited, its Affiliates and their parties acting in concert) whether alone or together with parties acting in concert with it will, directly or indirectly, control or be interested in 19.90% or more of the voting rights of the Company (or in such other percentage lower than 19.90% as may from time to time be specified in the Takeovers Code which will result in Hyatt Servicing Limited, its Affiliates and their parties acting in concert being presumed as a party acting in concert with any shareholder of the Company and parties acting in concert with such shareholder).

## 10. ADJUSTMENTS

10.1 Subject as hereinafter provided, the Conversion Price shall from time to time be adjusted in accordance with the following provisions and so that if the event giving rise to any such adjustment shall be such as would be capable of falling within more than one of sub-paragraphs 10.1(a) to 10.1(h) inclusive of this Condition 10.1, it shall fall within the first of the applicable paragraphs to the exclusion of the remaining paragraphs provided that if such event would be capable of falling within sub-paragraph 10.1(h) as well, sub-paragraph 10.1(h) shall apply:-

- (a) If and whenever the Shares by reason of any consolidation or sub-division or reclassification become of a different nominal amount, the Conversion Price in force immediately prior thereto shall be adjusted by multiplying it by the revised nominal amount and dividing the result by the former nominal amount. Each such adjustment shall be effective from the close of business in Hong Kong on the day immediately preceding the date on which the consolidation or sub-division or reclassification becomes effective;
- (b) If and whenever the Company shall issue (other than in lieu of a cash dividend) any Shares credited as fully paid by way of capitalisation of profits or reserves (including any share premium account or capital

redemption reserve fund), the Conversion Price in force immediately prior to such issue shall be adjusted by multiplying it by the aggregate nominal amount of the issued Shares immediately before such issue and dividing the result by the sum of such aggregate nominal amount and the aggregate nominal amount of the Shares issued in such capitalisation. Each such adjustment shall be effective (if appropriate retroactively) from the commencement of the day next following the record date for such issue;

- (c) If and whenever the Company shall make any Capital Distribution (as defined in Condition 10.2) to holders (in their capacity as such) of Shares (whether on a reduction of capital or otherwise) or shall grant to such holders rights to acquire for cash assets of the Company or any of its subsidiaries, the Conversion Price in force immediately prior to such distribution or grant shall be adjusted by multiplying it by the following fraction:-

$$\frac{A - B}{A}$$

where:-

A = the market price (as defined in Condition 10.2) on the date on which the Capital Distribution or, as the case may be, the grant is publicly announced or (failing any such announcement) the date immediately preceding the date of the Capital Distribution or, as the case may be, of the grant; and

B = the fair value on the day of such announcement or (as the case may require) the immediately preceding day of the portion of the Capital Distribution or of such rights which is attributable to one Share,

Provided that the provisions of this sub-paragraph 10.1(c) shall not apply in relation to the issue of Shares paid out of profits or reserves and issued in lieu of a cash dividend.

Each such adjustment shall be effective (if appropriate retroactively) from the commencement of the day next following the record date for the Capital Distribution or grant;

- (d) If and whenever the Company shall offer to holders of Shares new Shares for subscription by way of rights, or shall grant to holders of Shares any options or warrants to subscribe for new Shares, at a price which is less than 80 per cent of the market price (as defined in Condition 10.2) at the date of the announcement of the terms of the offer or grant, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the date of the announcement of such offer or grant by the following fraction:-

$$\frac{A + B}{A + C}$$

where:-

A = the number of Shares in issue immediately before such announcement; and

B = the number of Shares which the aggregate amount (if any) payable for the Shares issued by way of rights or for the options or warrants or other rights issued by way of rights and for the total number of Shares comprised therein would purchase at such closing price per Share on whichever is the later of the last trading day immediately before the date of the announcement of a binding and irreversible issue or grant; and

C = the aggregate number of Shares issued or, as the case may be, comprised in the issue or grant.

Each such adjustment shall become effective (if appropriate retroactively) from the commencement of the day next following the record date for the offer or grant;

- (e) (i) If and whenever the Company shall issue wholly for cash any securities which by their terms are convertible into or exchangeable for or carry rights of subscription for new Shares for less than 80% of the fair value of such securities issued at the date of the announcement of the terms of issue of such securities, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to the issue by the following fraction:-

$$\frac{A + B}{A + C}$$

where:-

A = the number of Shares in issue immediately before such issue; and

B = the number of Shares which the aggregate consideration receivable for the Shares to be issued on conversion or exchange or on exercise of the right of subscription attached to such securities would purchase at the closing price on whichever is the later of the last trading day immediately before the date of the announcement of a binding and irreversible issue or grant; and

C = the maximum number of Shares to be issued on conversion or exchange of such securities or on the exercise of such rights of

subscription attached thereto at the initial conversion, exchange or subscription price or rate.

Each such adjustment shall become effective (if appropriate retrospectively) from the close of business in Hong Kong on the Business Day next preceding whichever is the earlier of the date on which the issue is announced and the date on which the issuer determines the conversion or exchange rate or subscription price; and

- (ii) If and whenever the rights of conversion or exchange or subscription attached to any such securities as are mentioned in section (i) of this sub-paragraph 10.1(e) are modified so that the consideration received for such modification is less than 80% of the fair value of such modification of rights of conversion or exchange or subscription at the date of announcement of the proposal to modify such rights of conversion or exchange or subscription, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such modification by the following fraction:-

$$\frac{A + B}{A + C}$$

where:-

A = the number of Shares in issue immediately before such modification; and

B = the number of Shares which the aggregate consideration receivable for the Shares to be issued on conversion or exchange or on exercise of the right of subscription attached to such securities would purchase at the closing price on whichever is the later of the last trading day immediately before the date of the announcement of a binding and irreversible issue or grant; and

C = the maximum number of Shares to be issued on conversion or exchange of such securities or on the exercise of such rights of subscription attached thereto at the initial conversion, exchange or subscription price or rate.

Each such adjustment shall become effective (if appropriate retrospectively) as at the date upon which such modification shall take effect. A right of conversion or exchange or subscription shall not be treated as modified for the foregoing purposes where it is adjusted to take account of rights or capitalisation issues and other events normally giving rise to adjustment of conversion or exchange terms;

- (f) If and whenever the Company shall issue wholly for cash any Shares at a price per Share which is less than 80 per cent of the market price (as defined in Condition 10.2) at the date of the announcement of the terms of such issue, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the date of such announcement by a fraction of which the numerator is the number of Shares in issue immediately before the date of such announcement plus the number of Shares which the aggregate amount payable for the issue would purchase at such market price and the denominator is the number of Shares in issue immediately before the date of such announcement plus the number of Shares so issued. Such adjustment shall become effective on the date of the issue; and
- (g) If and whenever the Company shall issue Shares for the acquisition of asset at a total Effective Consideration per Share (as defined below) which is less than 80 per cent of the market price (as defined in Condition 10.2) at the date of the announcement of the terms of such issue, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the date of such announcement by the following fraction:-

$$\frac{A + B/C}{A+D}$$

where:-

- A = the number of shares in issue immediately prior the date of announcement of the issuance of such additional shares.
- B = total Effective Consideration;
- C = the market price per share immediately before the date of announcement of the issuance of such additional shares; and
- D = the number of such additional shares to be issued in exchange for assets.

Such adjustment shall become effective on the date of issue. For the purpose of this sub-paragraph 10.1(g) "total Effective Consideration" shall be the fair value of the assets acquired; and

- (h) If the Company or the Series A Bondholders determines that an adjustment should be made to the Conversion Price as a result of one or more events or circumstances (whether or not referred to in sub-paragraphs 10.1(a) to 10.1(g) above) or that an adjustment should not be made or should be made on a different basis (even if the relevant circumstance is specifically provided for in sub-paragraphs 10.1(a) to 10.1(g) above), or that the effective date for the relevant adjustment should be a date other than that mentioned in sub-paragraphs 10.1(a) to 10.1(g) above, the Company or the Series A Bondholders may, at its own expense, request the approved

independent expert (as defined in Condition 10.2), acting as expert, to make a final determination as soon as practicable (aa) what adjustment (if any) to the Conversion Price is fair and reasonable to take account thereto and is appropriate to give the result which the approved independent expert considers in good faith to reflect the intentions of the provisions of this Condition 10 ; and (bb) the date on which such adjustment should take effect; and upon such determination such adjustment (if any) shall be made and shall take effect in accordance with such determination, provided that an adjustment shall only be made pursuant to this sub-paragraph 10.1(h) if the approved independent expert is so requested to make such a determination.

10.2 For the purposes of this Condition 10:-

"announcement"	means the publication of an announcement by the Company on the website of the Stock Exchange and "date of announcement" shall mean the date on which the announcement is so published shall have a corresponding meaning;
"approved independent expert"	means an approved independent expert (which may be an investment bank or a professional valuer or auditors) of repute in Hong Kong selected by the Company and agreed by the Series A Bondholders for the purpose of providing a specific opinion or calculation or determination hereunder and in the absence of such agreement shall be the auditors of the Company from time to time;
"Capital Distribution"	shall (without prejudice to the generality of that phrase) include distributions in cash or specie. Any dividend charged or provided for in the accounts for any financial period shall (whenever paid and however described) be deemed to be a Capital Distribution provided that any such dividend shall not automatically be so deemed if it is paid out of the aggregate of the net profits (less losses) attributable to the holders of Shares for all financial periods as shown in the audited consolidated profit and loss account of the Company and its subsidiaries for each financial period ended [31 December];
"fair value"	means the fair value (as the case may be) as determined by an approved independent expert appointed by the Company.
"issue"	shall include allot;

"market price"	means the average of the closing prices of the Share on the Stock Exchange for each of the last five (5) consecutive Stock Exchange dealing days on which trading in the Shares on the Stock Exchange took place ending on the last such trading day immediately preceding the day on or as of which the market price is to be ascertained;
"reserves"	includes unappropriated profits;
"rights"	includes rights in whatsoever form issued;
"Shares"	includes, for the purposes of Shares comprised in any offer, issue, distribution or grant pursuant to sub-paragraphs 10.1(c), 10.1(d), 10.1(e), 10.1(f) or 10.1(g) any such ordinary shares of the Company as, when fully paid, will be Shares; and
"subsidiary"	shall have the meaning as defined in the Listing Rules.

10.3 The provisions of sub-paragraphs 10.1(b), 10.1(c), 10.1(d), 10.1(e), 10.1(f) or 10.1(g) shall not apply to:-

- (a) an issue of fully paid Shares upon the exercise of any conversion rights attached to securities convertible into Shares or upon exercise of any rights (including any conversion of the Series A Bond or Series B Bond) to acquire Shares provided that an adjustment has been made under this Condition 10 in respect of the issue of such securities or granting of such rights (as the case may be); or
- (b) an issue of fully paid Shares upon the exercise of options or rights granted pursuant to the share option schemes and/or share award scheme or schemes of similar nature for employees and executives adopted by the Company and the convertible bonds issued by the Company on 25 October 2012, of which the outstanding principle amount is [HK\$850] million with the maturity date on 24 October 2015; or
- (c) an issue of Shares pursuant to exercise of rights attached to securities issued or rights granted by the Company in any such case in consideration or part consideration for the acquisition of any other securities, assets or business provided that an adjustment has been made (if appropriate) under this Condition 10 in respect of the issue of such securities or granting of such rights (as the case may be); or
- (d) an issue of Shares pursuant to a scrip dividend scheme where an amount



not less than the nominal amount of the Shares so issued is capitalised and the market value of such Shares is not more than 110 per cent of the amount of dividend which holders of the Shares could elect to or would otherwise receive in cash, for which purpose the "market value" of a Share shall mean the average of the closing prices for such Stock Exchange dealing days on which dealings in the Shares took place (being not less than five such days) as are selected by the directors of the Company in connection with determining the basis of allotment in respect of the relevant scrip dividend and which fall within the period of one month ending on the last day on which holders of Shares may elect to receive or (as the case may be) not to receive the relevant dividend in cash.

- 10.4 Any adjustment to the Conversion Price shall be made to the nearest one-tenth of a cent so that any amount under one-twentieth of a cent shall be rounded down and any amount of one-twentieth of a cent or more shall be rounded up and in no event shall any adjustment (otherwise than upon the consolidation of Shares into Shares of a larger nominal amount) involve an increase in the Conversion Price. In addition to any determination which may be made by the directors of the Company every adjustment to the Conversion Price shall be certified either (at the option of the Company) by the auditors of the Company for the time being or by an approved independent expert.
- 10.5 Notwithstanding anything contained herein, no adjustment shall be made to the Conversion Price in any case in which the amount by which the same would be reduced in accordance with the foregoing provisions of this Condition would be less than one Hong Kong cent and any adjustment that would otherwise be required then to be made shall not be carried forward in any subsequent adjustment. All calculations (including, without limitation, calculations of the Conversion Price and the current market price per Share) under this Condition 10 shall be made to two decimal places..
- 10.6 If the Company or any subsidiary of the Company shall in any way modify the rights attached to any share or loan capital so as wholly or partly to convert or make convertible such share or loan capital into, or attach thereto any rights to acquire, Shares, the Company shall appoint an approved independent expert to consider whether any adjustment to the Conversion Price is appropriate (and if such approved independent expert shall certify that any such adjustment is appropriate, the Conversion Price shall be adjusted accordingly and the provisions of Conditions 10.4, 10.5 and 10.7 shall apply).
- 10.7 Whenever the Conversion Price is adjusted as herein provided, the Company shall as soon as possible give notice to all the Series A Bondholders that the Conversion Price is adjusted (setting forth brief particulars of the event giving rise to the adjustment, the Conversion Price in effect prior to such adjustment, the adjusted Conversion Price and the effective date thereof) and shall at all times thereafter so long as the Series A Bond remains outstanding make available for inspection at its principal place of business in Hong Kong a signed copy of the said certificate of the auditors of the Company or of the relevant approved independent expert (as the case may be) and a certificate signed by a director of the Company setting forth brief particulars of the event giving rise to

the adjustment, the Conversion Price in effect prior to such adjustment, the adjusted Conversion Price and the effective date thereof and shall, on request, send a copy thereof to the Series A Bondholders.

- 10.8 If application of any of the provisions of this Condition 10 would but for this paragraph 10.8 result in the Conversion Price being reduced so that on conversion Shares shall fall to be issued at a discount to their nominal value, then the Conversion Price shall be adjusted to an amount equal to the nominal value of one Share.

## **11. PROTECTION OF THE SERIES A BONDHOLDERS**

- 11.1 So long as any of the Series A Bond are outstanding, and save with the prior written consent of the Bondholders whose share in the outstanding Bonds represents 75% or more of the aggregate of all the then outstanding Bonds:-

- (a) the Company shall keep available for issue, free from pre-emptive rights, out of its authorised but unissued capital sufficient Shares to satisfy in full the conversion rights attached to the Series A Bond at the Conversion Price from time to time and all other rights for the time being outstanding of subscription for and conversion into Shares and will ensure that all Shares delivered upon conversion of Series A Bonds pursuant to these Conditions will be duly authorised, validly issued, fully-paid and free and clear of all liens, claims, charges, security, encumbrances or like interest, and rank at least *pari passu* with all other Shares then outstanding. If at any time the number of authorised but unissued Shares shall not be sufficient to effect the Conversion Right in full, the Company will take such corporate action as may be necessary to increase its authorised but unissued Shares to such number of Shares as shall be sufficient for such purpose;;
- (b) the Company shall use its best endeavours (a) to maintain a listing for all the issued Shares on the Stock Exchange; (b) to obtain and maintain a listing on the Stock Exchange for all the Shares issued on the exercise of the Conversion Rights attaching to the Series A Bond; and (c) pay all expense in connection therewith;
- (c) the Company shall comply with and procure the compliance of all conditions imposed by the Stock Exchange or by any other competent authority (in Hong Kong or elsewhere) for approval of the issue of the Series A Bond or for the listing of and permission to deal in the Shares to be issued upon exercise by a Series A Bondholder of its Conversion Rights and to ensure the continued compliance thereof;
- (d) the Company shall ensure that all Shares issued upon conversion of the Series A Bond will be duly and validly issued fully paid and registered and shall rank in *pari passu* in all respects with the other existing Shares outstanding on the date of the conversion notice.
- (e) it will not create or issue any class of share capital other than Shares or

securities convertible into or exchangeable for Shares, without giving notice to the Series A Bondholders in accordance with Condition 16 at least fourteen (14) days prior to the date of such creation or issue, and shall not in any way modify or amend the rights attaching to the Shares as a class or attach any special restrictions thereto; or

- (f) it will ensure that the respective memorandum of association and bye-laws of the Company and its subsidiaries are not amended, repealed or altered, in each case in a manner which would adversely affect the rights of the Series A Bondholders except where such amendment or alteration is for the purpose of complying with the requirements of the Listing Rules.

#### 11A. TAXATION

All payments of principal and any other amounts payable by the Company in respect of the Series A Bonds will be made without withholding of, or deduction for or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of Hong Kong or Bermuda, or any authority therein or thereof having power to tax, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. If such withholding or deduction is so required, the Company will pay such additional amounts as may be necessary in order that the net amounts received by the Series A Bondholders after such withholding or deduction shall equal the amounts of principal and other amounts payable by the Company which would have been receivable in respect of the Series A Bonds in the absence of such withholding or deduction; except that no such additional amounts shall be payable with respect to any Series A Bond:

- (a) to any Series A Bondholder (or to a third party on behalf of a holder) (i) who is for Hong Kong or Bermuda tax purposes treated as a resident of Hong Kong or Bermuda or a Hong Kong or a Bermudan corporation or (ii) who is otherwise subject to such taxes, duties, assessments or governmental charges by reason of his being connected with Hong Kong or Bermuda otherwise than by reason only of the holding of any Series A Bond or the receipt of principal and other amounts payable by the Company in respect of any Series A Bond; or
- (b) if the Series A Bond Certificate in respect of such Series A Bond is surrendered for cancellation more than five (5) days after due date [in accordance with the Conditions] except to the extent that the holder thereof would have been entitled to such additional amounts on presenting the same for payment as at the expiry of such 5-day period.

Without prejudice to the Company's obligation to pay such additional amounts as aforesaid, the Company may request Series A Bondholders to comply with any reporting requirements under applicable Hong Kong or Bermuda law to enable such Bondholders to be treated as non-residents of Hong Kong or Bermuda or non-Hong Kong or non-Bermudan corporations for Hong Kong or Bermuda tax purposes. Bondholders may, comply with any such request if

it is reasonable.

Any reference in this Series A Bond to principal shall be deemed also to refer to any additional amounts which may be payable under this Condition.

## **12. EVENTS OF DEFAULT**

12.1 If any of the following events occurs, the Bondholders whose share in the outstanding Bond represents 75% or more of the aggregate of all the then outstanding Bonds may give notice to the Company that the Series A Bonds are, and they shall on the giving of such notice immediately become, due and payable at their principal:-

- (a) there is a default by the Company in the payment of the principal or any other amounts payable by the Company in respect of the Series A Bonds and such default is not remedied by the Company within seven (7) Business Days; or
- (b) there is a default by the Company in the performance or observance of any covenant, condition, provision or obligation contained in the Series A Bonds and such default continues for the period of thirty (30) days next following the service by Series A Bondholder holding not less than two-thirds of the outstanding Series A Bonds on the Company of notice requiring the same to be remedied; or
- (c) an encumbrancer takes possession or a receiver, manager or other similar officer is appointed of the whole or any material part of undertaking, property, assets or revenues of the Company or any of its Major Subsidiary and such possession or appointment is not terminated within thirty (30) Business Days of a written request by the Series A Bondholders; or
- (d) the Company or any of its Major Subsidiary becomes insolvent or is unable to pay its debts as they mature or applies for or consents to or suffers the appointment of any administrator, liquidator or receiver of the Company or any of its Major Subsidiary or the whole or any material part of undertaking, property, assets or revenues of the Company or any of its Major Subsidiary or takes any proceeding under any law for a readjustment or deferment of its obligations or any part of them or makes or enters into a general assignment or compromise with or for the benefit of its creditors; or
- (e) (A) any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period or 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), (B) any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of such member of the Group as a result of an event of default (however described) or (C) any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of such member of the Group due and payable prior to its specified maturity as a

result of an event of default (however described) except for a single Financial Indebtedness of less than HK\$50,000,000 in respect of the matters set out in (A) to (C); or

- (f) proceedings shall have been initiated against the Company or any Major Subsidiary under any applicable bankruptcy, reorganisation or insolvency law and such proceedings have not been discharged or stayed within a period of forty-five (45) days; or
- (g) a resolution is passed or an order of a court of competent jurisdiction is made that the Company be wound up or dissolved (otherwise than for the purposes of or pursuant to a consolidation, amalgamation, merger, reconstruction or reorganisation the terms of which have previously been approved by the Bondholders whose share in the outstanding Bond represents 75% or more of the aggregate of all the then outstanding Bonds, and upon which the continuing corporation effectively assumes the entire obligations of the Company, as the case may be, under the Series A Bonds); or
- (h) a moratorium is agreed or declared in respect of any indebtedness of the Company or any of its Major Subsidiary or any governmental authority or agency condemns, seizes, compulsorily purchases or expropriates all or a material part of the assets of the Company or any of its Major Subsidiary; or
- (i) any event occurs which under the laws of the jurisdiction of incorporation of the Company or any Major Subsidiary has an analogous effect to any of the events referred to in paragraphs (f) to (h) inclusive above; or
- (j) it is or will become unlawful for the Company to perform or comply with any of its obligations under or in respect of the Series A Bonds; or
- (k) the Shares (as a class) cease to be listed on the Stock Exchange or is suspended for a continuous period of forty-five (45) trading days due to the default of the Company or any of its directors.

**"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 Series A 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 HKFRS, 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) 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 shall be taken into account), (H) any amount raised by the issue of redeemable shares, (I) any counter indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and (J) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (A) to (I).

“**Major Subsidiary**” under this Condition means a subsidiary of the Company if the value of that subsidiary’s total assets, profit or revenue represents [5%] or more under any of the total assets, profit or revenue percentage ratios as defined under rule 14.04(9) of the Listing Rules (as amended from time to time).

### 13. VOTING

The Series A Bondholders will not be entitled to attend or vote at any meetings of the Company by reason only of it being the Series A Bondholders.

### 14. REGISTER OF SERIES A BONDHOLDERS

The Company shall procure that there shall be kept at the Company's registered office outside Hong Kong a full and complete register of Series A Bondholders and of any conversions, cancellation and destruction and of all replacement Series A Bond issued in substitution for any mutilated, defaced, lost, stolen or destroyed Bond. The Company shall further procure that a copy of such register shall be made available for inspection at its principal place of business in Hong Kong by any Series A Bondholders at all reasonable times and that extracts from the register be made available to any Series A Bondholders upon the payment of a charge of HK\$10.00 per page or such higher charge as may reasonably be determined by the Company from time to time.

### 15. EXPERTS

In giving any certificate or making any adjustment hereunder, the auditors of the Company or the approved independent expert (as the case may be) shall be deemed to be acting as experts and not as arbitrators and, in the absence of manifest error, their decision shall be conclusive and binding on the Company and the Series A Bondholders and all persons claiming through or under them respectively.

### 16. NOTICES

Any notices to be given to each Series A Bondholder or the Company shall be given by sending the notice by hand or in prepaid envelope by registered post, in the case of Series A Bondholder(s), to their address as specified in the register of Series A Bondholders or, in the case of the Company, for the attention of Mr. [●] and the company secretary of the Company, to Room 6301, The Center, 99 Queen’s Road, Central, Hong Kong for the time being or to such other address in Hong Kong as the party concerned may have notified to the other party pursuant to this Condition 16 by not less than five (5) days' prior written notice.

Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered: (a) if given or made by letter and delivered by hand or courier when actually delivered to the relevant address; (b) if given or sent by registered mail, on the date which is the third Business Day (in the case of mail sent to a local address) or the fifth Business Day (in the case of mail sent to an overseas address) after the posting thereof.

**17. REPLACEMENT SERIES A BOND**

If the Series A Bond Certificate is lost or mutilated, the Series A Bondholders shall notify the Company as soon as practicable and a replacement Series A Bond Certificate shall be issued if the Series A Bondholders provides the Company with the mutilated Series A Bond Certificate or a declaration by the Series A Bondholders or its officer that the Series A Bond Certificate had been lost or mutilated (as the case may be) or other evidence that the Series A Bond Certificate had been lost or mutilated provided that any costs and expenses incurred by the Series A Bondholders and the Company shall be borne solely by the Series A Bondholders. Any Series A Bond Certificate replaced in accordance with this Condition shall forthwith be cancelled.

**18. AMENDMENT**

The terms of this Instrument and the Conditions may be varied, expanded or amended by agreement in writing between the Company and all of the Aggregated Bondholders.

**19. GOVERNING LAW AND JURISDICTION**

The Series A Bond, this Instrument and the Conditions are governed by and shall be construed in accordance with Hong Kong law and the Company agrees to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

[End of Text]





Notes:-

*This Bond cannot be transferred to bearer on delivery and is only transferable to the extent permitted by Condition 4 of the Conditions. This Series A Bond certificate must be delivered to the secretary of the Company for cancellation and reissue of an appropriate Series A Bond certificate in the event of any such transfer*

-----

(For endorsement in the event of partial conversion)

<u>Date</u>	<u>Amount Converted</u>	<u>Amount Outstanding</u>
-------------	-------------------------	---------------------------

Appendix 2  
Form of Transfer

FOR VALUE RECEIVED, I/We, \_\_\_\_\_ (the "Transferor")  
hereby transfers to:

Name: \_\_\_\_\_ (the "Transferee")

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

(PLEASE PRINT OR TYPE NAME AND ADDRESS OF TRANSFEREE)

HK\$[●] principal amount of the Series A Bond in respect of which this Series A Bond Certificate is issued, and all rights in respect thereof and irrevocably request the Company to transfer the aforesaid principal amount (together with all interest accrued thereon) of the Series A Bond on the Company's books maintained in respect thereof.

All payments in respect of the principal amount of the Series A Bond transferred are to be made (unless otherwise instructed by the transferee) to the following account:

Name of bank:

HK\$ account number:

For the account of:

Dated:

\_\_\_\_\_  
Transferor's name

\_\_\_\_\_  
Transferee's name

\_\_\_\_\_  
Transferor's signature

\_\_\_\_\_  
Transferor's signature

\_\_\_\_\_  
Witness's signature

\_\_\_\_\_  
Witness's signature

I/We, the transferee named herein hereby confirm that I/we are/ are not a connected person of the Company (as defined in the Listing Rules).

*Notes:-*

1. *The name of the person by or on whose behalf this form of transfer is signed must correspond with the name of the registered holder as it appears on the face of the relevant Series A Bond Certificate.*
2. *A representative of the Bondholder should state the capacity in which he signs (e.g. executor).*
3. *The signature of the person effecting a transfer shall conform to any list of duly authorised specimen signatories supplied by the registered holder or be certified by a recognised bank, notary public or in such other manner as the Company may require.*
4. *This form of transfer should be dated as of the date it is deposited with the Company.*

Appendix 3  
Conversion Notice

(To be completed in duplicate)

(Please read the notes overleaf before completing this Notice.)

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

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

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

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

To: Goldpoly New Energy Holdings Limited (the “**Issuer**”)

I/We, by or on behalf of the holder or beneficial owner of the Series A Bonds (the “**Series A Bonds**”) specified below, hereby elect to convert such Series A Bonds into ordinary shares of the Issuer (the “**Shares**”) in accordance with Condition [\*] of the terms and conditions of the Series A Bonds.

1. Total principal amount and certificate numbers of Series A Bonds to be converted:

Total principal amount: \_\_\_\_\_

Certificate numbers of Series A Bonds: \_\_\_\_\_

2. Conversion Price: \_\_\_\_\_

3. Total number of Shares to be issued:

Principal amount of Series A Bonds delivered ÷ Conversion Price

= \_\_\_\_\_

4. Name(s), address(es) and signature(s) of person(s) in whose name(s) the Shares required to be delivered on conversion are to be registered :-

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

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

\_\_\_\_\_

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

5. (A) The relevant number of Shares be issued in the name(s) of the person(s) whose name(s) stand(s) on the Series A Bond Register as the Series A

Bondholder(s) represented by this Series A Bond Certificate and the certificate for such Shares be delivered to the address of the following participant of the Central Clearing and Settlement System ("CCASS") operated by the Hong Kong Securities Clearing Company Limited:

Participation I.D. of the designated CCASS participant: \_\_\_\_\_

CCASS participant's contact person: \_\_\_\_\_

CCASS participant's contact telephone number and fax number: \_\_\_\_\_

CCASS participant's address for delivery of share certificates: \_\_\_\_\_

OR

- (B) I/We hereby request that the certificates for the Shares (or other securities and property) required to be delivered upon conversion be despatched (at my/our risk and expense) to the person whose name and address is given below and in the manner specified below:

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

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

Manner of despatch (if other than by registered mail):  
\_\_\_\_\_

6. I/We hereby request that any cash amount required to be paid by the Issuer upon conversion be transferred to the bank account specified below:

Swift Code: \_\_\_\_\_

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

City: \_\_\_\_\_

ABA: \_\_\_\_\_

Account Number: \_\_\_\_\_

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

7. The Series A Bond Certificates representing the Bonds convened hereby accompany this Conversion Notice.

8. I/We hereby declare that all approvals, consents and authorisations (if any) required by the laws of to which I am / we are subject and to be obtained by me/us prior to the said conversion have been obtained and are in full force and effect and that any applicable condition thereto has been complied with by

me/us.

9. I/We, hereby confirm that I/we will not breach Condition 9 as a result of my/our conversion exercised hereunder.
10. The Company has notified the Series A Bondholders that the Company's register of shareholders will be closed on the following dates:  
  
\_\_\_\_\_

-----  
**Notes:**

- (i) *This Conversion Notice will be void unless the introductory details, Sections 1, 2, 3, 4 and 5 (if applicable) are completed.*
- (ii) *Despatch of share certificates or other securities or property will be made at the risk and expense of the converting Series A Bondholder and the converting Series A Bondholder will be required to prepay the expenses of, and submit any necessary documents required in order to effect, despatch in the manner specified.*
- (iii) *If an adjustment contemplated by the terms and conditions of the Series A Bonds is required in respect of a conversion of Series A Bonds where additional Shares are to be issued, certificates for the additional Shares deliverable pursuant to such adjustment (together with any other securities, property or cash) will be delivered or despatched in the same manner as the Shares, other securities, property and cash previously issued pursuant to the relevant Conversion Notice.*

.....

For Company's use only:-

- 1 (A) Series A Bonds conversion identification reference: \_\_\_\_\_  
(B) Conversion Date: \_\_\_\_\_  
(C) Delivery Date: \_\_\_\_\_
- 2 (A) Aggregate principal amount of Series A Bonds in respect of which Series A Bond Certificates have been deposited for conversion:  
\_\_\_\_\_  
(B) Conversion Price on Conversion Date: \_\_\_\_\_  
(C) Number of Shares issuable: \_\_\_\_\_  
(disregard fractions)
- 3 (If applicable) amount of cash payment due to converting Series A Bondholder under Series A Bond [\*]:  
\_\_\_\_\_

*Note: The Company must complete items 1, 2 and 3 (if applicable).*

Appendix 4  
FORM OF REDEMPTION NOTICE

Goldpoly New Energy Holdings Limited

HK\$[●] Series A Convertible Bonds due [\*]

**REDEMPTION NOTICE**  
(To be completed in duplicate)

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

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

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

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

To: Goldpoly New Energy Holdings Limited (the “**Issuer**”)

I/We, by or on behalf of the holder or beneficial owner of the Series A Bonds (the “**Series A Bonds**”) specified below, hereby elect to have the following principal amount of the Series A Bonds redeemed pursuant to and in accordance with Condition [\*] on [insert relevant Redemption Date ].

Total principal amount and certificate numbers of Series A Bonds to be converted:

Total principal amount: \_\_\_\_\_

Certificate numbers of Series A Bonds: \_\_\_\_\_

Payment should be made by transfer to [details of the relevant account maintained by the payee] with [name and address of the relevant bank in Hong Kong].

If the Series A Bond Certificates referred to above are to be returned to the undersigned in accordance with the Conditions relating to the Series A Bonds, they should be returned by registered mail to:

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

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

\_\_\_\_\_

\_\_\_\_\_

**EXECUTION PAGE FOR THE BOND INSTRUMENT**

**THE COMPANY**

SEALED with the Common Seal of )  
GOLDPOLY NEW ENERGY )  
HOLDINGS LIMITED )  
(金保利新能源有限公司) )  
and signed by \_\_\_\_\_ )  
 )  
in the presence of:- )



(B) 部分

Dated the \_\_\_\_\_ day of \_\_\_\_\_

**GOLDPOLY NEW ENERGY HOLDINGS LIMITED**  
**(金保利新能源有限公司\*)**  
**(as the Company)**

---

**BOND INSTRUMENT**  
constituting the series B convertible bonds in the  
aggregate principal amount of HK\$[•] issued by  
**GOLDPOLY NEW ENERGY HOLDINGS LIMITED**  
**(金保利新能源有限公司\*)**  
due [•]

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\* for identification purposes only

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THIS INSTRUMENT is made on \_\_\_\_\_

BY:-

**GOLDPOLY NEW ENERGY HOLDINGS LIMITED** (金保利新能源有限公司), a company incorporated under the laws of Bermuda with limited liabilities, whose registered office is at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda and whose principal place of business is situate at Room 6301, The Center, 99 Queen's Road, Central, Hong Kong and whose shares are listed on the main board of the Stock Exchange (the "**Company**").

**IN FAVOUR OF**

**THE PERSONS** for the time being and from time to time registered as holders of the Series B Bonds referred to below (the "**Series B Bondholders**")

**WHEREAS:-**

- (A) Pursuant to the agreement dated on [●] in relation to the sale and purchase of [92.17]% issued share capital of China Merchants New Energy Holdings Limited (招商新能源控股有限公司) entered into amongst the Company, Profit Icon Investments Limited as the purchaser, the vendors as named therein (the "**Sale and Purchase Agreement**") and the resolutions of the shareholders of the Company passed on the [●] day of [●], the Company is authorised to create and issue, among others, Series B Bonds in the principal amount of HK\$[●] which, at the option of the relevant Series B Bondholders, are convertible into Shares at the Conversion Price (subject to adjustments from time to time).
- (B) The Series B Bonds will be represented by individual Series B Bond Certificates. Each Series B Bondholder will be issued with a Series B Bond Certificate representing its entire holding of the Series B Bonds.
- (C) The board of directors of the Company has resolved to constitute the Series B Bonds by way of a deed poll.

**IT IS HEREBY AGREED AS FOLLOWS:-**

1. **INTERPRETATION**

1.1 In this Instrument, unless the context otherwise requires, the following expressions shall have the following meanings:-

"Affiliate"

means:

- (a) with respect to any body corporate, any other body corporate, unincorporated entity or person directly or indirectly Controlling, directly or indirectly Controlled by or under direct or indirect common control with, such

body corporate; and

- (b) with respect to any individual, his/her relative or any body corporate, unincorporated entity or person directly or indirectly Controlling, directly or indirectly Controlled by or under direct or indirect common control with, such individual or his/her relative;

“Bonds”	means Series A Bonds and Series B Bonds;
“Bondholders”	means Series A Bondholders and Series B Bondholders;
“Bond Instrument” or “Instrument”	means this instrument executed by the Company by way of deed poll constituting the Series B Bond, as amended and/or supplemented from time to time;
“Business Day”	means a day on which banks are generally open for business in Hong Kong and the Cayman Islands, except a Sunday and a Saturday or a day on which a tropical cyclone warning signal no. 8 or above or a “black” rainstorm warning signal is hoisted in Hong Kong at any time between 9:00 a.m. and 5:00 p.m.;
“Conditions”	means the terms and conditions as set out in this Instrument (with such amendments thereto as the Company and the Series B Bondholders may mutually agree in writing), and a “Condition” refers to the relative numbered paragraph of the Conditions;
“Control”	means the power of a person to secure that the policies and affairs of another are conducted and decisions made directly or indirectly in accordance with the wishes of that person by means of: <ul style="list-style-type: none"><li>(a) in the case of a company, being the beneficial owner of more than 50 per cent. of either the issued share capital of that company or of the voting rights in that company, or having the right to appoint or remove a majority of the directors or otherwise control the votes at board meetings of that company by virtue of any powers conferred by the articles of association, shareholders’ agreement or any other document regulating the affairs of that company;</li></ul>

- (b) in the case of a partnership, being the beneficial owner of more than 50 per cent. of the capital of that partnership, or having the right to control the composition of or the votes to the majority of the management of that partnership by virtue of any powers conferred by the partnership agreement or any other document regulating the affairs of that partnership;

and “Controlled” shall be construed accordingly;

“Conversion Notice”	shall have the meaning ascribed to it pursuant to Condition 8.2 upon an exercise of its Conversion Rights, substantially in the form set out in Appendix 3 to this Instrument;
“Conversion Period”	means a period commencing from the day immediately after the end of the Escrow Period and ending on the Maturity Date;
“Conversion Price”	has the meaning ascribed to it pursuant to Condition 8 of this Instrument;
“Conversion Rights”	means the rights attached to the Series B Bond to convert any part of the principal amount thereof into Shares pursuant to Condition 8.1;
“Equity Share Capital”	means the issued share capital of the Company excluding any part thereof which does not either as respects dividends or as respects capital carry any right to participate beyond a specified amount or beyond an amount calculated by reference to a specified rate in a distribution;
“Escrow Agent”	has the meaning ascribed thereto in Condition 7.4;
“Escrow Period”	means the period commencing from the issue date of the Series B Bonds and ending on the date when the Series B Bonds is released by the Escrow Agent from the escrow arrangement pursuant to the escrow agreement dated [●];
“HK\$”	means Hong Kong dollars, the lawful currency of Hong Kong;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People's Republic of China;
“Maturity Date”	means the [●], being the date falling on the fifth

	anniversary of the issue date of the Series B Bonds or if such date is not a Business Day, the Business Day immediately following such date;
“Listing Rules”	means the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (as amended from time to time);
“Series A Bond”	means any of the convertible bonds to be issued by the Company in the aggregate principal amount of HK\$ [●] in the form of registered bonds by the Company as constituted by an instrument dated [*], and the reference to the “Series A Bonds” shall be construed accordingly;
“Series A Bondholder(s)”	means person(s) who for the time being is the registered holder(s) of the Series A Bond(s);
“Series B Bond”	means any of the convertible bonds to be issued by the Company in the aggregate principal amount of HK\$ [●] in the form of registered bonds by the Company as constituted by this Instrument, and the reference to the “Series B Bonds” shall be construed accordingly;
Series B Bondholders	means person(s) who for the time being is the registered holder(s) of the Series B Bond(s);
“Series B Bond Certificate(s)”	means the certificates to be issued in respect of the Series B Bond in the form or set out in <b>Appendix 1</b> to this Instrument evidencing the title of the Series B Bondholder(s) to the Series B Bond and as may be modified or amended from time to time in accordance with the Conditions of this Instrument;
“Shares”	means the shares of HK\$[0.10] each in the issued share capital of the Company existing on the date hereof and all other (if any) stock or shares from time to time and for the time being ranking pari passu therewith and all other (if any) shares or stock in the Equity Share Capital of the Company resulting from any sub-division, consolidation or re-classification of the Shares;
“Stock Exchange”	means The Stock Exchange of Hong Kong Limited;

“Takeovers Code”	means the Code on Takeovers and Mergers approved by the Securities and Futures Commission as amended from time to time;
“Transfer Form”	has the meaning ascribed to it pursuant to Condition 4.5; and
“%”	means per cent.

1.2 For the purpose of these terms and conditions, in relation to the Series B Bonds, “**outstanding Series B Bonds**” refers to all the Series B Bonds issued other than:

- (a) those which have been redeemed or in respect of which Conversion Right has been exercised and which have been cancelled in accordance with the Conditions;
- (b) those in respect of which the date for redemption in accordance with the Conditions has occurred and the redemption moneys have been duly paid to the relevant Series B Bondholder or on its behalf;
- (c) those mutilated or defaced Series B Bonds which have been surrendered in exchange for replacement Series B Bonds pursuant to Condition [17];
- (d) (for the purpose only of determining how many Series B Bonds are outstanding and without prejudice to their status for any other purpose) those Series B Bonds alleged to have been lost, stolen or destroyed and in respect of which replacement Series B Bonds have been issued pursuant to Condition [17]; or
- (e) those which have been redeemed and cancelled as provided in Condition [7].

1.3 Except as otherwise expressly provided, expressions defined in the Companies Ordinance (Cap. 32 of the Laws of Hong Kong) as at the date hereof have the same meanings when used in this Instrument.

1.4 A reference to a statute or statutory provision includes a reference:-

- (a) to that statute or provision as from time to time modified or re-enacted;
- (b) to any repealed statute or statutory provision which it re-enacts (with or without modification); and
- (c) to any orders, regulations, instruments or other subordinate legislation



made under the relevant statute or statutory provision.

- 1.5 Unless the context otherwise requires:-
- (a) words in the singular include the plural, and vice versa;
  - (b) words importing any gender include all genders; and
  - (c) a reference to a person includes a reference to a body corporate and to an unincorporated body of persons.
- 1.6 A reference to Recitals, a Condition, Sub-condition or Appendix is to the recitals, a condition and a sub-condition of or the schedule to this Instrument.
- 1.7 The headings are for convenience only and do not affect interpretation of this Instrument.

## 2. AMOUNT AND ISSUE OF THE SERIES B BONDS

- 2.1 The Series B Bonds are issued in registered form in denominations of HK\$1 million or integral multiples thereof (“**authorised denominations**”) or at the election of a Series B Bondholder in a global Bond representing all of its holding. A Series B Bond Certificate will be issued by execution in manual or facsimile form by a duly authorised officer of the Company to each Series B Bondholder in respect of its registered holding of each Series B Bond.
- 2.2 The Series B Bonds shall be issued at its full face value subject to the Conditions and shall be binding on the Company and shall enure for the benefit of the Series B Bondholders.

## 3. PERIOD

Subject as provided herein, the Series B Bond shall mature on the Maturity Date, and the Company shall repay the principal moneys of the outstanding under the Series B Bonds to the Series B Bondholders together with all interest (if any) accrued thereon up to and including the date of actual repayment on the Maturity Date amounts due and payable under these Conditions.

## 4. STATUS AND TRANSFER

- 4.1 The obligations of the Company arising under the Series B Bonds constitute general, unconditional and unsecured obligations of the Company and rank, and will rank equally among themselves and pari passu with all other present and future unsecured and unsubordinated obligations of the Company (including the Series B Bonds) except for obligations accorded preference by mandatory provisions of applicable law. No application will be made for a listing of the Series B Bond.
- 4.2 Each holder of the Series B Bond will (except as otherwise required by law) be treated as its absolute owner for all purposes (whether or not it is overdue and

regardless of any notice of ownership, trust or any interest in it or any writing on, or the theft or loss of, the Series B Bond Certificate issued in respect of it) and no person will be liable for so treating the holder. Every subsequent Series B Bondholder shall be recognised by the Company as entitled to its Series B Bonds free from any equity, set off or cross claim on the part of the Company against the original or any intermediate holder of such Series B Bonds.

- 4.3 Transfer or assignment of the Series B Bond shall be subject to the conditions, approvals, requirements and any other provisions of or under the Stock Exchange or their rules and regulations, the approval of listing in respect of the Shares which may fall to be issued upon the exercise of the Series B Bond and all applicable laws and regulations and the other provisions herein PROVIDED THAT, no transfer or assignment may be made to (i) any person during the Escrow Period and (ii) a connected person of the Company (within the meaning of the Listing Rules) save for a Permitted Transfer and unless the principal amount to be assigned or transferred shall be in an amount not less than HK\$1 million and in integral multiple of HK\$1 million. For the purpose of this Condition 4.3, a "Permitted Transfer refers to a transfer to a person who is an Affiliate of a Series B Bondholder and such transfer has been approved by the independent non-executive directors of the Company.
- 4.4 In the event that the prior consent of the Stock Exchange is required for transfer or assignment to any party, the Company shall use all reasonable endeavours to facilitate any such assignment or transfer of the Series B Bond, including making any necessary applications to the Stock Exchange for approval (if required).
- 4.5 The title to the Series B Bond will be passed when the transfer or assignment is registered in the register of the Series B Bondholders referred to in Condition 14. Subject to Condition 4.3 above, a Series B Bond (in an authorised denomination or multiples thereof) may be transferred by delivering the Series B Bond Certificates issued in respect of that Series B Bond (for cancellation) with the form of transfer in the form annexed to Appendix 2 of this Instrument or such other form of transfer approved by the directors of the Company from time to time (the "Transfer Form") duly completed and signed (the Series B Bond Certificate(s) and the Transfer Form, together the "Transfer Documents") and delivered to the principal office of the Company in Hong Kong for the time being for registration. The Company shall after receipt of the Transfer Documents forthwith register the transfer and make a notation on the Bond Register to the effect that the Series B Bond is registered in the name of the transferee specified in such form of transfer.

Each new Series B Bond Certificate to be issued upon a transfer of Series B Bonds will within five (5) Business Days of receipt by the Company of the Transfer Documents (including the duly completed Transfer Form), be sent at the expense of the Company by courier (if the address of the transferee is in Hong Kong) or by express mail (if the transferee's address is outside Hong Kong) at the risk of the transferee entitled to the Series B Bonds to the address specified in the form of transfer.

Where only part of the principal amount of a Series B Bond (being an authorised denomination or multiples thereof) is to be transferred, converted or redeemed, a new Series B Bond Certificate in respect of the principal amount of the Series B Bonds not so transferred, converted or redeemed shall be issued and sent at the expense of the Company by courier (if the address of the Series B Bondholder entitled is in Hong Kong) or by express mail (if the Series B Bondholder's address is outside Hong Kong) at the risk of that Series B Bondholder to the address specified in the Series B Bond Register, within five (5) Business Days of deposit or surrender of the original Series B Bond Certificate.

- 4.6 Any legal and other costs and expenses which may be incurred by the Company in connection with any transfer or assignment of the Series B Bond or any request therefore shall be borne by the Company. For the avoidance of doubt, the stamp duty (if any) incurred in connection with any transfer or assignment of the Series B Bond shall be born by the transferor and the transferee themselves in accordance with their own agreement.
- 4.7 No Series B Bondholder may require the transfer of a Series B Bond to be registered after the Series B Bond Certificate in respect of such Series B Bond has been deposited for conversion pursuant to Condition [8].

## 5. INTEREST

The Series B Bond shall not bear any interest.

## 6. PAYMENT

- 6.1 Payment of the principal in respect of the Series B Bond will be made for value on the relevant due date by way of the Company's or any of the Company's subsidiary's cheque drawn on a licensed bank in Hong Kong to be delivered to the Series B Bondholders at the address as specified in the Series B Bond Register, subject in all cases to any fiscal or other laws and regulations applicable thereto. Cheques will be mailed to the address of the Bondholder appearing on the Bond Register at the expense of the Company by courier (if the address of the Bondholder is in Hong Kong) or by express mail (if the Bondholder's address is outside Hong Kong) at the risk of the Bondholder on the due date for payment of principal and any other amounts payable on the relevant Series B Bonds or such other manner as may be agreed between the Company and the relevant Series B Bondholders. The Series B Bond Certificates shall be surrendered to the Company forthwith upon the payment of the principal at maturity.
- 6.2 If the due date for payment of any amount in respect of the Series B Bond is not a Business Day, the Series B Bondholders will be entitled to the payment on the next following Business Day in the same manner together with interest accrued (if any) and other payment. For the avoidance of doubt, no further payment will be made as a consequence of the due date not being a Business Day.
- 6.3 All payments by the Company hereunder shall be made, not later than 4:00 p.m.

(Hong Kong time) on the due date.

- 6.4 In the event of default, interest at the rate of [three(3)] per cent per annum over the principal in respect of the Series B Bond will be accrued from the relevant due date up to the date of actual payment (both dates inclusive) of the full amount (both before and after judgment).

## 7. REDEMPTION AND CANCELLATION

- 7.1 The Company shall be entitled to redeem in whole or in part of the principal amount of the outstanding Series B Bond at 100 per cent. of the principal amount thereof on any Business Day after the Escrow Period, provided that:
- (a) the Company shall give the Series B Bondholders a written notice of redemption in accordance with Condition 16 and in the form annexed to Appendix 4, specifying the amount to be redeemed, the redemption date. The relevant Series B Bondholder shall deliver the relevant Series B Bond Certificate to the Company on the redemption date against payment by the Company of the full redemption amount;
  - (b) the redemption shall not take place earlier than the expiry of fourteen (14) days or later than the expiry of [twenty-one (21) days] after the date of the notice of redemption;
  - (c) the principal amount to be redeemed shall be in an amount not less than HK\$1 million and in integral multiple of HK\$1 million (save that if at any time, the principal outstanding amount of the Series B Bond is less than HK\$1 million, the whole (but not part only) of the principal outstanding amount of the Series B Bond shall be redeemed); and
  - (d) the amount to be redeemed is not already the subject of a proposed conversion as stipulated in a Conversion Notice served to the Company.
- 7.2 Any notice of redemption duly given by the Company to the Series B Bondholders shall be irrevocable and the Company shall be bound to make redemption in accordance therewith. All amounts payable on redemption shall be paid on the redemption date by way of a cheque drawn on a licensed bank. Cheques will be mailed to the address of the Bondholder appearing on the Bond Register at the expense of the Company by courier (if the address of the Series B Bondholder is in Hong Kong) or by express mail (if the Series B Bondholder's address is outside Hong Kong) at the risk of the Series B Bondholder on the due date for payment of principal and any other amounts payable on the relevant Series B Bonds or in any other manners as may be agreed between the Company and the relevant Series B Bondholders.
- 7.3 Notwithstanding the provisions in Condition 7.1, in the event the Profit Guarantee (“利润保证” as defined in clause 8.1 of the Sale and Purchase Agreement) is not met, the Company shall be entitled to request the Series B Bondholders to surrender the Series B Bonds and cancel such principal amount of the outstanding Series B Bonds as representing the difference between the

amount of HK\$847,964,000 and the product of HK\$847,964,000 times the actual aggregate profit of the Target Group (as defined in the Sale and Purchase Agreement) as showed in the audited financial statements of the Target Group for the three financial years ending 31 December 2015 or such shorter period (the “**Financial Statements**”) as provided in clauses 8.1 and 8.2 of the Sale and Purchase Agreement divided by HK\$495,000,000 (the “**Difference**”).

- 7.4 In the event the Profit Guarantee is not met, the Company shall within ten (10) Business Days after the issue date of the Financial Statement instruct the [\*] (“**Escrow Agent**”) to release the Series B Bond Certificates being held in escrow by the Escrow Agent pursuant to an escrow agreement dated [\*] to the Company. The Company shall cancel such principal amount of the Series B Bonds equivalent to the Difference and shall within five (5) Business Days upon the receipt of the escrowed Series B Bond Certificates from the Escrow Agent issue new Series B Bond Certificates for such principal amount of the Series B Bonds not so cancelled. The principal amount of each Series B Bond Certificates shall be in such amount as equivalent to the respective Series B Bondholder’s proportionate interest in the Series B Bonds held by the Escrow Agent after deducting therefrom their proportionate share of the Difference. The new Series B Bond Certificates be sent at the expense of the Company by courier (if the address of the Series B Bondholder is in Hong Kong) or by express mail (if the address of the Series B Bondholder is outside Hong Kong) at the risk of the relevant Series B Bondholder to the address specified in the register of Series B Bondholders.

## 8. CONVERSION

- 8.1 Subject as hereinafter provided and the provisions under the Listing Rules and the Takeovers Code, the Series B Bondholders will have the right to convert the outstanding principal amount of the Series B Bond in whole or in part (in an authorised denomination or multiples thereof) into duly authorised, validly issued, fully-paid and unencumbered Shares at any time and from time to time during the Conversion Period in amounts of not less than HK\$1 million and in integral multiples of HK\$1 million on each conversion, save that if at any time, the principal outstanding amount of the Series B Bond is less than HK\$1 million, the whole (but not part only) of the principal outstanding amount of the Series B Bond may be converted. The price at which each Share shall be issued upon conversion shall be HK\$[1.00] subject to adjustment as hereafter described (the “**Conversion Price**”). No fraction of a Share will be issued on conversion but an equivalent payment in Hong Kong dollars will be made to the Series B Bondholders in respect of such fraction in such manner as the Company shall in its absolute discretion thinks fit. Shares issued upon conversion shall rank pari passu in all respects with all other existing Shares outstanding on the Conversion Date (as defined below) notice and shall be entitled to all dividends, bonuses and other distributions the record date of which falls on a date immediately after the Conversion Date (as defined below).

For the purpose of this Condition, “**Conversion Date**” means the date on which any Series B Bond Certificate and the original, signed Conversion Notice is received by the Company (or the next business day if the Conversion Notice is

delivered to the principal place of business of the Company In Hong Kong after 4:30 p.m. on a Business Day).

- 8.2 The Conversion Rights may, subject as provided herein, be exercised on any Business Day during the Conversion Period by the Series B Bondholders delivering to the Company a written notice in accordance with Condition 16 stating the intention of the Series B Bondholders to convert together with the Series B Bond Certificates. The conversion notice shall be in the form annexed to Appendix 3 to this Instrument (the “**Conversion Notice**”). The Company shall be responsible for payment of all of its own expenses, all of the taxes and stamps, issue and registration duties (if any) and Stock Exchange levies and charges (if any) arising on the issue of Shares on conversion of the Series B Bonds.
- 8.3 The Shares to be issued on exercise of the Conversion Rights shall be allotted and issued by the Company to the Series B Bondholders or as it may direct within five (5) Business Days after, and with effect from, the Conversion Date and certificates for the Shares to which the Series B Bondholders shall become entitled in consequence of exercising its Conversion Rights shall be issued in board lots with one certificate for any odd lot of Shares and shall be made available for the collection of the Series B Bondholders at the principal place of business in Hong Kong, or upon request of the Series B Bondholders Register, shall be delivered to the Series B Bondholders at their address as specified in the register of Series B Bondholders, (if appropriate) together with an endorsement on the Series B Bond Certificates by a director of the Company for any balance of the Series B Bonds not converted, or in accordance with the Central Clearing and Settlement System account credit instructions as designated by the relevant Series B Bondholder in the relevant Conversion Notice or otherwise in writing by the relevant Series B Bondholder, if any; or make available such certificates at the Hong Kong branch share registrar of the Company for collection by the relevant Series B Bondholder , if any; or make available such certificates at the Hong Kong branch share registrar of the Company for collection by the relevant Series B Bondholder. If the relevant Series B Bondholder shall request the certificates for Shares to be delivered to it, all risks in connection with the delivery shall be borne by the Series B Bondholder.

## 9. CONVERSION RESTRICTIONS

- 9.1 The Series B Bondholder shall not have the right to convert the whole or part of the principal amount of the Series B Bonds into Shares to the extent that immediately after such conversion:-
- (a) the minimum public float requirement for the Shares as required under the Listing Rules could not be maintained; or
  - (b) the Series B Bondholder (other than Hyatt Servicing Limited, its Affiliates and their parties acting in concert) whether alone or together with parties acting in concert with it will, directly or indirectly, control or be interested in 29.90% or more of the voting rights of the Company (or in such other

percentage lower than 29.90% as may from time to time be specified in the Takeovers Code being the level for triggering a mandatory general offer); or

Hyatt Servicing Limited, its Affiliates and their parties acting in concert) whether alone or together with parties acting in concert with it will, directly or indirectly, control or be interested in 19.90% or more of the voting rights of the Company (or in such other percentage lower than 19.90% as may from time to time be specified in the Takeovers Code which will result in Hyatt Servicing Limited, its Affiliates and their parties acting in concert being presumed as a party acting in concert with any shareholder of the Company and parties acting in concert with such shareholder).

## **10. ADJUSTMENTS**

10.1 Subject as hereinafter provided, the Conversion Price shall from time to time be adjusted in accordance with the following provisions and so that if the event giving rise to any such adjustment shall be such as would be capable of falling within more than one of sub-paragraphs 10.1(a) to 10.1(h) inclusive of this Condition 10.1, it shall fall within the first of the applicable paragraphs to the exclusion of the remaining paragraphs provided that if such event would be capable of falling within sub-paragraph 10.1(h) as well, sub-paragraph 10.1(h) shall apply:-

- (a) If and whenever the Shares by reason of any consolidation or sub-division or reclassification become of a different nominal amount, the Conversion Price in force immediately prior thereto shall be adjusted by multiplying it by the revised nominal amount and dividing the result by the former nominal amount. Each such adjustment shall be effective from the close of business in Hong Kong on the day immediately preceding the date on which the consolidation or sub-division or reclassification becomes effective;
- (b) If and whenever the Company shall issue (other than in lieu of a cash dividend) any Shares credited as fully paid by way of capitalisation of profits or reserves (including any share premium account or capital redemption reserve fund), the Conversion Price in force immediately prior to such issue shall be adjusted by multiplying it by the aggregate nominal amount of the issued Shares immediately before such issue and dividing the result by the sum of such aggregate nominal amount and the aggregate nominal amount of the Shares issued in such capitalisation. Each such adjustment shall be effective (if appropriate retroactively) from the commencement of the day next following the record date for such issue;
- (c) If and whenever the Company shall make any Capital Distribution (as defined in Condition 10.2) to holders (in their capacity as such) of Shares (whether on a reduction of capital or otherwise) or shall grant to such holders rights to acquire for cash assets of the Company or any of its subsidiaries, the Conversion Price in force immediately prior to such

distribution or grant shall be adjusted by multiplying it by the following fraction:-

$$\frac{A - B}{A}$$

where:-

A = the market price (as defined in Condition 10.2) on the date on which the Capital Distribution or, as the case may be, the grant is publicly announced or (failing any such announcement) the date immediately preceding the date of the Capital Distribution or, as the case may be, of the grant; and

B = the fair value on the day of such announcement or (as the case may require) the immediately preceding day of the portion of the Capital Distribution or of such rights which is attributable to one Share,

Provided that the provisions of this sub-paragraph 10.1(c) shall not apply in relation to the issue of Shares paid out of profits or reserves and issued in lieu of a cash dividend.

Each such adjustment shall be effective (if appropriate retroactively) from the commencement of the day next following the record date for the Capital Distribution or grant;

- (d) If and whenever the Company shall offer to holders of Shares new Shares for subscription by way of rights, or shall grant to holders of Shares any options or warrants to subscribe for new Shares, at a price which is less than 80 per cent of the market price (as defined in Condition 10.2) at the date of the announcement of the terms of the offer or grant, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the date of the announcement of such offer or grant by the following fraction:-

$$\frac{A + B}{A + C}$$

where:-

A = the number of Shares in issue immediately before such announcement; and

B = the number of Shares which the aggregate amount (if any) payable for the Shares issued by way of rights or for the options or warrants or other rights issued by way of rights and for the total number of Shares comprised therein would purchase at such closing price per Share on whichever is the later of the last trading day immediately before the date of the announcement of



a binding and irreversible issue or grant; and

C = the aggregate number of Shares issued or, as the case may be, comprised in the issue or grant.

Each such adjustment shall become effective (if appropriate retroactively) from the commencement of the day next following the record date for the offer or grant;

- (e) (i) If and whenever the Company shall issue wholly for cash any securities which by their terms are convertible into or exchangeable for or carry rights of subscription for new Shares for less than 80% of the fair value of such securities issued at the date of the announcement of the terms of issue of such securities, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to the issue by the following fraction:-

$$\frac{A + B}{A + C}$$

where:-

A = the number of Shares in issue immediately before such issue;

B = the number of Shares which the aggregate consideration receivable for the Shares to be issued on conversion or exchange or on exercise of the right of subscription attached to such securities would purchase at the closing price on whichever is the later of the last trading day immediately before the date of the announcement of a binding and irreversible issue or grant; and

C = the maximum number of Shares to be issued on conversion or exchange of such securities or on the exercise of such rights of subscription attached thereto at the initial conversion, exchange or subscription price or rate.

Each such adjustment shall become effective (if appropriate retrospectively) from the close of business in Hong Kong on the Business Day next preceding whichever is the earlier of the date on which the issue is announced and the date on which the issuer determines the conversion or exchange rate or subscription price; and

- (ii) If and whenever the rights of conversion or exchange or subscription attached to any such securities as are mentioned in section (i) of this sub-paragraph 10.1(e) are modified so that the consideration received for such modification is less than 80% of the fair value of such modification of rights of conversion or exchange or subscription at

the date of announcement of the proposal to modify such rights of conversion or exchange or subscription, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such modification by the following fraction:-

$$\frac{A + B}{A + C}$$

where:-

A = the number of Shares in issue immediately before such modification; and

B = the number of Shares which the aggregate consideration receivable for the Shares to be issued on conversion or exchange or on exercise of the right of subscription attached to such securities would purchase at the closing price on whichever is the later of the last trading day immediately before the date of the announcement of a binding and irreversible issue or grant; and

C = the maximum number of Shares to be issued on conversion or exchange of such securities or on the exercise of such rights of subscription attached thereto at the initial conversion, exchange or subscription price or rate.

Each such adjustment shall become effective (if appropriate retrospectively) as at the date upon which such modification shall take effect. A right of conversion or exchange or subscription shall not be treated as modified for the foregoing purposes where it is adjusted to take account of rights or capitalisation issues and other events normally giving rise to adjustment of conversion or exchange terms;

- (f) If and whenever the Company shall issue wholly for cash any Shares at a price per Share which is less than 80 per cent of the market price (as defined in Condition 10.2) at the date of the announcement of the terms of such issue, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the date of such announcement by a fraction of which the numerator is the number of Shares in issue immediately before the date of such announcement plus the number of Shares which the aggregate amount payable for the issue would purchase at such market price and the denominator is the number of Shares in issue immediately before the date of such announcement plus the number of Shares so issued. Such adjustment shall become effective on the date of the issue; and
- (g) If and whenever the Company shall issue Shares for the acquisition of asset at a total Effective Consideration per Share (as defined below) which

is less than 80 per cent of the market price (as defined in Condition 10.2) at the date of the announcement of the terms of such issue, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the date of such announcement by the following fraction:-

$$\frac{A + B/C}{A+D}$$

where:-

- A = the number of shares in issue immediately prior the date of announcement of the issuance of such additional shares.
- B = total Effective Consideration;
- C = the market price per share immediately before the date of announcement of the issuance of such additional shares; and
- D = the number of such additional shares to be issued in exchange for assets.

Such adjustment shall become effective on the date of issue. For the purpose of this sub-paragraph 10.1(g) "total Effective Consideration" shall be the fair value of the assets acquired; and

- (h) If the Company or the Series B Bondholders determines that an adjustment should be made to the Conversion Price as a result of one or more events or circumstances (whether or not referred to in sub-paragraphs 10.1(a) to 10.1(g) above) or that an adjustment should not be made or should be made on a different basis (even if the relevant circumstance is specifically provided for in sub-paragraphs 10.1(a) to 10.1(g) above), or that the effective date for the relevant adjustment should be a date other than that mentioned in sub-paragraphs 10.1(a) to 10.1(g) above, the Company or the Series B Bondholders may, at its own expense, request the approved independent expert (as defined in Condition 10.2), acting as expert, to make a final determination as soon as practicable (aa) what adjustment (if any) to the Conversion Price is fair and reasonable to take account thereto and is appropriate to give the result which the approved independent expert considers in good faith to reflect the intentions of the provisions of this Condition 10 ; and (bb) the date on which such adjustment should take effect; and upon such determination such adjustment (if any) shall be made and shall take effect in accordance with such determination, provided that an adjustment shall only be made pursuant to this sub-paragraph 10.1(h) if the approved independent expert is so requested to make such a determination.

10.2 For the purposes of this Condition 10:-

"announcement" means the publication of an announcement by

	the Company on the website of the Stock Exchange and "date of announcement" shall mean the date on which the announcement is so published shall have a corresponding meaning;
"approved independent expert"	means an approved independent expert (which may be an investment bank or a professional valuer or auditors) of repute in Hong Kong selected by the Company and agreed by the Series B Bondholders for the purpose of providing a specific opinion or calculation or determination hereunder and in the absence of such agreement shall be the auditors of the Company from time to time;
"Capital Distribution"	shall (without prejudice to the generality of that phrase) include distributions in cash or specie. Any dividend charged or provided for in the accounts for any financial period shall (whenever paid and however described) be deemed to be a Capital Distribution provided that any such dividend shall not automatically be so deemed if it is paid out of the aggregate of the net profits (less losses) attributable to the holders of Shares for all financial periods as shown in the audited consolidated profit and loss account of the Company and its subsidiaries for each financial period ended [31 December];
"fair value"	means the fair value (as the case may be) as determined by an approved independent expert appointed by the Company.
"issue"	shall include allot;
"market price"	means the average of the closing prices of the Share on the Stock Exchange for each of the last five (5) consecutive Stock Exchange dealing days on which trading in the Shares on the Stock Exchange took place ending on the last such trading day immediately preceding the day on or as of which the market price is to be ascertained;
"reserves"	includes unappropriated profits;
"rights"	includes rights in whatsoever form issued;
"Shares"	includes, for the purposes of Shares comprised

in any offer, issue, distribution or grant pursuant to sub-paragraphs 10.1(c), 10.1(d), 10.1(e), 10.1(f) or 10.1(g) any such ordinary shares of the Company as, when fully paid, will be Shares; and

"subsidiary" shall have the meaning as defined in the Listing Rules.

10.3 The provisions of sub-paragraphs 10.1(b), 10.1(c), 10.1(d), 10.1(e), 10.1(f) or 10.1(g) shall not apply to:-

- (a) an issue of fully paid Shares upon the exercise of any conversion rights attached to securities convertible into Shares or upon exercise of any rights (including any conversion of the Series A Bond or Series B Bond) to acquire Shares provided that an adjustment has been made under this Condition 10 in respect of the issue of such securities or granting of such rights (as the case may be); or
- (b) an issue of fully paid Shares upon the exercise of options or rights granted pursuant to the share option schemes and/or share award scheme or schemes of similar nature for employees and executives adopted by the Company and the convertible bonds issued by the Company on 25 October 2012, of which the outstanding principle amount is [HK\$850] million with the maturity date on 24 October 2015; or
- (c) an issue of Shares pursuant to exercise of rights attached to securities issued or rights granted by the Company in any such case in consideration or part consideration for the acquisition of any other securities, assets or business provided that an adjustment has been made (if appropriate) under this Condition 10 in respect of the issue of such securities or granting of such rights (as the case may be); or
- (d) an issue of Shares pursuant to a scrip dividend scheme where an amount not less than the nominal amount of the Shares so issued is capitalised and the market value of such Shares is not more than 110 per cent of the amount of dividend which holders of the Shares could elect to or would otherwise receive in cash, for which purpose the "market value" of a Share shall mean the average of the closing prices for such Stock Exchange dealing days on which dealings in the Shares took place (being not less than five such days) as are selected by the directors of the Company in connection with determining the basis of allotment in respect of the relevant scrip dividend and which fall within the period of one month ending on the last day on which holders of Shares may elect to receive or (as the case may be) not to receive the relevant dividend in cash.

10.4 Any adjustment to the Conversion Price shall be made to the nearest one-tenth of a cent so that any amount under one-twentieth of a cent shall be rounded down and any amount of one-twentieth of a cent or more shall be rounded up

and in no event shall any adjustment (otherwise than upon the consolidation of Shares into Shares of a larger nominal amount) involve an increase in the Conversion Price. In addition to any determination which may be made by the directors of the Company every adjustment to the Conversion Price shall be certified either (at the option of the Company) by the auditors of the Company for the time being or by an approved independent expert.

- 10.5 Notwithstanding anything contained herein, no adjustment shall be made to the Conversion Price in any case in which the amount by which the same would be reduced in accordance with the foregoing provisions of this Condition would be less than one Hong Kong cent and any adjustment that would otherwise be required then to be made shall not be carried forward in any subsequent adjustment. All calculations (including, without limitation, calculations of the Conversion Price and the current market price per Share) under this Condition 10 shall be made to two decimal places..
- 10.6 If the Company or any subsidiary of the Company shall in any way modify the rights attached to any share or loan capital so as wholly or partly to convert or make convertible such share or loan capital into, or attach thereto any rights to acquire, Shares, the Company shall appoint an approved independent expert to consider whether any adjustment to the Conversion Price is appropriate (and if such approved independent expert shall certify that any such adjustment is appropriate, the Conversion Price shall be adjusted accordingly and the provisions of Conditions 10.4, 10.5 and 10.7 shall apply).
- 10.7 Whenever the Conversion Price is adjusted as herein provided, the Company shall as soon as possible give notice to all the Series B Bondholders that the Conversion Price is adjusted (setting forth brief particulars of the event giving rise to the adjustment, the Conversion Price in effect prior to such adjustment, the adjusted Conversion Price and the effective date thereof) and shall at all times thereafter so long as the Series B Bond remains outstanding make available for inspection at its principal place of business in Hong Kong a signed copy of the said certificate of the auditors of the Company or of the relevant approved independent expert (as the case may be) and a certificate signed by a director of the Company setting forth brief particulars of the event giving rise to the adjustment, the Conversion Price in effect prior to such adjustment, the adjusted Conversion Price and the effective date thereof and shall, on request, send a copy thereof to the Series B Bondholders.
- 10.8 If application of any of the provisions of this Condition 10 would but for this paragraph 10.8 result in the Conversion Price being reduced so that on conversion Shares shall fall to be issued at a discount to their nominal value, then the Conversion Price shall be adjusted to an amount equal to the nominal value of one Share.

## **11. PROTECTION OF THE SERIES B BONDHOLDERS**

- 11.1 So long as any of the Series B Bond are outstanding, and save with the prior written consent of the Bondholders whose share in the outstanding Bonds represents 75% or more of the aggregate of all the then outstanding Bonds:-

- (a) the Company shall keep available for issue, free from pre-emptive rights, out of its authorised but unissued capital sufficient Shares to satisfy in full the conversion rights attached to the Series B Bond at the Conversion Price from time to time and all other rights for the time being outstanding of subscription for and conversion into Shares and will ensure that all Shares delivered upon conversion of Series B Bonds pursuant to these Conditions will be duly authorised, validly issued, fully-paid and free and clear of all liens, claims, charges, security, encumbrances or like interest, and rank at least *pari passu* with all other Shares then outstanding. If at any time the number of authorised but unissued Shares shall not be sufficient to effect the Conversion Right in full, the Company will take such corporate action as may be necessary to increase its authorised but unissued Shares to such number of Shares as shall be sufficient for such purpose;;
- (b) the Company shall use its best endeavours (a) to maintain a listing for all the issued Shares on the Stock Exchange; (b) to obtain and maintain a listing on the Stock Exchange for all the Shares issued on the exercise of the Conversion Rights attaching to the Series B Bond; and (c) pay all expense in connection therewith;
- (c) the Company shall comply with and procure the compliance of all conditions imposed by the Stock Exchange or by any other competent authority (in Hong Kong or elsewhere) for approval of the issue of the Series B Bond or for the listing of and permission to deal in the Shares to be issued upon exercise by a Series B Bondholder of its Conversion Rights and to ensure the continued compliance thereof;
- (d) the Company shall ensure that all Shares issued upon conversion of the Series B Bond will be duly and validly issued fully paid and registered and shall rank in *pari passu* in all respects with the other existing Shares outstanding on the date of the conversion notice.
- (e) it will not create or issue any class of share capital other than Shares or securities convertible into or exchangeable for Shares, without giving notice to the Series B Bondholders in accordance with Condition 16 at least fourteen (14) days prior to the date of such creation or issue, and shall not in any way modify or amend the rights attaching to the Shares as a class or attach any special restrictions thereto; or
- (f) it will ensure that the respective memorandum of association and bye-laws of the Company and its subsidiaries are not amended, repealed or altered, in each case in a manner which would adversely affect the rights of the Series B Bondholders except where such amendment or alteration is for the purpose of complying with the requirements of the Listing Rules.

11A. **TAXATION**

All payments of principal and any other amounts payable by the Company in

respect of the Series B Bonds will be made without withholding of, or deduction for or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of Hong Kong or Bermuda, or any authority therein or thereof having power to tax, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. If such withholding or deduction is so required, the Company will pay such additional amounts as may be necessary in order that the net amounts received by the Series B Bondholders after such withholding or deduction shall equal the amounts of principal and other amounts payable by the Company which would have been receivable in respect of the Series B Bonds in the absence of such withholding or deduction; except that no such additional amounts shall be payable with respect to any Series B Bond:

- (a) to any Series B Bondholder (or to a third party on behalf of a holder) (i) who is for Hong Kong or Bermuda tax purposes treated as a resident of Hong Kong or Bermuda or a Hong Kong or a Bermudan corporation or (ii) who is otherwise subject to such taxes, duties, assessments or governmental charges by reason of his being connected with Hong Kong or Bermuda otherwise than by reason only of the holding of any Series B Bond or the receipt of principal and other amounts payable by the Company in respect of any Series B Bond; or
- (b) if the Series B Bond Certificate in respect of such Series B Bond is surrendered for cancellation more than five (5) days after due date in accordance with the Conditions except to the extent that the holder thereof would have been entitled to such additional amounts on presenting the same for payment as at the expiry of such 5-day period.

Without prejudice to the Company's obligation to pay such additional amounts as aforesaid, the Company may request Series B Bondholders to comply with any reporting requirements under applicable Hong Kong or Bermuda law to enable such Bondholders to be treated as non-residents of Hong Kong or Bermuda or non-Hong Kong or non-Bermudan corporations for Hong Kong or Bermuda tax purposes. Bondholders may, comply with any such request if it is reasonable.

Any reference in this Series B Bond to principal shall be deemed also to refer to any additional amounts which may be payable under this Condition.

## **12. EVENTS OF DEFAULT**

12.1 If any of the following events occurs, the Bondholders whose share in the outstanding Bond represents 75% or more of the aggregate of all the then outstanding Bonds may give notice to the Company that the Series B Bonds shall only become, due and payable at their principal on the day immediately following the expiry of the Escrow Period:-

- (a) there is a default by the Company in the payment of the principal or any other amounts payable by the Company in respect of the Series B Bonds



and such default is not remedied by the Company within seven (7) Business Days; or

- (b) there is a default by the Company in the performance or observance of any covenant, condition, provision or obligation contained in the Series B Bonds and such default continues for the period of thirty (30) days next following the service by Series B Bondholder holding not less than two-thirds of the outstanding Series B Bonds on the Company of notice requiring the same to be remedied; or
- (c) an encumbrancer takes possession or a receiver, manager or other similar officer is appointed of the whole or any material part of undertaking, property, assets or revenues of the Company or any of its Major Subsidiary and such possession or appointment is not terminated within thirty (30) Business Days of a written request by the Series B Bondholders; or
- (d) the Company or any of its Major Subsidiary becomes insolvent or is unable to pay its debts as they mature or applies for or consents to or suffers the appointment of any administrator, liquidator or receiver of the Company or any of its Major Subsidiary or the whole or any material part of undertaking, property, assets or revenues of the Company or any of its Major Subsidiary or takes any proceeding under any law for a readjustment or deferment of its obligations or any part of them or makes or enters into a general assignment or compromise with or for the benefit of its creditors; or
- (e) (A) any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period or 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), (B) any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of such member of the Group as a result of an event of default (however described) or (C) any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of such member of the Group due and payable prior to its specified maturity as a result of an event of default (however described) except for a single Financial Indebtedness of less than HK\$50,000,000 in respect of the matters set out in (A) to (C); or
- (f) proceedings shall have been initiated against the Company or any Major Subsidiary under any applicable bankruptcy, reorganisation or insolvency law and such proceedings have not been discharged or stayed within a period of forty-five (45) days; or
- (g) a resolution is passed or an order of a court of competent jurisdiction is made that the Company be wound up or dissolved (otherwise than for the purposes of or pursuant to a consolidation, amalgamation, merger, reconstruction or reorganisation the terms of which have previously been approved by the Bondholders whose share in the outstanding Bond

represents 75% or more of the aggregate of all the then outstanding Bonds, and upon which the continuing corporation effectively assumes the entire obligations of the Company, as the case may be, under the Series B Bonds); or

- (h) a moratorium is agreed or declared in respect of any indebtedness of the Company or any of its Major Subsidiary or any governmental authority or agency condemns, seizes, compulsorily purchases or expropriates all or a material part of the assets of the Company or any of its Major Subsidiary; or
- (i) any event occurs which under the laws of the jurisdiction of incorporation of the Company or any Major Subsidiary has an analogous effect to any of the events referred to in paragraphs (f) to (h) inclusive above; or
- (j) it is or will become unlawful for the Company to perform or comply with any of its obligations under or in respect of the Series B Bonds; or
- (k) the Shares (as a class) cease to be listed on the Stock Exchange or is suspended for a continuous period of forty-five (45) trading days due to the default of the Company or any of its directors.

**"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 Series B 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 HKFRS, 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) 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 shall be taken into account), (H) any amount raised by the issue of redeemable shares, (I) any counter indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and (J) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (A) to (I).

**"Major Subsidiary"** under this Condition means a subsidiary of the Company if the value of that subsidiary's total assets, profit or revenue represents [5%] or more under any of the total assets, profit or revenue percentage ratios as defined under rule 14.04(9) of the Listing Rules (as amended from time to time).

### 13. VOTING

The Series B Bondholders will not be entitled to attend or vote at any meetings of the Company by reason only of it being the Series B Bondholders.

### 14. REGISTER OF SERIES B BONDHOLDERS

The Company shall procure that there shall be kept at the Company's registered office outside Hong Kong a full and complete register of Series B Bondholders and of any conversions, cancellation and destruction and of all replacement Series B Bond issued in substitution for any mutilated, defaced, lost, stolen or destroyed Bond. The Company shall further procure that a copy of such register shall be made available for inspection at its principal place of business in Hong Kong by any Series B Bondholders at all reasonable times and that extracts from the register be made available to any Series B Bondholders upon the payment of a charge of HK\$10.00 per page or such higher charge as may reasonably be determined by the Company from time to time.

### 15. EXPERTS

In giving any certificate or making any adjustment hereunder, the auditors of the Company or the approved independent expert (as the case may be) shall be deemed to be acting as experts and not as arbitrators and, in the absence of manifest error, their decision shall be conclusive and binding on the Company and the Series B Bondholders and all persons claiming through or under them respectively.

### 16. NOTICES

Any notices to be given to each Series B Bondholder or the Company shall be given by sending the notice by hand or in prepaid envelope by registered post, in the case of Series B Bondholder(s), to their address as specified in the register of Series B Bondholders or, in the case of the Company, for the attention of Mr. [●] and the company secretary of the Company, to Room 6301, The Center, 99 Queen's Road, Central, Hong Kong for the time being or to such other address in Hong Kong as the party concerned may have notified to the other party pursuant to this Condition 16 by not less than five (5) days' prior written notice. Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered: (a) if given or made by letter and delivered by hand or courier when actually delivered to the relevant address; (b) if given or sent by registered mail, on the date which is the third Business Day (in the case of mail sent to a local address) or the fifth Business Day (in the case of mail sent to an overseas address) after the posting thereof.

### 17. REPLACEMENT SERIES B BOND

If the Series B Bond Certificates is lost or mutilated, the Series B Bondholders shall notify the Company as soon as practicable and a replacement Series B Bond Certificates shall be issued if the Series B Bondholders provides the Company with the mutilated Series B Bond Certificates or a declaration by the

Series B Bondholders or its officer that the Series B Bond Certificates had been lost or mutilated (as the case may be) or other evidence that the Series B Bond Certificates had been lost or mutilated provided that any costs and expenses incurred by the Series B Bondholders and the Company shall be borne solely by the Series B Bondholders. Any Series B Bond Certificates replaced in accordance with this Condition shall forthwith be cancelled.

**18. AMENDMENT**

The terms of this Instrument and the Conditions may be varied, expanded or amended by agreement in writing between the Company and all of the Aggregated Bondholders.

**19. GOVERNING LAW AND JURISDICTION**

The Series B Bond, this Instrument and the Conditions are governed by and shall be construed in accordance with Hong Kong law and the Company agrees to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

[End of Text]

Appendix 1  
Series B Bond Certificate

Certificate Number :[●]

Principal Amount: [●]

**GOLDPOLY NEW ENERGY HOLDINGS LIMITED**  
**(金保利新能源有限公司)**  
*(Incorporated in Bermuda with limited liability)*

**HK\$[●] SERIES B CONVERTIBLE BONDS DUE [●], [●]**

Goldpoly New Energy Limited (the “**Company**”) hereby CERTIFIES that [●] is, at the date hereof, entered in the Company’s register of Bondholders as the holder of Series B Convertible Bonds due [●] (the “**Series B Bonds**”) in the principal amount of HK\$[●] (Hong Kong Dollar [●]). The Series B Bonds are constituted by a bond instrument dated [●] (the “**Bond Instrument**”) and have the terms and conditions set out therein (in each case, as amended or supplemented from time to time).

Words and expressions used in the Bond Instrument and the Conditions have the same meanings when used in this Series B Bond Certificate.

For value received, the Company promises to pay the person who appears at the relevant time on the Series B Bond Register as holder of the Series B Bonds in respect of which this Series B Bond Certificate is issued such amount or amounts as shall become due in respect of such Bonds in accordance with and otherwise to comply with the Conditions.

The Series B Bonds are convertible into ordinary shares with a par value of HK\$0.10 each of the Company in accordance with and subject to the Conditions.

The Series B Bonds represented by this Series B Bond Certificate were issued pursuant to the resolutions of the shareholders of the Company passed on [●].

This Series B Bond Certificate is evidence of entitlement only. Title to the Series B Bonds passes only on due registration in the register of Bondholders and only the duly registered holder is entitled to payments on the Series B Bonds in respect of which this Series B Bond Certificate is issued.

**In witness** whereof the Company has caused this Series B Bond Certificate to be signed in manual or facsimile on its behalf by one of its authorised officers.

THE COMMON SEAL of )  
**Goldpoly New Energy Holdings** )  
**Limited** )  
is affixed in accordance with its )  
bye-laws in the presence of : )

Notes:-

*This Bond cannot be transferred to bearer on delivery and is only transferable to the extent permitted by Condition 4 of the Conditions. This Series B Bond certificate must be delivered to the secretary of the Company for cancellation and reissue of an appropriate Series B Bond certificate in the event of any such transfer*

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(For endorsement in the event of partial conversion)

<u>Date</u>	<u>Amount Converted</u>	<u>Amount Outstanding</u>
-------------	-------------------------	---------------------------

Appendix 2  
Form of Transfer

FOR VALUE RECEIVED, I/We, \_\_\_\_\_ (the "Transferor")  
hereby transfers to:

Name: \_\_\_\_\_ (the "Transferee")

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

(PLEASE PRINT OR TYPE NAME AND ADDRESS OF TRANSFEREE)

HK\$[●] principal amount of the Series B Bond in respect of which this Series B Bond Certificate is issued, and all rights in respect thereof and irrevocably request the Company to transfer the aforesaid principal amount (together with all interest accrued thereon) of the Series B Bond on the Company's books maintained in respect thereof.

All payments in respect of the principal amount of the Series B Bond transferred are to be made (unless otherwise instructed by the transferee) to the following account:

Name of bank:

HK\$ account number:

For the account of:

Dated:

\_\_\_\_\_  
Transferor's name

\_\_\_\_\_  
Transferee's name

\_\_\_\_\_  
Transferor's signature

\_\_\_\_\_  
Transferor's signature

\_\_\_\_\_  
Witness's signature

\_\_\_\_\_  
Witness's signature

I/We, the transferee named herein hereby confirm that I/we are/ are not a connected person of the Company (as defined in the Listing Rules).

*Notes:-*

1. *The name of the person by or on whose behalf this form of transfer is signed must correspond with the name of the registered holder as it appears on the face of the relevant Series B Bond Certificate.*
2. *A representative of the Bondholder should state the capacity in which he signs (e.g. executor).*
3. *The signature of the person effecting a transfer shall conform to any list of duly authorised specimen signatories supplied by the registered holder or be certified by a recognised bank, notary public or in such other manner as the Company may require.*
4. *This form of transfer should be dated as of the date it is deposited with the Company.*



Appendix 3  
Conversion Notice

(To be completed in duplicate)

(Please read the notes overleaf before completing this Notice.)

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

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

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

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

To: Goldpoly New Energy Holdings Limited (the “**Issuer**”)

I/We, by or on behalf of the holder or beneficial owner of the Series B Bonds (the “**Series B Bonds**”) specified below, hereby elect to convert such Series B Bonds into ordinary shares of the Issuer (the “**Shares**”) in accordance with Condition [\*] of the terms and conditions of the Series B Bonds.

1. Total principal amount and certificate numbers of Series B Bonds to be converted:

Total principal amount: \_\_\_\_\_

Certificate numbers of Series B Bonds: \_\_\_\_\_

2. Conversion Price: \_\_\_\_\_

3. Total number of Shares to be issued:  
Principal amount of Series B Bonds delivered ÷ Conversion Price  
= \_\_\_\_\_

4. Name(s), address(es) and signature(s) of person(s) in whose name(s) the Shares required to be delivered on conversion are to be registered :-

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

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

\_\_\_\_\_

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

5. (A) The relevant number of Shares be issued in the name(s) of the person(s) whose name(s) stand(s) on the Series B Bond Register as the Series B Bondholder(s) represented by this Series B Bond Certificate and the certificate for such Shares be delivered to the address of the following participant of the Central Clearing and Settlement System ("CCASS") operated by the Hong Kong Securities Clearing Company Limited:

Participation I.D. of the designated CCASS participant: \_\_\_\_\_

CCASS participant's contact person: \_\_\_\_\_

CCASS participant's contact telephone number and fax number: \_\_\_\_\_

CCASS participant's address for delivery of share certificates: \_\_\_\_\_

OR

- (B) I/We hereby request that the certificates for the Shares (or other securities and property) required to be delivered upon conversion be despatched (at my/our risk and expense) to the person whose name and address is given below and in the manner specified below:

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

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

\_\_\_\_\_

Manner of despatch (if other than by registered mail):

\_\_\_\_\_

6. I/We hereby request that any cash amount required to be paid by the Issuer upon conversion be transferred to the bank account specified below:

Swift Code: \_\_\_\_\_

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

City: \_\_\_\_\_

ABA: \_\_\_\_\_

Account Number: \_\_\_\_\_

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

7. The Series B Bond Certificates representing the Bonds convened hereby accompany this Conversion Notice.
8. I/We hereby declare that all approvals, consents and authorisations (if any) required by the laws of to which I am / we are subject and to be obtained by

me/us prior to the said conversion have been obtained and are in full force and effect and that any applicable condition thereto has been complied with by me/us.

9. I/We, hereby confirm that I/we will not breach Condition 9 as a result of my/our conversion exercised hereunder.
10. The Company has notified the Series B Bondholders that the Company's register of shareholders will be closed on the following dates:  
  
\_\_\_\_\_

-----  
**Notes:**

- (i) *This Conversion Notice will be void unless the introductory details, Sections 1, 2, 3, 4 and 5 (if applicable) are completed.*
- (ii) *Despatch of share certificates or other securities or property will be made at the risk and expense of the converting Series B Bondholder and the converting Series B Bondholder will be required to prepay the expenses of, and submit any necessary documents required in order to effect, despatch in the manner specified.*
- (iii) *If an adjustment contemplated by the terms and conditions of the Series B Bonds is required in respect of a conversion of Series B Bonds where additional Shares are to be issued, certificates for the additional Shares deliverable pursuant to such adjustment (together with any other securities, property or cash) will be delivered or despatched in the same manner as the Shares, other securities, property and cash previously issued pursuant to the relevant Conversion Notice.*

.....

For Company's use only:-

- 1 (A) Series B Bonds conversion identification reference: \_\_\_\_\_  
(B) Conversion Date: \_\_\_\_\_  
(C) Delivery Date: \_\_\_\_\_
- 2 (A) Aggregate principal amount of Series B Bonds in respect of which Series B Bond Certificates have been deposited for conversion:  
\_\_\_\_\_  
(B) Conversion Price on Conversion Date: \_\_\_\_\_  
(C) Number of Shares issuable: \_\_\_\_\_  
(disregard fractions)
- 3 (If applicable) amount of cash payment due to converting Series B Bondholder under Series B Bond [\*]:  
\_\_\_\_\_

*Note: The Company must complete items 1, 2 and 3 (if applicable).*

Appendix 4  
FORM OF REDEMPTION NOTICE

Goldpoly New Energy Holdings Limited

HK\$[•] Series B Convertible Bonds due [\*]

REDEMPTION NOTICE  
(To be completed in duplicate)

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

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

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

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

To: Goldpoly New Energy Holdings Limited (the “**Issuer**”)

I/We, by or on behalf of the holder or beneficial owner of the Series B Bonds (the “**Series B Bonds**”) specified below, hereby elect to have the following principal amount of the Series B Bonds redeemed pursuant to and in accordance with Condition [\*] on [*insert relevant Redemption Date* ].

Total principal amount and certificate numbers of Series B Bonds to be converted:

Total principal amount: \_\_\_\_\_

Certificate numbers of Series B Bonds: \_\_\_\_\_

Payment should be made by transfer to [*details of the relevant account maintained by the payee*] with [*name and address of the relevant bank in Hong Kong*].

If the Series B Bond Certificates referred to above are to be returned to the undersigned in accordance with the Conditions relating to the Series B Bonds, they should be returned by registered mail to:

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

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

\_\_\_\_\_

\_\_\_\_\_

**EXECUTION PAGE FOR THE BOND INSTRUMENT**

**THE COMPANY**

SEALED with the Common Seal of )  
GOLDPOLY NEW ENERGY )  
HOLDINGS LIMITED )  
(金保利新能源有限公司) )  
and signed by \_\_\_\_\_ )  
 )  
in the presence of:- )

附表 6

弥偿契据

## FORM OF DEED OF INDEMNITY

**THIS DEED OF INDEMNITY** is made on this [•] of [•]

**BY:-**

**THE PERSONS WHOSE NAMES AND ADDRESSES** are set out in the Schedule 1 hereto (each an “**Indemnifier**” and collectively “**Indemnifiers**”)

**IN FAVOUR OF:-**

**PROFIT ICON INVESTMENTS LIMITED**, a company incorporated in the British Virgin Islands with limited liability, whose registered office is at the Office of the first Registered Agent at AMS Trustee Limited, Sea Meadow House, Blackburne Highway, (P.O. Box 116), Road Town, Tortola, British Virgin Islands and whose correspondence address is at Room 6301, The Center, 99 Queen’s Road, Central, Hong Kong (“**Profit Icon**”); and

**GOLDPOLY NEW ENERGY HOLDINGS LIMITED (金保利新能源有限公司)**, a company incorporated under the laws of Bermuda with limited liability, whose registered office is at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda and whose principal place of business is at Room 6301, The Center, 99 Queen’s Road, Central, Hong Kong (the “**Goldpoly**”).

(Profit Icon and Goldpoly are referred to as the “**Listed Group**”)

**WHEREAS:**

- (A) A sale and purchase agreement dated [•] was entered into between the Indemnifiers and Listed Group, pursuant to which the Indemnifiers agree to sell and Profit Icon agrees to purchase 92.17% issued share capital in China Merchants New Energy Holdings Limited (招商新能源控股有限公司) subject to the terms and conditions contained therein (the “**Sale and Purchase Agreement**”).
- (B) It is a condition precedent to the completion of the Sale and Purchase Agreement that the Indemnifiers shall deliver to the Listed Group this Deed of Indemnity (this “**Deed**”) on or before the Completion Date.

### **1. INTERPRETATION**

- 1.1 Words and expressions defined or used in the Sale and Purchase Agreement shall (unless the context otherwise requires or expressly defined otherwise in this Deed) have the same meaning in this Deed.
- 1.2 In this Deed, the expression “**Taxation Claim**” includes any notice, demand, assessment, reassessment, letter or other document issued or action taken, either



before or after the date hereof, by any governmental authority or official whereby any member of the Target Group is or may be:

- (a) placed under a liability to make a payment in respect of Taxation relating to any act, deed, matter or thing done or omitted to be done prior to the Completion Date; or
- (b) deprived of any Taxation Relief available to any member of the Target Group prior to the Completion Date, whether or not the deprivation of such Taxation Relief results in any Taxation being payable by any member of the Target Group, and in such a case, the amount of Taxation which would otherwise have been relieved, allowed or credited, or any amount of any repayment which would otherwise have been received by any member of the Target Group in respect of the Taxation Relief so lost shall be treated as an amount of Taxation for which a liability has arisen.

1.3 In this Deed, the expression “**Taxation Relief**” shall include:

- (a) the right to any relief, allowance or credit available to any member of the Target Group pursuant to any legislation or otherwise for Taxation purposes, including, without limiting the generality of the foregoing, any loss carried forward, investment tax credits or foreign tax credits; and
- (b) the right to any refund or repayment of Taxation available to any member of the Target Group.

1.4 In this Deed, the expression “**Taxation**” means:

- (a) any liability of any member of the Target Group to any form of taxation and duty whenever created or imposed, whether of Hong Kong, the PRC, the British Virgin Islands or of any other part of the world, and, without prejudice to the generality of the foregoing, including any tax computed on income, tax on capital assets, profits tax, provisional profits tax, business tax on gross income, income tax, value added tax, interest tax, salaries tax, property tax, land appreciation tax, lease registration tax, estate duty, capital gains tax, death duty, capital duty, stamp duty, payroll tax, withholding tax, preferential tax, inheritance tax, transfer tax, employment tax, gift duty, rates, import, customs and excise duties and generally any tax duty, impost, levy or rate or any amount payable to the revenue, customs or fiscal authorities of local, municipal, provincial, national, state or federal level whether of Hong Kong, the PRC, the British Virgin Islands or of any other part of the world;
- (b) such amount or amounts as is or are referred to in Clause 1.2 (b); and
- (c) all costs, interest, fines, penalties, charges, liabilities and expenses incidental or relating to the liability to Taxation or the deprivation of Taxation Relief or of a right to repayment of Taxation which is the subject of this Deed to the extent that the same is or are payable or suffered by any member of the Target Group.

- 1.5 In this Deed, the expression “Hong Kong” means Hong Kong Special Administrative Region of the PRC.
- 1.6 In this Deed, the expression “PRC” means the People's Republic of China and for the purpose of this Deed, excludes Hong Kong, the Macau Special Administrative Region of the PRC and Taiwan.
- 1.7 References to income or profits or gains earned, accrued or received shall include income or profits or gains deemed to have been or treated as or regarded as earned, accrued or received for the purposes of any legislation.
- 1.8 In this Deed, words importing the singular include the plural and vice versa, words importing gender or the neuter include both genders and the neuter and references to persons include bodies corporate or unincorporated.
- 1.9 References to Clauses in this Deed are references to clauses or sub-clauses of this Deed.
- 1.10 Headings in this Deed are for ease of reference only and do not form part of this Deed.
- 1.11 Reference to the Indemnifier in this Deed includes its successors and permitted assigns.
- 1.12 Reference to any law, regulation or other statutory provision in this Deed includes reference to such law or regulation or provision as modified, codified or re-enacted.
- 1.13 In construing this Deed:
- (a) the rule known as the *ejusdem generis* rule shall not apply and accordingly general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
  - (b) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

## 2. INDEMNITY

- 2.1 Subject to Clause 2.2, each Indemnifier hereby severally but not jointly covenants with and undertakes to the Listed Group that it will fully indemnify and at all time keep fully indemnified the Listed Group on demand from and against:
- (a) any and all losses, liabilities, damages, costs, expenses, penalties and interest which the Listed Group and/or any member of the Target Group suffer, sustain or incur as a result of or in connection with any Taxation Claim made against any member of the Target Group in relation to any event occurred on or before the Completion Date;

- (b) any and all claims, actions, demands, proceedings, judgements, losses, liabilities, damages, costs, charges, fees, expenses, penalties and fines of whatever nature which the Listed Group and/or any member of the Target Group may suffer, sustain or incur as a result of or in connection with any legal proceedings instituted by or against any member of the Target Group in relation to events occurred on or before the Completion Date;
- (c) any and all losses, liabilities, damages, reasonable costs and expenses, charges, penalties and fine of whatever nature suffered or incurred by the Listed Group and/or any member of the Target Group arising out of or in connection with any non-payment of any social insurance, housing funds, pension contributions and/or any other (in each case, statutorily required) social security or similar schemes by any member of the Target Group on or before the Completion Date that are legally required in the PRC or any jurisdictions;
- (d) any and all losses, liabilities, damages, reasonable costs and expenses, charges, penalties and fine of whatever nature which the Listed Group and/or any member of the Target Group suffer, sustain or incur arising out of or in connection with any legal and/or regulatory breaches by any member of the Target Group in respect of the failure to lay accounts and/or the failure to make the requisite regulatory filings within the prescribed time limit or at all under the relevant laws and regulations applicable to such member of the Target Group on or before the Completion Date; and
- (e) any and all losses, liabilities, damages, reasonable costs and expenses, charges, penalties and fine of whatever nature which the Listed Group and/or any member of the Target Group suffer, sustain or incur arising out of or in connection with any defeats in title of lands or assets of any member of the Target Group which exist on or before the Completion Date.

2.2 This Deed does not cover, and the indemnity contained in Clause 2.1 above shall not apply, and the Indemnifiers shall be under no liability under this Deed in respect of, any claim or liability:

- (a) to the extent that such claim or liability is discharged by another person who is not any member of the Target Group and the Listed Group, and the members of the Target Group and the Listed Group are not required to reimburse such person in respect of the discharge of the claim or liability;
- (b) any matter or claim which would not have arisen but for an alteration, enactment or re-enactment of any ordinance, law, regulation, other legislative act, or generally accepted administrative practice of any government or governmental or regulatory authority which occurs after the date of this Deed (including, without limitation, any alteration in rates of tax or any imposition of taxation not in effect on the date of this Deed) and whether or not such alteration, enactment or re-enactment has retrospective effect, or a change in the interpretation of tax law after the date of this Deed;

- (c) any liability to the extent that provision or reserve in respect thereof has been made in the Target Group's audited accounts for the year ended [30 June 2012] or to the extent that actual payment or discharge of such liability has been taken into account therein.
- (d) if and to the extent that any claim or liability arises by reason of:
  - (i) any act, transaction or arrangement done or omitted to be done before the Completion Date by the Indemnifiers or any member of the Target Group solely at the request or with the approval of the Listed Group;
  - (ii) any act, transaction or arrangement done or omitted to be done on or after the Completion Date by the Listed Group or any member of the Target Group otherwise than required in the ordinary course of business as carried on by such member of the Target Group at the Completion Date;
  - (iii) any claim, election, surrender or disclaimer made or omitted to be made or notice or consent given or omitted to be given by the Listed Group or any member of the Target Group after the Completion Date under the provisions of any statutes relating to Taxation; or
  - (iv) the winding-up of any member of the Target Group or any winding-up or cessation after the Completion Date of any trade or business carried on by any member of the Target Group as a result of circumstances or event occurring after the Completion Date;
- (e) to the extent that any claim or liability arises out of or in connection with any fact, matter or circumstance that has been disclosed in the Disclosure Letter of Vendors (as defined in the Sale and Purchase Agreement); and
 

*[N.B. Parties agree to discuss whether there may be any specific matters which the board of directors, after fully reviewed the Target Group prior closing, will want to be covered by this Deed, even such specific matters have been disclosed]*
- (f) any losses and damages (including but not limited to loss of opportunities or profits) suffered by the Listed Group or any member of the Target Group which are indirectly resulted from the subject matter of any claims under Clause 2.1.

2.3 Notwithstanding anything contained in this Deed, the maximum aggregate liability of the Indemnifier in respect of all claims under this Deed and all claims for breach of Vendors' Warranties (as defined in the Sale and Purchase Agreement) under the Sale

and Purchase Agreement shall not exceed the Consideration (as defined in the Sale and Purchase Agreement) as adjusted pursuant to clause 3.3 of the Sale and Purchase Agreement.

- 2.5 In respect of any losses, liabilities, damages, costs and expenses, charges, penalties and fines arising out of the same nature or event or incidence, no claim shall be made under this Deed if and to the extent that an equivalent claim can be made for breach of Vendors' Warranties (as defined in the Sale and Purchase Agreement) under the Sale and Purchase Agreement and the Indemnifiers have satisfied such equivalent claim pursuant to the Sale and Purchase Agreement.
- 2.6 The Indemnifiers shall only be liable under this Deed where the legal proceedings for a claim under this Deed shall be made within seven (7) years after the Completion Date.
- 2.7 The liabilities of the Indemnifiers under this Deed are severally but not jointly. The liabilities of the Indemnifiers under this Deed shall be apportioned amongst themselves on pro rata basis using as a numerator the number of Sale Shares (as defined in the Sale and Purchase Agreement) sold by a particular Indemnifier and as a denominator the total number of Sale Shares (as defined in the Sale and Purchase Agreement) sold by the Indemnifiers under the Sale and Purchase Agreement.
- 2.8 The Listed Group shall, upon any claim, action, demand or assessment being made against it or a member of the Target Group which may lead to a claim by the Listed Group under this Deed, as soon as reasonably practicable, give written notice thereof (specifying in reasonable detail and to the extent possible the matter which gives rise to the claim, the nature of the claim and the amount claimed) to the Indemnifiers provided that the performance of the obligation of the Listed Group under this Clause should not be treated as a condition precedent for the exercise by the Listed Group of its right to make any claim under this Deed.
- 2.9 If any claim under this Deed is brought under this Deed in relation to any liability which is contingent only or otherwise not capable of being quantified, the Indemnifiers shall not be liable to make any payment in respect thereof until such contingent liability becomes an actual liability or becomes capable of being quantified, as the case may be.

### 3. CONDUCT OF CLAIM

- 3.1 In the event of any claim or liability arising under this Deed, the Listed Group, shall, by way of covenant but not as a condition precedent to the liability of the Indemnifiers hereunder, give or procure that notice thereof is as soon as reasonably practicable given to the Indemnifiers in the manner provided in Clauses 2.8 and 6; and, as regards any such claim, the Listed Group shall, as the Indemnifiers may reasonably request, take such action, or procure that such action be taken, to cause such claim to be withdrawn, or to dispute, resist, appeal against, compromise or defend such claim and any determination in respect thereof but subject to the Listed Group being indemnified and secured to it or its reasonable satisfaction by the Indemnifiers from and against any and all losses (including additional Taxation), damages, interests, penalties, charges and reasonable costs and expenses which may be thereby sustained or incurred.

- 3.2 Subject to the Indemnifiers having duly executed confidentiality letter at the reasonably request of Listed Group, the Listed Group shall provide, and, where necessary, shall ensure that the Target Group will provide, to the Indemnifiers and the Indemnifiers' advisers, reasonable access to premises and personnel and to any relevant assets, documents, information and records within the power, possession or control of the Listed Group or the Target Group as the Indemnifiers may reasonably request solely for the purpose of investigating the matter during normal business hours on any Business Day and on reasonable notice to the Listed Group or the Target Group (as the case may be).
- 3.3 Without the prior written approval of the Listed Group, the Indemnifiers shall make no settlement of any Taxation Claim or claim of any other natures nor agree to or on any matter in the course of disputing any Taxation Claim or claim of any other natures likely to materially affect the future liability of any member of the Target Group.
- 3.4 Where the Listed Group or any member of the Target Group is entitled to recover from a person other than the Indemnifiers any sum in respect of any matter giving rise to a claim under this Deed, the Listed Group shall, and, where necessary, shall ensure that the relevant member of the Target Group will, use commercially reasonable efforts to enforce such recovery prior to taking any action against the Indemnifiers (other than to notify the Indemnifiers of the claim as provided in Clauses 2.8 and 6). In the event that the Listed Group or any member of the Target Group recovers any amount from such other person, the amount of the claim against the Indemnifiers under this Deed shall be reduced by the amount actually recovered less any expenses, costs and charges reasonably and actually incurred by any member of the Target Group or the Listed Group in obtaining such recovery from such other person
- 3.5 The indemnities given in Clause 2.1 shall be limited in time commencing from the Completion Date and ending on the expiry of seven (7) years after the Completion Date.

#### 4. PAYMENTS

- 4.1 If after the Indemnifiers have made any payment pursuant to this Deed, any member of the Target Group or the Listed Group shall receive a refund of all or part of the relevant claim or liability including but not limited to Taxation Claim, any member of the Target Group or the Listed Group (if any of them shall receive such refund) shall repay or to the Indemnifiers a total sum corresponding to the amount of such refund less:
- (a) any expenses, costs and charges payable or reasonably sustained or properly incurred by any member of the Target Group or the Listed Group in recovering such refund; and
  - (b) the amount of any additional claim or liability which shall not have been taken into account in calculating any other payment made or to be made pursuant to

this Clause but which is suffered or incurred by any member of the Target Group or the Listed Group in consequence of such refund.

- 4.2 Any payments due by the Indemnifiers pursuant to this Deed shall be increased to include such interest as any member of the Target Group or the Listed Group shall have been required to pay in relation to any claims and liabilities.
- 4.3 Any payments made by or due from the Indemnifiers under this Deed shall be made gross and without any deductions or withholdings of any nature.
- 4.4 In the event that any deductions or withholdings are required by law, or that any payments made by or due from the Indemnifiers under this Deed are liable for Taxation (in the hands of any member of the Target Group or otherwise), then the Indemnifiers shall be liable to pay to the relevant member of the Target Group or the Listed Group to whom the payments are made or due such further sums as will ensure that the aggregate of the sums paid or payable shall, after making all deductions and withholdings from, or deducting liabilities to Taxation in respect of, such sums, leave the relevant member of the Target Group or the Listed Group with the same amount as it/they would have been entitled to receive under the terms of this Deed in the absence of any such deductions, withholdings or liabilities to Taxation. For the avoidance of doubt, in the event that any claim which is the subject of the indemnities under this Deed has been discharged by any member of the Target Group or the Listed Group, the indemnities given hereunder shall take effect as covenants by the Indemnifiers to reimburse in full upon demand the relevant member of the Target Group or the Listed Group which had discharged such claim for any loss or payment of cost or expenses incurred in relation thereto.

## 5. **WAIVER AND SEVERABILITY**

No failure or delay by the Listed Group in exercising any right, power or remedy under this Deed shall operate as a waiver thereof. If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Deed shall not be affected or impaired thereby.

## 6. **NOTICES**

- 6.1 Any notice or other communication under or in connection with this Deed shall be in writing and shall be left at or sent by pre-paid registered airmail, telex or facsimile transmission to the respective addresses set out below or to such other address and/or number as may have been last notified in writing by such party to all other parties hereto.

### Indemnifiers

If to China Merchants New Energy Group Limited  
招商新能源集團有限公司:

Address : [Flat/Rm 1011, 10/F., West Tower, Shun Tak Centre, 168-200  
Connaught Road Central, Hong Kong]

Attention : [Mr. Lu Zhenwei]

Fax number: [[(852) 3112 8410]

If to China Green Holdings Limited  
中國綠色控股有限公司

Address : [Flat/Rm 1011, 10/F., West Tower, Shun Tak Centre, 168-200  
Connaught Road Central, Hong Kong]

Attention : [Mr. Li Yuan ]

Fax number: [[(852) 3112 8410]

If to Ease Soar Limited:

Address : [Unit 1703-1706, Level 17, International Commerce Centre, 1  
Austin Road West, Kowloon, Hong Kong]

Attention : [Mr. Barton Yu/Mr. Eddie Kong]

Fax number: [[(852) 2526 7638]

If to Hyatt Servicing Limited:

Address : [Room 1608-11, 16/F., Shui On Centre, 6-8 Harbour Road,  
Wanchai, Hong Kong]

Attention : [Mr. Chan Pang Ching]

Fax number: [[(852) 2545 1036]

If to Talesun Solar Hong Kong Limited  
騰暉電力香港有限公司:

Address : [36/F., Tower Two, Times Square, 1 Matheson Street, Causeway  
Bay, Hong Kong]

Attention : [Mr. Hu Changqing]

Fax number: [(86) 51282355588]

If to Sino Arena Investments Limited:



Address : [Flat/Rm 1011, 10/F., West Tower, Shun Tak Centre, 168-200  
Connaught Road Central, Hong Kong]

Attention : [Mr. Zeng Xiangyi]

Fax number: [(852) 3112 8410]

Listed Group

If to Profit Icon Investments Limited:

Address : c/o Room 6301, The Center, 99, Queen's Road, Central, Hong  
Kong

Attention : (852) 2411 5838

Fax number: Mr. Lam Ho Fai

If to Goldpoly New Energy Holdings Limited  
金保利新能源有限公司:

Address : [Room 6301, The Center, 99, Queen's Road, Central, Hong Kong]

Attention : (852) 2411 5838

Fax number: Mr. Lam Ho Fai

- 6.2 Any such notice or other document shall be deemed to have been duly given upon receipt if left or sent by facsimile transmission, or if sent by telex upon the receipt by the sending machine of the addressee's confirmatory answerback and in the case of notice sent by post it shall be deemed to have been given seven (7) Business Days after posting. In proving the giving of a notice it shall be sufficient to prove that the notice was left or that the envelope containing such notice was properly addressed and posted or that the applicable means of telecommunication was properly received (as the case may be).

**7. FURTHER UNDERTAKING**

Each Indemnifier undertakes with the Listed Group that it will on demand do all such acts and things and execute all such deeds and documents as may be necessary or required to carry into effect or to give legal effect to the provisions of this Deed and the indemnities hereby contemplated.

**8. EFFECTIVENESS**

This Deed shall become effective subject to and immediately upon the Completion (as defined in the Sale and Purchase Agreement) of the Sale and Purchase Agreement.

**9. ASSIGNMENT**

This Deed shall be binding on and enure for the benefit of the successors of each of the parties. None of the parties may assign any of his/its rights or obligations under this Deed without the prior consent of the other party in writing.

**10. TIME OF ESSENCE**

Time shall be the essence as regards to any date or period mentioned in this Deed, or any date or period substituted for the same by the agreement of the parties hereto or otherwise.

**11. COUNTERPARTS**

This Deed may be executed in any number of counterparts by the parties hereto on separate counterparts each of which when executed and upon delivery and exchange by that party shall be binding on the party who has executed it and all of which when taken together shall constitute one and the same document.

**12. ENTIRE AGREEMENT**

This Deed sets forth the entire agreement and understanding between the parties or any of them in relation to the subject matter of this Deed and supersedes and cancels in all respects all previous agreements, letters of intent, correspondences, understandings, agreements and undertakings (if any) between the parties hereto with respect to the subject matter hereof, whether such be written or oral.

**13. GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by or construed in accordance with the laws of Hong Kong and the parties hereto submit to the non-exclusive jurisdiction of the Courts of Hong Kong.

## SCHEDULE 1

Name

Address

China Merchants New Energy Group Limited  
招商新能源集團有限公司

China Green Holdings Limited  
中國綠色控股有限公司

Ease Soar Limited  
逸昇有限公司

Hyatt Servicing Limited

Talesun Solar Hong Kong Limited  
騰暉電力香港有限公司

Sino Arena Investments Limited

IN WITNESS whereof the parties hereto have caused this Deed to be duly executed on the date first above written.

**INDEMNIFIERS**

Executed as a **DEED** by                    )  
  )  
  )  
in the presence of                            )  
  )

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

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

Executed as a **DEED** by                    )  
  )  
  )  
in the presence of                            )  
  )

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

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

Executed as a **DEED** by )  
)  
)  
in the presence of )  
)

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

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

Executed as a **DEED** by )  
)  
)  
in the presence of )  
)

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

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

Executed as a **DEED** by )  
)  
)  
in the presence of )  
)

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

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

Executed as a **DEED** by )

)

in the presence of )

)

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

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

**LISTED GROUP**

Executed as a **DEED** by )

)

in the presence of )

)

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

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

Executed as a **DEED** by )

)

in the presence of )

)

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

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

附表 7

托管协议

FORM OF ESCROW AGREEMENT

[\*] 2012

To: King & Wood Mallesons  
9/F, Hutchison House  
Central, Hong Kong

Attn: Dr. Sheldon Tse

Dear Sirs,

**Re : The Sale and Purchase Agreement dated [\*] 2012 and  
the Series B Convertible Bonds**

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We refer to (a) the sale and purchase agreement dated [\*] 2012 ”) (the “**Sale and Purchase Agreement**”) entered into among Profit Icon Investments Limited (“**Profit Icon**”), Goldpoly New Energy Holdings Limited (金保利新能源有限公司) (“**Goldpoly**”), China Merchants New Energy Group Limited (招商新能源集團有限公司) (“**CMNEG**”), China Green Holdings Limited (中國綠色控股有限公司) (“**China Green**”), Ease Soar Limited(逸昇有限公司)(“**Ease Soar**”), Hyatt Servicing Limited (“**Hyatt**”), Talesun Solar Hong Kong Limited (騰暉電力香港有限公司) (“**Talesun**”) and Sino Arena Investments Limited (“**Sino Arena**”, together with CMNEG, China Green, Ease Soar, Hyatt and Talesun, collectively the “**Bondholders**” and each a “**Bondholder**”, for the purpose of this Agreement, the defined term “**Bondholders**” mean any or all of Sino Arena, CMNEG, China Green, Ease Sour, Hyatt and Talesun or its/their nominees whom Goldpoly issued the Series B Bond in favour of pursuant to the Sale and Purchase Agreement, as the case may be), a copy of which is attached hereto as Appendix IX; and (b) the series B convertible bonds in the total principal amount of HK\$[\*] million issued on [\*] by Goldpoly in favour of the Bondholders in such proportion and manner in accordance with the terms of the Sale and Purchase Agreement (the “**Series B Bonds**”).

This Agreement when signed by each of the Parties (as defined below) shall constitute the escrow agreement as referred to in Clause [3.3] and Clause [4.1(j)] of the Sale and Purchase Agreement, under which Profit Icon, Goldpoly and the Bondholders agree to jointly engage King & Wood Mallesons as the escrow agent (the “**Escrow Agent**”) to hold the following documents in escrow: (a) Series B Bonds instrument together with Series B bond certificate(s) in the total principal amount of HK\$[\*] issued by Goldpoly in favour of CMNEG; (b) Series B Bonds instrument together with Series B bond certificate(s) in the total principal amount of HK\$[\*] issued by Goldpoly in favour of China Green; (c) Series B Bonds instrument together with Series B bond certificate(s) in the total principal amount of HK\$[\*] issued by Goldpoly in favour of Ease Soar; (d) Series B Bonds instrument together with Series B bond certificate(s) in the total principal amount of HK\$[\*] issued by Goldpoly in favour of Hyatt; (e) Series B Bonds instrument together with Series B bond certificate(s) in the total principal amount of HK\$[\*] issued by Goldpoly in favour of Talesun; (f) Series B Bonds instrument together with Series B bond certificate(s) in the total principal amount of HK\$[\*] issued by Goldpoly in favour of Sino Arena (item (a) to item (f) are collectively referred to as the “**Escrowed Documents**” hereinbelow, and each of item (a) to item (f) in respect of a Bondholder is referred to the “**Relevant Escrowed Documents**”).

Unless otherwise defined, the terms used in this Agreement shall have the same meanings as defined in the Sale and Purchase Agreement and the Series B Bonds.



In accordance with Clause [3.2] of the Sale and Purchase Agreement, the Bondholders shall deposit the Escrowed Documents with the Escrow Agent upon the delivery of the Escrowed Documents by Goldpoly to the Bondholders at the completion of the Sale and Purchase Agreement.

Profit Icon, Goldpoly, the Bondholders and the Escrow Agent (collectively the “Parties” and each a “Party”) agree as follows:

**1. Appointment**

1.1 Subject to the delivery of the Escrowed Documents by the Bondholders to the Escrow Agent pursuant to the Sale and Purchase Agreement, Profit Icon, Goldpoly and the Bondholders hereby jointly appoint and authorise the Escrow Agent to stakehold and release the Escrowed Documents in accordance with the terms of this Agreement, and the Escrow Agent hereby accepts such appointment.

**2. Release of the Escrowed Documents**

2.1 The Escrow Agent should release the Escrowed Documents at any time during the term of this Agreement in the following manner:

(a) if the Escrow Agent receives a notice of release in relation to the Escrowed Documents (the “**Notice of Release**”) signed by Profit Icon and Goldpoly (Profit Icon and Goldpoly are collectively referred to as the “**Listed Group**”) in the form and substance of **Schedule I**, which shall be provided to the Escrow Agent within ten (10) Business Days after the issue date of the Financial Statements for the Profit Guarantee Period (“**利潤保証期帳目**”), as defined in the Sale and Purchase Agreement, of the Target Group in accordance with [Clause 8.1 and Clause 8.2] of the Sale and Purchase Agreement (the “**First Notice Period**”), the Escrow Agent shall release the Escrowed Documents within three (3) Business Days after receipt of the Notice of Release to the party(ies) and the address(es) as specified in the Notice of Release.

(b) if the Escrow Agent does not receive the Notice of Release within the First Notice Period, the Escrow Agent shall, upon the expiry of the First Notice Period, hold the Escrowed Documents to the order of the Bondholders and upon receipt of a notice of request in relation to the Escrowed Documents (the “**Notice of Request**”) signed by the Bondholders in the form and substance of **Schedule II**, the Escrow Agent shall, without liability to any parties save as the otherwise provided herein, release the Escrowed Documents to the Bondholders within three (3) Business Days after receipt of the Notice of Request at the addresses as specified in the Notice of Request.

(c) if the Escrow Agent has not received the Notice of Release or the Notice of Request by 15 April 2016 (if the Financial Statements for the Profit Guarantee Period, as defined in the Sale and Purchase Agreement, of the Target Group in accordance with [Clause 8.1 and Clause 8.2] of the Sale and Purchase Agreement has been issued before such date) or otherwise by 30 June 2016, the Escrow Agent shall release to each Bondholder the Relevant Escrowed Documents which Goldpoly issued in favour to such Bondholder at the relevant address of such bondholder set out in Clause [5.4] or such other address as may be notified by such Bondholder to the Escrow Agent pursuant to Clause [5.2].

2.2 If the Escrow Agent considers that the Notice of Release issued by the Listed Group or Notice of Request issued by the Bondholders does not comply with the requirement of

this Agreement, the Escrow Agent shall promptly notify the Listed Group or the Bondholders (as the case may be), with copy to the other parties, of the non-compliance. After such non-compliance has been corrected, the Escrow Agent shall release the Escrowed Documents in accordance with the terms of this Agreement within three (3) Business Days after the supplementary and/or amended Notice of Release or Notice of Request (as the case may be) complying with this Agreement has been received by the Escrow Agent.

- 2.3 In the event of any omissions or mistakes of the address(es) and/or other information as specified in the Notice of Release or the Notice of Request (as the case may be), as a result of which the Escrow Agent cannot perform its relevant delivery obligation, the Escrow Agent shall promptly notify the Listed Group or the Bondholders (as the case may be) with copy to the other parties. After such omissions or mistakes have been corrected, the Escrow Agent shall perform its relevant delivery obligation within three (3) Business Days after the supplementary and/or amended Notice of Release or the Notice of Request (as the case may be) complying with this Agreement has been received by the Escrow Agent.

### **3. Fees and Protection of the Escrow Agent**

- 3.1 In consideration of the Escrow Agent agreeing to act as the escrow agent under this Agreement, the Escrow Agent will be entitled to a non-refundable fee of HK\$[\*] per annum payable by [Goldpoly], with the first annual fee payable upon execution of this Agreement and the subsequent annual fees payable on each anniversary date of this Agreement until this Agreement is terminated in accordance with the terms contained herein.
- 3.2 The Listed Group and the Bondholders hereby jointly and severally agree to indemnify the Escrow Agent and to keep the Escrow Agent indemnified in full from and against all and any claims, proceedings, actions, taxes, damages, losses, costs, expenses or liabilities of any nature whatsoever which the Escrow Agent may suffer or incur in connection with the holding of the Escrowed Documents as escrow agent in accordance with this Agreement or instructions given by the Listed Group or the Bondholders pursuant to this Agreement, save and except any claims, proceedings, actions, taxes, damages, losses, costs, expenses or liabilities of any nature caused by the gross negligence, dishonesty, fraud or willful default of the Escrow Agent as adjudicated by a court of competent jurisdiction. The Listed Group and the Bondholders hereby jointly and severally agree to promptly reimburse to you on demand all costs and expenses reasonably incurred by the Escrow Agent and pay all fees relating to the discharge and performance by the Escrow Agent of its responsibilities under this Agreement including, without limitation, all reasonable costs and expenses relating to the execution and performance of this Agreement, but excluding the preparation and signing of this Agreement. The indemnity under this Clause shall survive notwithstanding the termination of this Agreement.
- 3.3 The release of all the Escrowed Documents in accordance with this Agreement shall represent full and final discharge of the Escrow Agent's obligations as the escrow agent under this Agreement and following such release the Escrow Agent shall have no liability whatsoever to any of the Listed Group or Bondholders or to any third party for acting in accordance with the provisions of this Agreement. In any event, the liability of the Escrow Agent under the terms of this Agreement is simply to hold the Escrowed Documents and no claim should be made against the Escrow Agent otherwise.
- 3.4 the Escrow Agent shall not in any way be liable for any failure or delay in carrying out any obligations hereunder directly or indirectly owing to:

- (a) any causes or circumstances beyond its control including (without limitation) orders of any court of competent jurisdiction or governmental laws, restrictions or revocation; or
  - (b) any claims made or action taken in respect of all or any of Escrowed Documents by any third party; or
  - (c) any Notice of Release or Notice of Request being ambiguous or erroneous; or
  - (d) any delay caused as a result of its seeking legal or other advice in respect of any matter in relation to this Agreement pursuant to Clause 3.7.
- 3.5 Neither the Escrow Agent nor any of its officers, employees, partners, servants or agents thereof shall, by reason of any matter or thing contained in this Agreement, be deemed to be a trustee for or have any fiduciary relationship with any of the other Parties or any other person.
- 3.6 The Escrow Agent will be entitled to rely, for the purpose of discharging its duties hereunder, on any original notice, letter or other document received by the Escrow Agent pursuant to the terms of this Agreement without any obligation on its part to investigate whether any statement contained in the original notice, letter or other document is correct, whether the same has been validly authorised and issued, whether the signatures are genuine, whether the same has been properly dated, and the Escrow Agent shall not be under any liability in relying and acting on any such original notice, letter or other document which in good faith the Escrow Agent believe to be genuine. The Parties agree that the Escrow Agent and any of its officers, employees, partners, servants or agents thereof shall be entitled to assume that the Notice of Release, the Notice of Request and the signatures thereon are genuine.
- 3.7 (a) The Escrow Agent is authorised to take such steps the Escrow Agent may consider expedient to enable the Escrow Agent to provide the services herein, including without limitation, to take, or refrain from taking, any action as the Escrow Agent may deem expedient as and when required by applicable laws, regulations, orders, directives, notices and requests of any relevant government agency (whether or not having the force of law).
- (b) In the event of any disagreement between the Parties in conflicting or inconsistent claims or demands being made in connection with this Agreement, or in the event that the Escrow Agent is in doubtful in good faith as to what action you should take hereunder, the Escrow Agent shall be entitled to retain the Escrowed Documents or any part thereof until the Escrow Agent shall have received:
- (i) an order of a court directing the Escrow Agent how to act in connection therewith; or
  - (ii) any joint written instructions executed by the Listed Group and the Bondholders directing the Escrow Agent how to act in connection therewith,
- in which event the Escrow Agent shall act in accordance with such order or joint written instructions provided that the Escrow Agent shall be under no duty whatsoever to institute or defend any such proceedings.
- (c) In the circumstances provided in Clause 3.7(b) above, the Escrow Agent is further authorised and directed to:
- (i) retain in its possession without any liability to any parties hereto or to any other person, firm or corporation the Escrowed Documents until the release of the Escrowed Documents is authorised by and made pursuant to Clause 3.7(b);

(ii) deliver the Escrowed Documents held by the Escrow Agent hereunder to a court of law having competent jurisdiction.

- 3.8 This Agreement sets forth all of the duties of the Escrow Agent as an escrow agent and no other obligation shall be implied from the terms of any other agreement, instrument or document. The Escrow Agent shall not have any interest in the Escrowed Documents but shall serve as an escrow holder of the Escrowed Documents only.
- 3.9 The Escrow Agent is hereby expressly authorised, at its discretion, to disregard any and all notices or authorizations except as set out in this Agreement, except only orders or process of courts of law and the Escrow Agent is hereby expressly authorised to comply with and obey orders, judgments or decrees of any court. In the event that the Escrow Agent obeys or complies with order, judgment or decree of any court, the Escrow Agent shall not be liable to any parties hereto or to any other person, firm or corporation by reason of such decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.
- 3.10 The Escrow Agent shall not be liable for losses of any kind which may be incurred by the Listed Group or any of the Bondholders as a result of the provision of the services herein by you in accordance with the instructions of the Listed Group or the Bondholders, unless such loss is due to the gross negligence, dishonesty, fraud or willful default of the Escrow Agent as adjudicated by a court of competent jurisdiction. The Escrow Agent shall be under no duty to give the Escrowed Documents any greater degree of care than the Escrow Agent give to its own similar property.

#### **4. Term and Termination**

- 4.1 Your appointment as escrow agent shall become effective upon your signing of this Agreement and shall terminate upon the earliest of:
- (a) release or return of all the Escrowed Documents in accordance with this Agreement;
  - (b) upon effectiveness of the removal of the Escrow Agent by all the Parties in accordance with this Agreement; or
  - (c) upon effectiveness of the resignation of the Escrow Agent in accordance with this Agreement.
- 4.2 At any time during the escrow period, the Escrow Agent may, at its discretion, resign as escrow agent by giving seven (7) days' notice in writing to each of us. The Listed Group and the Bondholders undertake to co-operate with the Escrow Agent by appointing a successor escrow agent on or before the expiry of the said notice. The resignation of the Escrow Agent as escrow agent shall be effective on the date the Escrowed Documents are delivered to the successor escrow agent.
- 4.3 In addition, the Listed Group and the Bondholders may jointly remove the Escrow Agent as escrow agent at any time with or without cause, by a written notice given to the Escrow Agent at least seven (7) days before the proposed effective date of such removal, which notice shall specify the effective date of such removal and instructions relating to the delivery of the Escrowed Documents then retained in its possession.
- 4.4 Upon the date on which a successor escrow agent is appointed by the Listed Group and the Bondholders(which appointment shall be communicated to the Escrow Agent in writing), the Escrow Agent shall tender the Escrowed Documents then retained in its possession to such successor escrow agent as soon as reasonably practicable. Upon tendering the Escrowed Documents you shall have no further obligation under this Agreement and this Agreement shall terminate with immediate effect.

4.5 Any termination of this Agreement and any delivery of the Escrowed Documents then retained in the possession of the Escrow Agent pursuant to this Agreement, whether or not following termination of this Agreement, shall terminate the duties of the Escrow Agent as escrow agent hereunder in respect of the Escrowed Documents, but without prejudice to its right to settle any transactions entered into under this Agreement prior to termination. Termination of this Agreement shall be without prejudice to any liability or claim arising prior to the date of such termination.

## 5. Notice

5.1 (a) Any Notice of Release to be given to the Escrow Agent pursuant to this Agreement shall be executed by any one of the authorized representatives of Profit Icon and Goldpoly hereto as set forth in Appendix I and Appendix II respectively, and Notice of Request shall be executed by any one of the authorized representatives of each Bondholder as set forth in Appendix III to Appendix VIII respectively. The Notice of Release or the Notice of Request (as the case may be) shall be served to the Escrow Agent in original by hand or by prepaid post addressed to its address specified in Clause 5.4 below.

(b) The Listed Group agrees to notify the Bondholders and send a copy of the Notice of Release to each Bondholder upon issue of such notice.

(c) The Bondholders agree to notify Listed Group and send a copy of Notice of Request to Listed Group upon issue of such notice.

5.2 Any notice, demand or other communication to be given by one party to the other parties under, or in connection with, this Agreement shall be in writing and signed by or on behalf of the Party giving it. It shall be delivered by fax, in the form of registered mail or by hand to the address set out in Clause 5.4 (or such other address as may be notified by the Parties from time to time).

5.3 Any notice so served by hand, fax or post shall be deemed to have been duly given:

(a) in the case of delivery by hand, when delivered;

(b) in the case of fax, at the time of receipt of confirmation of successful transmission; and

(c) in the case of registered mail, at 10 a.m. on the fifth Business Day following the date of posting.

5.4 The addresses and fax numbers of the Parties for the purpose of this Clause are as follows:

### Listed Group

If to Profit Icon Investments Limited:

Correspondence Address: c/o Room 6301, The Center, 99, Queen's Road, Central,  
Hong Kong

Fax No.: (852) 2411 5838

Attn.: Mr. Lam Ho Fai

If to Goldpoly New Energy Holdings Limited

金保利新能源有限公司:

Correspondence Address: Room 6301, The Center, 99, Queen's Road, Central, Hong  
Kong

Fax No.: (852) 2411 5838  
Attn.: Mr. Lam Ho Fai

#### Bondholders

If to China Merchants New Energy Group Limited  
招商新能源集團有限公司:

Correspondence Address: [Flat/Rm 1011, 10/F., West Tower, Shun Tak Centre,  
168-200 Connaught Road Central, Hong Kong]

Fax No.: [(852) 3112 8410]  
Attn.: [Mr. Lu Zhenwei ]

If to China Green Holdings Limited  
中國綠色控股有限公司:

Correspondence Address: [Flat/Rm 1011, 10/F., West Tower, Shun Tak Centre,  
168-200 Connaught Road Central, Hong Kong ]

Fax No.: [(852) 3112 8410]  
Attn.: [Mr. Li Yuan]

If to Ease Soar Limited  
逸昇有限公司:

Correspondence Address: [Unit 1703-1706, Level 17, International Commerce  
Centre, 1 Austin Road West, Kowloon, Hong Kong]

Fax No.: [(852) 2526 7638]  
Attn.: [Mr. Barton Yu/Mr. Eddie Kong ]

If to Hyatt Servicing Limited:

Correspondence Address: [Room 1608-11, 16/F., Shui On Centre, 6-8 Harbour Road,  
Wanchai, Hong Kong ]

Fax No.: [(852) 2545 1036]  
Attn.: [Mr. Chan Pang Ching]

If to Talesun Solar Hong Kong Limited  
騰暉電力香港有限公司:

Correspondence Address: [36/F., Tower Two, Times Square, 1 Matheson Street,  
Causeway Bay, Hong Kong]

Fax No.: [\*]  
Attn.: [Mr. Hu Changqing]

If to Sino Arena Investments Limited:

Correspondence Address: [ [ Flat/Rm 1011, 10/F., West Tower, Shun Tak Centre,  
168-200 Connaught Road Central, Hong Kong]

Fax No.: [(852) 3112 8410]  
Attn.: [Mr. Zeng Xiangyi]

#### Escrow Agent

If to the King & Wood Mallesons:

Address: 9/F, Hutchison House, Central, Hong Kong  
Fax No.: (852) 34431299

## **6. Governing Law and Dispute Resolution**

- 6.1 This Agreement and your appointment as escrow agent shall be governed by and construed in all respects in accordance with the laws of the Hong Kong.
- 6.2 The courts of Hong Kong shall have non-exclusive jurisdiction over any dispute which may arise in any way in connection with this Agreement.

## 7 Counterparts

- 7.1 This Agreement may be executed in any number of counterparts and by any parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same Agreement.

Yours faithfully,

For and on behalf of  
China Merchants New Energy Group Limited  
招商新能源集團有限公司

For and on behalf of  
China Green Holdings Limited  
中國綠色控股有限公司

\_\_\_\_\_  
Authorized Signatory

Name :

Title :

For and on behalf of  
Ease Soar Limited  
逸昇有限公司

\_\_\_\_\_  
Authorized Signatory

Name :

Title :

For and on behalf of  
Hyatt Servicing Limited

\_\_\_\_\_  
Authorized Signatory

Name :

Title :

For and on behalf of  
Talesun Solar Hong Kong Limited  
騰暉電力香港有限公司

\_\_\_\_\_  
Authorized Signatory

Name :

Title :

For and on behalf of  
Sino Arena Investments Limited

\_\_\_\_\_  
Authorized Signatory

Name :

Title :

For and on behalf of  
Profit Icon Investments Limited

\_\_\_\_\_  
Authorized Signatory

Name :

Title :

For and on behalf of  
Goldpoly New Energy Holdings Limited  
金保利新能源有限公司

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

Name :  
Title :

Name :  
Title :

Confirmed and agreed by the Escrow Agent :

---

King & Wood Mallesons  
Date:



**APPENDIX I**

**Specimen Signature of the Representative  
Authorized to Execute Notice of Release**

In accordance with the provisions of this Agreement, Profit Icon Investments Limited hereby authorizes any one of the undersigned, or such other person as it may notify to the other Parties in writing from time to time, to sign on behalf of it the Notice of Release or any other notices to be given under this Agreement.

Name: [\*]  
Signature Specimen:

---

Name: [\*]  
Signature Specimen:

---

**APPENDIX II**

**Specimen Signature of the Representative  
Authorized to Execute Notice of Release**

In accordance with the provisions of this Agreement, Goldpoly New Energy Holdings Limited (金保利新能源有限公司) authorizes any one of the undersigned, or such other person as it may notify to the other Parties in writing from time to time, to sign on behalf of it the Notice of Release or any other notices to be given under this Agreement.

Name: [\*]  
Signature Specimen:

---

Name: [\*]  
Signature Specimen:

---

**APPENDIX III**

**Specimen Signature of the Representative  
Authorized to Execute Notice of Request**

In accordance with the provisions of this Agreement, China Merchants New Energy Group Limited (招商新能源集團有限公司) hereby authorizes any one of the undersigned, or such other person as it may notify to the other Parties in writing from time to time, to sign on behalf of it the Notice of Request or any other notices to be given under this Agreement.

Name: [\*]  
Signature Specimen:

---

Name: [\*]  
Signature Specimen:

---

**APPENDIX IV**

**Specimen Signature of the Representative  
Authorized to Execute Notice of Request**

In accordance with the provisions of this Agreement, China Green Holdings Limited (中國綠色控股有限公司) hereby authorizes any one of the undersigned, or such other person as it may notify to the other Parties in writing from time to time, to sign on behalf of it the Notice of Request or any other notices to be given under this Agreement.

Name: [\*]

Signature Specimen:

---

Name: [\*]

Signature Specimen:

---

APPENDIX V

**Specimen Signature of the Representative  
Authorized to Execute Notice of Request**

In accordance with the provisions of this Agreement, Ease Soar Limited (逸昇有限公司) hereby authorizes any one of the undersigned, or such other person as it may notify to the other Parties in writing from time to time, to sign on behalf of it the Notice of Request or any other notices to be given under this Agreement.

Name: [\*]

Signature Specimen:

---

Name: [\*]

Signature Specimen:

---

**APPENDIX VI**

**Specimen Signature of the Representative  
Authorized to Execute Notice of Request**

In accordance with the provisions of this Agreement, Hyatt Servicing Limited hereby authorizes any one of the undersigned, or such other person as it may notify to the other Parties in writing from time to time, to sign on behalf of it the Notice of Request or any other notices to be given under this Agreement.

Name: [\*]  
Signature Specimen:

---

Name: [\*]  
Signature Specimen:

---

**APPENDIX VII**

**Specimen Signature of the Representative  
Authorized to Execute Notice of Request**

In accordance with the provisions of this Agreement, Talesun Solar Hong Kong Limited (騰暉電力香港有限公司) hereby authorizes any one of the undersigned, or such other person as it may notify to the other Parties in writing from time to time, to sign on behalf of it the Notice of Request or any other notices to be given under this Agreement.

Name: [\*]  
Signature Specimen:

---

Name: [\*]  
Signature Specimen:

---

**APPENDIX VIII**

**Specimen Signature of the Representative  
Authorized to Execute Notice of Request**

In accordance with the provisions of this Agreement, Sino Arena Investments Limited hereby authorizes any one of the undersigned, or such other person as it may notify to the other Parties in writing from time to time, to sign on behalf of it the Notice of Request or any other notices to be given under this Agreement.

Name: [\*]  
Signature Specimen:

---

Name: [\*]  
Signature Specimen:

---



**APPENDIX IX**

**Sale and Purchase Agreement**

## SCHEDULE I

### Notice of Release

[Date]

To: King & Wood Mallesons (the “Escrow Agent”)

We refer to the escrow agreement (the “Escrow Agreement”) dated [\*] executed by Profit Icon Investments Limited, Goldpoly New Energy Holdings Limited (金保利新能源有限公司), China Merchants New Energy Group Limited(招商新能源集團有限公司), China Green Holdings Limited (中國綠色控股有限公司), Ease Soar Limited (逸昇有限公司), Hyatt Servicing Limited, Talesun Solar Hong Kong Limited (騰暉電力香港有限公司), Sino Arena Investments Limited and the Escrow Agent.

Unless otherwise specified, the terms used in this notice shall have the same meanings as defined the Escrow Agreement.

*\* The profit guarantee as referred to in Clause 8.1 of the Sale and Purchase Agreement has been met pursuant to the terms of the Sale and Purchase Agreement. We hereby irrevocably and unconditionally instruct you as the Escrow Agent to deliver to each Bondholder the Relevant Escrowed Documents which Goldpoly issued in favour of such Bondholder at the following addresses within three (3) Business Days from the date of receipt of this notice by you:*

*To: China Merchants New Energy Group Limited(招商新能源集團有限公司)  
c/o [Address]  
Attn.: [●]*

*To: China Green Holdings Limited (中國綠色控股有限公司)  
c/o [Address]  
Attn.: [●]*

*To: Ease Soar Limited (逸昇有限公司)  
c/o [Address]  
Attn.: [●]*

*To: Hyatt Servicing Limited  
c/o [Address]  
Attn.: [●]*

*To: Talesun Solar Hong Kong Limited (騰暉電力香港有限公司)  
c/o [Address]  
Attn.: [●]*

*To: Sino Arena Investments Limited  
c/o [Address]  
Attn.: [●]*

**OR**

*\* The profit guarantee as referred to in Clause 8.1 of the Sale and Purchase Agreement has not been met pursuant to the terms of the Sale and Purchase Agreement. We hereby irrevocably and unconditionally instruct you as the Escrow Agent to deliver the Escrowed Documents to the Listed Group at the following address within three (3) Business Days from the date of receipt of this notice by you:*

Goldpoly New Energy Holdings Limited (金保利新能源有限公司)  
c/o [Address]  
Attn.: [●]

(\* deleted where appropriate)

Yours faithfully  
For and on behalf of  
Profit Icon Investments Limited

---

Authorised Signatories  
Name :

For and on behalf of  
Goldpoly New Energy Holdings Limited (金保利新能源有限公司)

---

Authorised Signatories  
Name :

- c.c. China Merchants New Energy Group Limited(招商新能源集團有限公司) (fax no:[\*])  
China Green Holdings Limited (中國綠色控股有限公司) (fax no:[\*])  
Ease Soar Limited (逸昇有限公司) (fax no:[\*])  
Hyatt Servicing Limited (fax no:[\*])  
Talesun Solar Hong Kong Limited (騰暉電力香港有限公司) (fax no:[\*])  
Sino Arena Investments Limited (fax no:[\*])

## SCHEDULE II

### Notice of Request

[Date]

To: King & Wood Mallesons (the “Escrow Agent”)

We refer to the escrow agreement (the “Escrow Agreement”) dated [\*] executed by Profit Icon Investments Limited, Goldpoly New Energy Holdings Limited (金保利新能源有限公司), China Merchants New Energy Group Limited(招商新能源集團有限公司), China Green Holdings Limited (中國綠色控股有限公司), Ease Soar Limited (逸昇有限公司), Hyatt Servicing Limited, Talesun Solar Hong Kong Limited (騰暉電力香港有限公司), Sino Arena Investments Limited and the Escrow Agent.

Unless otherwise specified, the terms used in this notice shall have the same meanings as defined the Escrow Agreement.

Since no Notice of Release is given by the Listed Group to you in accordance with the terms of the Escrow Agreement, we hereby irrevocably and unconditionally instruct you as the Escrow Agent to deliver to each Bondholder the Relevant Escrowed Documents which Goldpoly issued in favour of such Bondholder at the following addresses within three (3) Business Days from the date of receipt of this notice by you:

To: China Merchants New Energy Group Limited(招商新能源集團有限公司)  
c/o [Address]  
Attn.: [•]

To: China Green Holdings Limited (中國綠色控股有限公司)  
c/o [Address]  
Attn.: [•]

To: Ease Soar Limited (逸昇有限公司)  
c/o [Address]  
Attn.: [•]

To: Hyatt Servicing Limited  
c/o [Address]  
Attn.: [•]

To: Talesun Solar Hong Kong Limited (騰暉電力香港有限公司)  
c/o [Address]  
Attn.: [•]

To: Sino Arena Investments Limited  
c/o [Address]  
Attn.: [•]

Yours faithfully

For and on behalf of  
China Merchants New Energy Group Limited  
招商新能源集團有限公司

For and on behalf of  
China Green Holdings Limited  
中國綠色控股有限公司

\_\_\_\_\_  
Authorized Signatory  
Name :

For and on behalf of  
Ease Soar Limited  
逸昇有限公司

\_\_\_\_\_  
Authorized Signatory  
Name :

For and on behalf of  
Hyatt Servicing Limited

\_\_\_\_\_  
Authorized Signatory  
Name :

For and on behalf of  
Talesun Solar Hong Kong Limited  
騰暉電力香港有限公司

\_\_\_\_\_  
Authorized Signatory  
Name :

For and on behalf of  
Sino Arena Investments Limited

\_\_\_\_\_  
Authorized Signatory  
Name :

\_\_\_\_\_  
Authorized Signatory  
Name :

c.c. Profit Icon Investments Limited  
Goldpoly New Energy Holdings Limited (金保利新能源有限公司)  
(fax no:[\*])

本协议于首页所书之日期由各方签署，以兹为证。

China Merchants New Energy )  
Group Limited 招商新能源集团有限公司 )  
之授权代表 )

卢振威

For and on behalf of  
CHINA MERCHANTS NEW ENERGY GROUP LIMITED  
招商新能源集团有限公司



.....  
Authorised Signature(s)

见证人： - 曾祥义

姓名：曾祥义

China Green Holdings Limited  
中国绿色控股有限公司  
之授权代表

李原

见证人: -



Name: Qiu Ping

For and on behalf of  
China Green Holdings Limited  
中国绿色控股有限公司



.....  
Authorised Signature(s)





Hyatt Servicing Limited  
之授权代表

HUNG CHAO HONG

见证人: -

*Wendy Wong*

Name: Wendy Wong Sui Wai

For and on behalf of  
**HYATT SERVICING LIMITED**

.....  
**Authorized Signature(s)**

Talesun Solar Hong Kong Limited )  
騰暉電力香港有限公司 )  
之授權代表 )

王柏興 )

见证人: - )

文

Name: 刘永生 )

For and on behalf of  
Talesun Solar Hong Kong Limited  
騰暉電力香港有限公司

  
.....  
Authorized Signature(s)



Profit Icon Investments Limited )

之授权代表 )

林若辉 )

For and on behalf of  
PROFIT ICON INVESTMENTS LIMITED

  
.....  
Authorized Signature(s)

见证人：- )



姚加魁 )

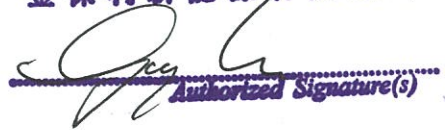
Goldpoly New Energy Holdings Limited )  
金保利新能源有限公司 )  
之授权代表 )

林若辉

见证人：- 

姚加魁

For and on behalf of  
Goldpoly New Energy Holdings Limited  
金保利新能源有限公司

  
Authorized Signature(s)

日期：2013年3月31日

载于本补充协议附表 1 之人士  
（“出售方”）

及

**PROFIT ICON INVESTMENTS LIMITED**  
（“购买方”）

及

**GOLDPOLY NEW ENERGY HOLDINGS LIMITED**  
（金保利新能源有限公司）

---

有关  
出售及购买招商新能源控股有限公司  
之 92.17% 已发行股份的买卖协议之  
补充协议

---

“最后完成日” 指 2013 年 9 月 30 日或本协议各方以书面同意之其它日期，作为完成或豁免先决条件的最后限期；

## 2. 其它

- 2.1 除上述修订外，买卖协议之其它内容、条款及条件不变，协议各方仍须依约履行。本补充协议由协议各方代表签订日起生效。
- 2.2 本补充协议中的用语，除特别说明外，与买卖协议中的定义与解释具有相同意义。
- 2.3 本补充协议为买卖协议的有效组成部分。
- 2.4 买卖协议有关管辖法律及司法权区的规定适用于本补充协议。
- 2.5 本补充协议可以一式多份签订，每份分开签订及交付的文件均为正本，而所有签订的文本构成一份相同的协议。

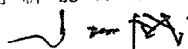
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本补充协议于首页所书之日期由各方签署，以兹为证。

China Merchants New Energy )  
Group Limited 招商新能源集团有限公司 )  
之授权代表 )

卢振威

For and on behalf of  
CHINA MERCHANTS NEW ENERGY GROUP LIMITED  
招商新能源集团有限公司



.....  
Authorized Signature(s)

见证人： - 曾祥义

姓名：曾祥义



China Green Holdings Limited )

中国绿色控股有限公司 )

之授权代表 )

李原 )

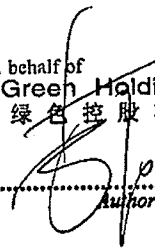
见证人： - )

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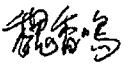
Name: QIU PING )

For and on behalf of  
China Green Holdings Limited  
中国绿色控股有限公司


.....  
Authorized Signature(s)



Ease Soar Limited  
逸昇有限公司  
之授权代表

见证人: -   
NH.

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)  
)  
)

For and on behalf of  
**EASE SOAR LIMITED**  
逸昇有限公司  
  
.....  
Authorised Signature(s)

Hyatt Servicing Limited

之授权代表

HUNG CHAO HONG

见证人：-

*Wong Suk Wai*

Name : Wong Suk Wai

For and on behalf of  
HYATT SERVICING LIMITED

.....  
**Authorized Signature(s)**



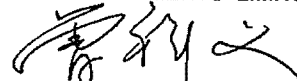
Sino Arena Investments Limited  
之授权代表

曾祥义

见证人： - 赵之郊

姓名：赵之郊

For and on behalf of  
SINO ARENA INVESTMENTS LIMITED

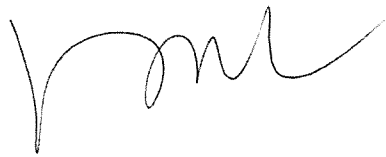


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Authorized Signature(s)

**Profit Icon Investments Limited**

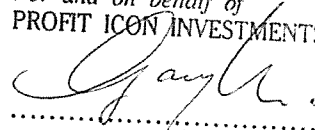
之授权代表 林浩輝

见证人: -



姚加强

For and on behalf of  
PROFIT ICON INVESTMENTS LIMITED




.....  
Authorized Signature(s)

Goldpoly New Energy Holdings Limited )

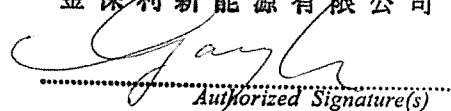
金保利新能源有限公司 )

之授权代表 林浩輝 )

见证人: - )

  
姚加魁 )

*For and on behalf of*  
Goldpoly New Energy Holdings Limited  
金保利新能源有限公司

  
.....  
*Authorized Signature(s)*

日期：2013 年 6 月 10 日

载于本第二补充协议附表 1 之人士

（“出售方”）

及

**PROFIT ICON INVESTMENTS LIMITED**

（“购买方”）

及

**GOLDPOLY NEW ENERGY HOLDINGS LIMITED**

（金保利新能源有限公司）

---

有关  
出售及购买招商新能源控股有限公司  
之 92.17% 已发行股份的买卖协议之  
第二补充协议

---



本第二补充协议由下列各方于2013年6月10日签订：

- (1) 载于本第二补充协议附表1之人士(“出售方”,任何出售方为“各出售方”);
- (2) PROFIT ICON INVESTMENTS LIMITED, 一家根据英属维尔京群岛法律注册成立的公司, 其注册地址为 the Office of the first Registered Agent at AMS Trustee Limited, Sea Meadow House, Blackburne Highway, (P.O. Box 116), Road Town, Tortola, British Virgin Islands (“购买方”); 及
- (3) GOLDPOLY NEW ENERGY HOLDINGS LIMITED (金保利新能源有限公司), 一家根据百慕达法律注册成立的公司, 其香港总办事处及主要营业地点位于香港中环皇后大道 99 号中环中心 63 楼 6301 室 (“金保利”)。

鉴于：

各出售方、购买方及金保利于2012年11月22日, 签订了《有关出售及购买招商新能源控股有限公司之92.17%已发行股份的买卖协议》, 并于2013年3月31日签订了补充协议修订, (统称“买卖协议”);

本第二补充协议各方达成以下协议：

#### 1. 托管代理

本第二补充协议各方同意将买卖协议第 1 条“定义及释义”中之“托管代理”的原有描述删除, 以下文取代：

“托管代理” 指由购买方及出售方及金保利根据第 3.2 条及托管协议的条款及条件, 共同委托以托管可换股债券的托管代理, 即 Quam Securities Company Limited 或根据托管协议任命的任何继任托管代理(按情形而定);

#### 2. 交割地点

本第二补充协议各方同意将买卖协议第 5.1 条的原有描述删除, 以下文取代：

5.1 于完成先决条件后 (或按照第 4.2 条豁免后), 交割将于交割日当

天办公时间内，于香港干诺道中 168-200 号信德中心西翼 10 楼 1010-12 室或各协议方同意的其它地方举行。

### 3. 其它

- 2.1 除上述修订外，买卖协议之其它内容、条款及条件不变，协议各方仍须依约履行。本第二补充协议由协议各方代表签订日起生效。
- 2.2 本第二补充协议中的用语，除特别说明外，与买卖协议中的定义与解释具有相同意义。
- 2.3 本第二补充协议为买卖协议的有效组成部分。
- 2.4 买卖协议有关管辖法律及司法权区的规定适用于本第二补充协议。
- 2.5 本第二补充协议可以一式多份签订，每份分开签订及交付的文件均为正本，而所有签订的文本构成一份相同的协议。

(本页以下无正文)

**附表1**

名称	成立地点	地址
China Green Holdings Limited 中国绿色控股有限公司	British Virgin Islands	P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands
China Merchants New Energy Group Limited 招商新能源集团有限公司	British Virgin Islands	Trident Chambers, P.O. Box 146, Road Town, Tortola, British Virgin Islands
Ease Soar Limited 逸昇有限公司	British Virgin Islands	P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands
Hyatt Servicing Limited	British Virgin Islands	Sea Meadow House, Blackburne Highway, P.O. Box 116, Road Town, Tortola, British Virgin Islands
China New Energy Power Investment Corporation Limited 中国新能源电力投资有限公司 (formerly known as Talesun Solar Hong Kong Limited 腾晖电力香港有限公司)	Hong Kong	36/F Tower Two, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong
Sino Arena Investments Limited	British Virgin Islands	P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands

本第二补充协议于首页所书之日期由各方签署，以兹为证。

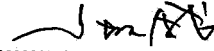
China Merchants New Energy )  
Group Limited 招商新能源集团有限公司 )  
之授权代表 )

李振威

见证人： - 曾祥义

姓名：曾祥义

For and on behalf of  
CHINA MERCHANTS NEW ENERGY GROUP LIMITED  
招商新能源集团有限公司



.....  
*Authorised Signature(s)*

China Green Holdings Limited )

中国绿色控股有限公司 )

之授权代表 )

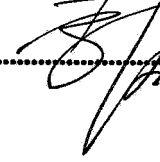
李原 )

见证人: - )

曾祥义 )

姓名: 曾祥义 )

For and on behalf of )  
China Green Holdings Limited )  
中国绿色控股有限公司 )

 )  
..... )  
Authorized Signature(s) )

Ease Soar Limited )

逸昇有限公司 )

之授权代表于宝东 )

见证人: - NGAI HEUNG MING )

NH )

For and on behalf of )  
EASE SOAR LIMITED )  
逸昇有限公司 )

.....  
Authorized Signature(s) )

Hyatt Servicing Limited

之授权代表

Hung Chao Hong

见证人: -

*[Handwritten signature]*

Name: Wang Suk Wai

)  
)  
)  
)  
)  
)  
)  
)

For and on behalf of  
**HYATT SERVICING LIMITED**

*[Handwritten signature]*


.....  
*Authorized Signature(s)*

China New Energy Power Investment Corporation Limited  
中国新能源电力投资有限公司  
之授权代表 王柏兴

*For and on behalf of*  
China New Energy Power Investment Corporation Limited  
中國新能源電力投資有限公司

.....  
*Authorized Signature(s)*

见证人: -

  
刘永生





Profit Icon Investments Limited )  
之授权代表 LAM HO FAI )



见证人：- LEUNG YUK LUN ERIC )



