

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**SCHEDULE 13D**

Under the Securities Exchange Act of 1934  
(Amendment No. 5)\*

**ATA Inc.**

(Name of Issuer)

**Common Shares, \$0.01 par value per share \*\*  
American Depositary Shares**

(Title of Class of Securities)

**00211V106\*\*\***

(CUSIP Number)

**Attn: Kevin Xiaofeng Ma  
1/F East Gate, Building No. 2, Jian Wai Soho,  
No. 39 Dong San Huan Zhong Road,  
Chao Yang District, Beijing 100022, China  
++86 10 6518 1122-5518**

(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications)

**August 16, 2018**

(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box ☐.

*Note.* Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. *See* Rule §240.13d-7(b) for other parties to whom copies are to be sent.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page

\*\* Not for trading, but in connection with the registration of American Depositary Shares, each representing 2 Common Shares.

\*\*\* CUSIP number of the American Depositary Shares.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 (the "Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

**SCHEDULE 13D**

<b>CUSIP No.</b>	<b>00211V106</b>
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<b>1</b>	Names of Reporting Persons I.R.S. Identification Nos. of Above Persons (Entities Only) Kevin Xiaofeng Ma
<b>2</b>	Check the Appropriate Box if a Member of a Group*  (a) <input type="checkbox"/>  (b) <input checked="" type="checkbox"/>
<b>3</b>	SEC Use Only

<b>4</b>	Source of Funds (See Instructions) <b>OO</b>	
<b>5</b>	Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) <input type="checkbox"/>	
<b>6</b>	Citizenship or Place of Organization People's Republic of China	
Number of Shares Beneficially Owned by Each Reporting Person With	<b>7</b>	Sole Voting Power 0
	<b>8</b>	Shared Voting Power 24,693,393 Common Shares <sup>1</sup>
	<b>9</b>	Sole Dispositive Power 0
	<b>10</b>	Shared Dispositive Power 24,693,393 Common Shares <sup>1</sup>
<b>11</b>	Aggregate Amount Beneficially Owned by Each Reporting Person 24,693,393 Common Shares <sup>1</sup>	
<b>12</b>	Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) <input type="checkbox"/>	
<b>13</b>	Percent of Class Represented by Amount in Row (11) 51.7% <sup>2</sup>	
<b>14</b>	Type of Reporting Person (See Instructions) <b>IN</b>	

<sup>1</sup> Includes (i) (a) 165,236 Common Shares and (b) options to purchase 1,102,095 Common Shares held by Kevin Xiaofeng Ma, (ii) 4,998,988 Common Shares held by Able Knight Development Limited ("Able Knight"), and (iii) 18,427,074 Common Shares held by Joingear Limited. Able Knight is a British Virgin Islands company wholly owned by Precious Time Holdings Limited and ultimately wholly owned by HSBC International Trustee Limited as trustee of an irrevocable trust constituted under the laws of the Cayman Islands with Kevin Xiaofeng Ma as the settlor and certain family members of Kevin Xiaofeng Ma as the beneficiaries. Kevin Xiaofeng Ma is the sole director of Able Knight. The business address of Able Knight is Portcullis Chambers, 4<sup>th</sup> Floor, Ellen Skelton Building, 3076 Sir Francis Drake Highway, Road Town, Tortola, British Virgin Islands. Joingear Limited is a British Virgin Islands company with 50.01% and 49.99% of its issued and outstanding share capital owned by Kevin Xiaofeng Ma and ChineseAll Group Limited, respectively. Kevin Xiaofeng Ma and Zhilei Tong are directors of Joingear Limited. The business address of Joingear Limited is OMC Chambers, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands.

<sup>2</sup> Percentage calculated based on 47,754,386 outstanding Common Shares as of April 5, 2018 as disclosed in the Issuer's transition report on Form 20-F filed with the Securities Exchange and Commission on April 12, 2018.

<b>CUSIP No.</b> <b>00211V106</b>	
<b>1</b>	Names of Reporting Persons I.R.S. Identification Nos. of Above Persons (Entities Only) Able Knight Development Limited
<b>2</b>	Check the Appropriate Box if a Member of a Group*  (a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/>
<b>3</b>	SEC Use Only
<b>4</b>	Source of Funds (See Instructions) <b>N/A</b>
<b>5</b>	Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) <input type="checkbox"/>

<b>6</b>	Citizenship or Place of Organization British Virgin Islands	
Number of Shares Beneficially Owned by Each Reporting Person With	<b>7</b>	Sole Voting Power 0
	<b>8</b>	Shared Voting Power 4,998,988 Common Shares <sup>1</sup>
	<b>9</b>	Sole Dispositive Power 0
	<b>10</b>	Shared Dispositive Power 4,998,988 Common Shares <sup>1</sup>
<b>11</b>	Aggregate Amount Beneficially Owned by Each Reporting Person 4,998,988 Common Shares <sup>1</sup>	
<b>12</b>	Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) <input type="checkbox"/>	
<b>13</b>	Percent of Class Represented by Amount in Row (11) 10.5% <sup>2</sup>	
<b>14</b>	Type of Reporting Person (See Instructions) CO	

<sup>1</sup> Includes 4,998,988 Common Shares held by Able Knight. Able Knight is a British Virgin Islands company wholly owned by Precious Time Holdings Limited and ultimately wholly owned by HSBC International Trustee Limited as trustee of an irrevocable trust constituted under the laws of the Cayman Islands with Kevin Xiaofeng Ma as the settlor and certain family members of Kevin Xiaofeng Ma as the beneficiaries. Kevin Xiaofeng Ma is the sole director of Able Knight. The business address of Able Knight is Portcullis Chambers, 4th Floor, Ellen Skelton Building, 3076 Sir Francis Drake Highway, Road Town, Tortola, British Virgin Islands.

<sup>2</sup> Percentage calculated based on 47,754,386 outstanding Common Shares as of April 5, 2018 as disclosed in the Issuer's transition report on Form 20-F filed with the Securities Exchange and Commission on April 12, 2018.

<b>CUSIP No.</b>		<b>00211V106</b>
<b>1</b>	Names of Reporting Persons I.R.S. Identification Nos. of Above Persons (Entities Only) Precious Time Holdings Limited	
<b>2</b>	Check the Appropriate Box if a Member of a Group*  (a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/>	
<b>3</b>	SEC Use Only	
<b>4</b>	Source of Funds (See Instructions) N/A	
<b>5</b>	Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) <input type="checkbox"/>	
<b>6</b>	Citizenship or Place of Organization British Virgin Islands	
Number of Shares Beneficially Owned by	<b>7</b>	Sole Voting Power 0
	<b>8</b>	Shared Voting Power 4,998,988 Common Shares <sup>1</sup>

Each Reporting Person With	<b>9</b>	Sole Dispositive Power 0
	<b>10</b>	Shared Dispositive Power 4,998,988 Common Shares <sup>1</sup>
<b>11</b>	Aggregate Amount Beneficially Owned by Each Reporting Person 4,998,988 Common Shares <sup>1</sup>	
<b>12</b>	Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) <input type="checkbox"/>	
<b>13</b>	Percent of Class Represented by Amount in Row (11) 10.5% <sup>2</sup>	
<b>14</b>	Type of Reporting Person (See Instructions) <b>CO</b>	

<sup>1</sup> Includes 4,998,988 Common Shares held by Able Knight. Able Knight is a British Virgin Islands company wholly owned by Precious Time Holdings Limited and ultimately wholly owned by HSBC International Trustee Limited as trustee of an irrevocable trust constituted under the laws of the Cayman Islands with Kevin Xiaofeng Ma as the settlor and certain family members of Kevin Xiaofeng Ma as the beneficiaries. The business address of Precious Time Holding Limited is Woodbourne Hall, P.O. Box 916, Road Town, Tortola, British Virgin Islands.

<sup>2</sup> Percentage calculated based on 47,754,386 outstanding Common Shares as of April 5, 2018 as disclosed in the Issuer's transition report on Form 20-F filed with the Securities Exchange and Commission on April 12, 2018.

<b>CUSIP No.</b>		<b>00211V106</b>	
<b>1</b>	Names of Reporting Persons I.R.S. Identification Nos. of Above Persons (Entities Only) Ma Family Trust		
<b>2</b>	Check the Appropriate Box if a Member of a Group*  (a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/>		
<b>3</b>	SEC Use Only		
<b>4</b>	Source of Funds (See Instructions) <b>N/A</b>		
<b>5</b>	Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) <input type="checkbox"/>		
<b>6</b>	Citizenship or Place of Organization Cayman Islands		
Number of Shares Beneficially Owned by Each Reporting Person With	<b>7</b>	Sole Voting Power 0	
	<b>8</b>	Shared Voting Power 4,998,988 Common Shares <sup>1</sup>	
	<b>9</b>	Sole Dispositive Power 0	
	<b>10</b>	Shared Dispositive Power 4,998,988 Common Shares <sup>1</sup>	
<b>11</b>	Aggregate Amount Beneficially Owned by Each Reporting Person 4,998,988 Common Shares <sup>1</sup>		
<b>12</b>	Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) <input type="checkbox"/>		

<b>13</b>	Percent of Class Represented by Amount in Row (11) 10.5% <sup>2</sup>
<b>14</b>	Type of Reporting Person (See Instructions) <b>OO</b>

<sup>1</sup> Includes 4,998,988 Common Shares held by Able Knight. Able Knight is a British Virgin Islands company wholly owned by Precious Time Holdings Limited and ultimately wholly owned by HSBC International Trustee Limited as trustee of an irrevocable trust constituted under the laws of the Cayman Islands with Kevin Xiaofeng Ma as the settlor and certain family members of Kevin Xiaofeng Ma as the beneficiaries. The business address of Ma Family Trust is 21 Collyer Quay #19-01, HSBC Building, Singapore 049320.

<sup>2</sup> Percentage calculated based on 47,754,386 outstanding Common Shares as of April 5, 2018 as disclosed in the Issuer's transition report on Form 20-F filed with the Securities Exchange and Commission on April 12, 2018.

<b>CUSIP No.</b>	<b>00211V106</b>
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<b>1</b>	Names of Reporting Persons I.R.S. Identification Nos. of Above Persons (Entities Only) Joingear Limited		
<b>2</b>	Check the Appropriate Box if a Member of a Group*  (a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/>		
<b>3</b>	SEC Use Only		
<b>4</b>	Source of Funds (See Instructions) <b>OO</b>		
<b>5</b>	Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) <input type="checkbox"/>		
<b>6</b>	Citizenship or Place of Organization British Virgin Islands		
Number of Shares Beneficially Owned by Each Reporting Person With	<b>7</b>	Sole Voting Power 0	
	<b>8</b>	Shared Voting Power 18,427,074 Common Shares <sup>1</sup>	
	<b>9</b>	Sole Dispositive Power 0	
	<b>10</b>	Shared Dispositive Power 18,427,074 Common Shares <sup>1</sup>	
<b>11</b>	Aggregate Amount Beneficially Owned by Each Reporting Person 18,427,074 Common Shares <sup>1</sup>		
<b>12</b>	Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) <input type="checkbox"/>		
<b>13</b>	Percent of Class Represented by Amount in Row (11) 38.6% <sup>2</sup>		
<b>14</b>	Type of Reporting Person (See Instructions) <b>CO</b>		

<sup>1</sup> Includes 18,427,074 Common Shares held by Joingear Limited. Joingear Limited is a British Virgin Islands company with 50.01% and 49.99% of its issued and outstanding share capital owned by Kevin Xiaofeng Ma and ChineseAll Group Limited, respectively. Kevin Xiaofeng Ma and Zhilei Tong are directors of Joingear Limited. The business address of Joingear Limited is OMC Chambers, Wickhams

<sup>2</sup> Percentage calculated based on 47,754,386 outstanding Common Shares as of April 5, 2018 as disclosed in the Issuer's transition report on Form 20-F filed with the Securities Exchange and Commission on April 12, 2018.

This Amendment No. 5 (this "Amendment No. 5") amends the Statement of Beneficial Ownership on Schedule 13D originally filed with the Securities and Exchange Commission (the "Commission") on November 20, 2015 and as amended by Amendment No. 1, Amendment No. 2, Amendment No. 3 and Amendment No. 4 filed with the Commission on March 23, 2016, August 30, 2017 February 8, 2018 and June 29, 2018, respectively (the "Schedule 13D") by the Reporting Persons with respect to common shares, par value \$0.01 per share (the "Common Shares"), and American Depositary Shares, each representing two Common Shares (the "ADS"), issued by ATA Inc. (the "Issuer"). Except as specifically provided herein, this Amendment No. 5 does not modify any of the information previously reported in the Schedule 13D. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Schedule 13D, unless otherwise defined herein.

#### **Item 4. Purpose of Transaction**

Item 4 of the Schedule 13D is hereby supplemented to add the following information:

On August 6, 2018, Mr. Kevin Xiaofeng Ma, together with New Beauty Holdings Limited ("New Beauty Holdings"), a company controlled by Mr. Kevin Xiaofeng Ma, entered into a loan agreement with Haitong International Investment Solutions Limited ("Haitong"), pursuant to which New Beauty Holdings borrowed a term loan in principal amount of US\$40,000,000 from Haitong ("Haitong Loan Agreement"). Mr. Kevin Xiaofeng Ma acted as the guarantor for all of the obligations of New Beauty Holdings under Haitong Loan Agreement. The proceeds from the loan was used to pay part of the considerations for the Third Closing under the Share Purchase Agreement.

On August 7, 2018, New Beauty Holdings, among others, entered into a facility agreement with Bank of Shanghai (Hong Kong) Limited ("BOSHK"), pursuant to which New Beauty Holdings borrowed a term loan in principal amount of US\$32,000,000 from BOSHK ("BOSHK Loan Agreement"). The proceeds from the loan was used to pay part of the considerations for the Third Closing under the Share Purchase Agreement.

On August 7, 2018, New Beauty Holdings issued a promissory note in principal amount of US\$10,000,000 to the CDH Lender (the "Second Note"), pursuant to the Note Purchase Agreement. The proceeds from the issuance of the Second Note was used to pay part of the considerations for the Third Closing under the Share Purchase Agreement.

The Third Closing under the Share Purchase Agreement was consummated on August 16, 2018.

The summary contained herein of Haitong Loan Agreement, BOSHK Loan Agreement and the Second Note is not intended to be complete and is qualified in its entirety by reference to the full text of Haitong Loan Agreement, BOSHK Loan Agreement and the Second Note, copies of which are filed as Exhibit T, U and V hereto, respectively, and which are incorporated herein by reference.

#### **Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer**

Item 6 of the Schedule 13D is hereby supplemented by adding the following at the end thereof:

The descriptions in Item 4 herein of the Amendment No. 5 are incorporated herein by reference.

#### **Item 7. Material to Be Filed as Exhibits**

Item 7 of the Schedule 13D is hereby supplemented by adding the following exhibits:

Exhibit T	Loan Agreement, dated as of August 6, 2018 by and among Mr. Kevin Xiaofeng Ma, New Beauty Holdings and Haitong International Investment Solutions Limited.
Exhibit U	Facility Agreement, dated as of August 7, 2018, by and among New Beauty Holdings, Able Knight Development Limited, Mutual Step Holdings Limited, Art Grace Development Limited, Art Kind Technology Limited, Joy Spread Development Limited and Bank of Shanghai (Hong Kong) Limited.
Exhibit V	Promissory Note, dated as of August 7, 2018, by and between New Beauty Holdings and Crystal Magic Brands Limited.

### Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: August 17, 2018

Kevin Xiaofeng Ma

By: /s/ Kevin Xiaofeng Ma

Able Knight Development Limited

By: /s/ Kevin Xiaofeng Ma

Name: Kevin Xiaofeng Ma

Title: Director

Precious Time Holdings Limited

By: /s/ Jamie Yu & Agatha Chee

Name: Jamie Yu & Agatha Chee

Title: Authorized Signatories of  
Lion International Management Limited as director

Ma Family Trust

By: /s/ Jamie Yu & Agatha Chee

Name: Jamie Yu & Agatha Chee

Title: Authorized Signatories of  
HSBC International Trustee Limited as trustee of the Ma  
Family Trust

Joingear Limited

By: /s/ Kevin Xiaofeng Ma

Name: Kevin Xiaofeng Ma

Title: Director

Dated 6 August 2018

Between

**NEW BEAUTY HOLDINGS LIMITED**

( )

and

**HAITONG INTERNATIONAL INVESTMENT SOLUTIONS LIMITED**

( )

and

**THE GUARANTOR LISTED IN PART II OF SCHEDULE 1**

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**SECURED LOAN AGREEMENT****US\$40,000,000.00**

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**TABLE OF CONTENTS**

1.	INTERPRETATION	1
2.	TOTAL COMMITMENT	16
3.	PURPOSE	16
4.	CONDITIONS PRECEDENT	16
5.	UTILISATION	17
6.	LOAN CONVERSION	17
7.	REPAYMENT	18
8.	LENDER ILLEGALITY, PREPAYMENT AND CANCELLATION	18
9.	INTEREST	19
10.	INTEREST PERIODS	20
11.	DEFAULT INTEREST	20
12.	TAXES	21
13.	FEES	24
14.	INCREASED COSTS	25
15.	PAYMENTS	25
16.	GUARANTEE AND INDEMNITY	26
17.	REPRESENTATIONS AND WARRANTIES	29
18.	INFORMATION COVENANTS	37
19.	GENERAL COVENANTS	38





## 1. INTERPRETATION

### 1.1 Definitions

In this Agreement:

“**Accounting Date**” means each 31 March, 30 June, 30 September and 31 December, except as adjusted to ensure that those dates fall on the same day of the week or otherwise with the consent of the Lender.

“**Accounting Period**” means a period of approximately one (1) year or quarter, in the case of each one (1) year and quarterly period, ending on an Accounting Date for which Accounts are required to be prepared under this Agreement.

“**Accounting Standards**” means the International Financial Reporting Standards adopted by the International Accounting Standard Board from time to time, or the generally accepted accounting principles applied in the PRC, as applicable.

“**Accounts**” means each set of financial statements and management reports required to be prepared for the Borrower or the Borrower Group to the satisfaction of the Lender and supplied to the Lender under this Agreement.

“**Affiliate**” means in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

“**Acquisition**” means, pursuant to the Share Purchase Agreement and ATA Learning SPA, the purchase of the Target Company Shares by the Borrower through the acquisition of 100% of the equity interests in ATA Learning.

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“**Acquisition Completion Date**” means the date on which the Acquisition is completed and the Borrower is registered as the legal and beneficial owner of ATA Learning.

“**Acquisition Documents**” means the Share Purchase Agreement, the ATA Learning SPA, the Deed of Assignment and any other agreement in connection with the Acquisition.

“**Additional Corporate Guarantor**” means ATA Learning which becomes a guarantor by execution of the PRC Corporate Guarantee in accordance with Clause 19.21(b).

“**Additional Personal Guarantor**” means any individual who has granted a Personal Guarantee in favour of the Lender as of the Effective Date.

“**Acquisition Long Stop Date**” means one (1) month from the Effective Date, which may be extended by the Lender in its sole discretion.

“**Anti-Bribery and Corruption Laws**” means the FCPA, the UK Bribery Act of 2010, Prevention of Bribery Ordinance (Cap. 201 of the laws of Hong Kong) or any similar laws, rules or regulations issued, administered or enforced by the United States, United Kingdom, the European Union, Hong Kong, PRC or any of its member states, or any other country or Governmental Entity having jurisdiction over any Obligor.

“**Assignment Agreement**” has the meaning given to it in Clause 26.6 (*Procedure for assignment*).

“**ATA Inc.**” means a company incorporated under the laws of Cayman Islands with registration number 174577 and registered office at P.O. Box 2681, Cricket Square, Hutchins Drive, George Town, Grand Cayman, Cayman Islands and listed on Nasdaq Global Market (Stock Code: NASDAQ: ATAI).

“**ATA Learning**” means ATA Learning (Beijing) Inc. (□□□□□□□□□□□□), a limited liability incorporated under the laws of the PRC.

“**ATA Learning Restructuring**” means the transfer of 100% of the equity interests in ATA Learning by the Borrower to □□□□□□□□□□□□□□□□□□□□□□□□□□□□ (Ningbo Meishan Bonded Port Area Maikaiwen Equity Investment Management Partnership (LP)) or another entity designated by the Borrower after the completion of the Acquisition.

“**ATA Learning SPA**” means, to facilitate the Acquisition, the share purchase agreement to be dated on or about 16 August 2018 between the Borrower as buyer and ATA Testing Authority (Holdings) Limited in respect of the purchase of 100% of the equity interests in ATA Learning.

“**Availability Period**” means the period from and including the date of this Agreement to and including the date falling 30 days after the date of this Agreement.

“**Base Currency Equivalent**” means:

- (a) for an amount expressed or denominated in any currency other than U.S. Dollars, the equivalent of that amount in U.S. Dollars converted at the People's Bank of China's Spot Rate of Exchange on the date of the relevant calculation; and
- (b) for an amount expressed or denominated in U.S. Dollars, that amount.

**"Board"** means the board of Directors of the ATA Inc.

**"Borrower Change of Control"** means (a) Mr. Ma ceasing to have full management control of any member of the Borrower Group, (b) Mr. Ma ceasing to hold a beneficial interest or ceasing to exercise control over at least 99% of the issued share capital of the Borrower, or (c) Mr. Ma ceasing to hold the largest amount of the beneficial interest in the issued share capital of ATA Inc.

**"Borrower Group"** means the Borrower, the Target Company, ATA Learning and ATA Inc.

**"Borrower Share Mortgage"** means the equitable share mortgage dated on or about the date of this Agreement over certain issued shares of the Borrower between Mr. Ma, the Borrower and the Lender, granted in favour of the Lender in connection with the Loan.

**"BOSHK"** means Bank of Shanghai (Hong Kong) Limited.

**"BOSHK Loan"** means the US\$32,000,000 term loan made to the Borrower, for purposes of facilitating the funds to consummate the Acquisition by the Borrower pursuant to the BOSHK Loan Agreement.

**"BOSHK Loan Agreement"** means the facility agreement dated on or about 6 August 2018 between BOSHK as lender and the Borrower as borrower in respect of the BOSHK Loan.

**"BOSHK Loan Borrower Share Charge"** means the share charge dated on or about 6 August 2018 over 44 % of the issued shares of the Borrower between Mr. Ma and BOSHK in favour of BOSHK in connection with the BOSHK Loan.

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

**"Charged Property"** means all of the assets which may from time to time are, or are expressed to be, the subject of the Security Documents.

**"Conversion Amount"** means a portion of the Loan up to a value of US\$5,000,000 which may be converted into Conversion Shares in accordance with Clause 6.

**"Conversion Date"** means the date simultaneously with completion of an IPO or such earlier date as may be necessary to comply with the relevant listing or regulatory requirements in relation to the IPO.

**"Conversion Price"** means a price per share equal to the product of (i) 80% and (ii) the Offering Price.

**"Conversion Shares"** means the equity securities of the Target Company which will be issued or transferred to the Lender or a Third Party Holder upon conversion of the Conversion Amount at the election of the Lender pursuant to Clause 6.

**"Confidential Information"** has the meaning given to it in Clause 27 (*Confidentiality*).

**"Debenture"** means the floating charge over all assets owned by the Borrower between the Borrower and the Lender, granted in favour of the Lender in connection with the Loan.

**"Deed of Assignment"** means the deed of assignment dated 27 June 2018 entered into, between, among others, the Borrower, Mr. Ma, ATA Inc. and ATA Learning, in respect of the assignment of certain rights and obligations to purchase certain equity securities of the Target Company by certain management companies, as the buyers under the Share Purchase Agreement, to a new buyer joining the Acquisition.

**"Default"** means:

- (a) an Event of Default; or
- (b) an event or circumstance which may (with the expiry of a grace period, the giving of notice, the making of any determination or the satisfaction of any other applicable condition under the Finance Documents or any combination of them) be an Event of Default.

**"Designated Person"** means a person or entity:

- (a) located in, incorporated under the laws of, or owned by, controlled by or acting on behalf of a person located in or organised under the laws of, any Sanctioned Country;

- (b) listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on the “Specially Designated National and Blocked Person” list maintained by OFAC or any similar list (including any list of specifically designated nationals or designated persons or entities) maintained by, or any public announcement of Sanctions designation made by, the US Department of State, the US Department of Commerce, the US Department of Treasury or any other US government entity, the United Nations Security Council, or the European Union or any of its member states;
- (c) which is otherwise a target of Sanctions (meaning that a person or national from the sanctioning jurisdiction would be restricted from doing business with that person); or
- (d) listed in the annex to, or otherwise subject to the provisions of, the Executive Order;

“**Director**” means a director of ATA Inc. (including any duly appointed alternate director).

“**Effective Date**” means the date of this Agreement.

“**Encumbrance**” means (i) any lease, sub-lease, occupancy agreement, easement or covenant granting a right of use or occupancy to any person, (ii) any proxy, power of attorney, voting trust agreement, interest, option, right of first offer, negotiation or refusal or transfer restriction in favour of any person; and/or (iii) any adverse claim as to title, possession or use.

“**Event of Default**” means an event specified as such in Clause 20 (*Default*).

“**FATCA**” means:

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

“**FATCA Deduction**” means a deduction or withholding from a payment under a Finance Document required by FATCA.

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

“**FCPA**” means the US Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

“**Finance Document**” means any of:

- (a) this Agreement;
- (b) the Security Documents;
- (c) the Request; and
- (d) any other document designated as such by the Lender and the Borrower,

and together, the “**Finance Documents**”.

“**Financial Indebtedness**” means any indebtedness for or in respect of the following (without double counting):

- (a) moneys borrowed (including debit balances at financial institutions);
- (b) any acceptance credit or bill discounting facility (including any dematerialised equivalent);
- (c) any bond, note, debenture, loan stock or other similar instrument;

- (d) any share which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, in each case at the option of the holder of that security) is capable of maturing or being mandatorily redeemable or redeemable at the option of its holder in whole or in part;

- (e) any agreement treated as a finance or capital lease in accordance with the Accounting Standards;
- (f) receivables sold or discounted (except to the extent that there is no recourse);
- (g) the acquisition cost of any asset or service to the extent payable before or after its acquisition or possession by the party liable where the advance or deferred payment (as the case may be) is arranged primarily as a method of raising finance or financing the acquisition or construction of that asset or the acquisition of that service (but excluding trade credit on customary commercial terms) or involves a period of more than six (6) months before or after (as the case may be) the date of acquisition or supply;
- (h) any other transaction (including any forward sale or purchase agreement and any sale and sale back, sale and lease back or deferred purchase arrangement) which has the commercial effect of a borrowing;
- (i) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or other instrument issued by a bank or financial institution; or
- (j) any guarantee in respect of an underlying liability of any person which is of the nature referred to in the above paragraphs.

**“First Interest Period”** means the period beginning on the Utilisation Date and ending on the day which falls six months after such date.

**“Government Entity”** means, as the case may be:

- (a) the government of the PRC, the British Virgin Islands, the Cayman Islands or Hong Kong;
- (b) any authority, agency or department established by the government of the PRC, the British Virgin Islands, the Cayman Islands or Hong Kong;
- (c) People’s Bank of China, or any entity holding all or a substantial part of the foreign reserves or investments of the PRC, the British Virgin Islands, the Cayman Islands or Hong Kong; and
- (d) any province, state or other political subdivision of the PRC, the British Virgin Islands, or the Cayman Islands.

**“Guarantors”** means the Personal Guarantor as more particularly set out in Part II of Schedule 1, the Additional Personal Guarantor and the Additional Corporate Guarantor, and **“Guarantor”** means each of them.

**“Hong Kong”** means the Hong Kong Special Administrative Region of the PRC.

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

**“Increased Cost”** means:

- (a) an additional or increased cost;
- (b) a reduction in the rate of return from the Loan or on its overall capital; or
- (c) a reduction of an amount due and payable under any Finance Document.

**“Interest Payment Date”** means the last day of the First Interest Period and each date falling an integral multiple of six (6) months from such date to and including the Maturity Date.

**“Interest Period”** means:

- (a) the First Interest Period; and
- (b) each subsequent period beginning on the last day of the preceding Interest Period and ending on the next Interest Payment Date provided that the last Interest period ends on the Maturity Date.

**“Interest Rate”** means the sum of (a) the Margin, plus (b) 6-month USD LIBOR.

**“LIBOR”** means, with respect to any Interest Period, the rate for deposits in USD for the period of six months that appears on the Bloomberg Screen US0006M Page (or any successor page) as of 11:00 a.m., London time, on the day that is two London Banking Days preceding the first day of such Interest Period.

**“Loan”** has the meaning given to it in Clause 2 (*Total Commitment*).

**“London Business Days”** means any day on which banks are open for business in London and on which dealings in deposits in

U.S. dollars are transacted in the London interbank market.

“**IPO**” an underwritten initial public offering of any of the Target Company securities to the general public on either Shanghai Stock Exchange or Shenzhen Stock Exchange, or a substantially similar public offering of securities in a jurisdiction and on an internationally recognized securities exchange.

“**Management Company 1**” means [REDACTED] (Ningbo Meishan Bonded Port Area Zhenming Equity Investment Management Partnership (LP)), a limited partnership incorporated and existing under the laws of the PRC with its registered address at Room 1335, No. 3 Office Building Meishan Avenue Business Centre, Beilun District, Ningbo, Zhengjiang ([REDACTED]1335[REDACTED]).

“**Management Company 2**” means [REDACTED] (Ningbo Meishan Bonded Port Area Xinyi Equity Investment Management Partnership (LP)) a limited partnership incorporated and existing under

the laws of the PRC with its registered address at Room 1335, No. 3 Office Building, Meishan Avenue Business Centre, Beilun District, Ningbo, Zhengjiang ([REDACTED]1335[REDACTED]).

“**Management Company 3**” means [REDACTED] (Ningbo Meishan Bonded Port Area Qixin Equity Investment Management Partnership (LP)), a limited partnership incorporated and existing under the laws of the PRC with its registered address at Room 1335, No. 3 Office Building, Meishan Avenue Business Centre, Beilun District, Ningbo, Zhengjiang ([REDACTED]1335[REDACTED]).

“**Material Adverse Change**” means:

- (a) any material adverse change in, and any change in circumstances that, in the reasonable opinion of the Lender, has a material adverse impact on the future, business, operations, properties, financial position (including any material increase in provisions), earnings, condition or prospects of the Borrower Group as a whole; or
- (b) any effect which, in the reasonable opinion of the Lender, is or is reasonably likely to be materially adverse to the validity or enforceability of, or effectiveness or ranking of any security granted or purported to be granted pursuant to, any Finance Document,

provided that any change or any change in circumstances:

- (i) resulting from a hurricane, flood, tornado, earthquake, other natural disaster, riot, terrorist activity or other such force majeure event; or
- (ii) that generally affects the Borrower and its peers in the same industry in which the Borrower Group operates, including any changes affecting the global commodities markets;

shall be excluded.

“**Maturity Date**” means the date falling twenty-four (24) months from the Utilisation Date.

“**Margin**” means five point seven per cent (5.7%) per annum.

“**Mr. Ma**” means Kevin Xiaofeng Ma ([REDACTED]), holder of PRC passport number of G46376524.

“**Obligor**” means each of the Borrower, the PRC Pledgors and the Guarantors.

“**OFAC**” means the Office of Foreign Assets Control of the US Department of the Treasury.

“**Offering Price**” means the initial price per share of the Target Company Share offered to the public during its IPO.

“**Other Taxes**” means all present or future stamp or documentary taxes, value added taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Finance Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Finance Document.

“**Party**” means a party to this Agreement.

“**Perfection Requirements**” means:

- (a) the delivery to the Lender of all deliverables required pursuant to any Security Document in order to perfect or protect the Security Interest granted thereunder;

- (b) the registration of such Security Document in each jurisdiction where such registration is required to perfect the Security Interest granted by such Security Document within the time periods required in such Security Document including:

in respect of the Borrower,

- (i) to the extent not already created, the creation and maintenance by the Borrower of a register of charges (the **“Register of Charges”**) in accordance with section 162 of The Business Companies Act of the British Virgin Islands (the **“BVI Act”**);
- (ii) the entering of particulars as required by the BVI Act of the Security Interest created pursuant to each Security Document to which it is party, in the Register of Charges;
- (iii) the registration of each Security Document to which it is party with the Registrar of Corporate Affairs of the British Virgin Islands (the **“CA Registrar”**) pursuant to section 163 of the BVI Act by making the filing of the particulars of the Security Interest created pursuant to the relevant Security Document to which it is a party in the approved form with the CA Registrar; and
- (iv) the delivery to the Lender of the certificate of registration of charge issued by the CA Registrar evidencing that the requirements of Part VIII of the BVI Act as to registration have been complied with and the filed stamped copy of the particulars of the Security Interest created pursuant to the relevant Security Document to which it is party,

in respect of the Additional Corporate Guarantor and the PRC Pledgors,

- (v) the due registration with SAFE of the PRC Corporate Guarantee and the PRC Equity Pledge in accordance with the requirements under the Provisions on Foreign Exchange Administration of Cross-border Guarantee (and any of its reversions or substitution by PRC legislation from time to time) and other applicable PRC laws and regulations;

- (vi) the delivery to the Lender of the evidence on completion of such registration with SAFE to the reasonably satisfactory of the Lender;
- (vii) the update of registration of the information of the PRC Corporate Guarantee and the PRC Equity Pledge with SAFE to the extent so required by any applicable laws or regulations where items recorded in the SAFE need to be amended accordingly; and
- (viii) the maintenance of such registration with SAFE in accordance with all relevant laws and regulations.

**“Personal Guarantor”** means Mr. Ma.

**“Personal Guarantee”** means each guarantee granted by each Additional Personal Guarantor in favour of the Lender.

**“PRC”** means the People’s Republic of China.

**“PRC Corporate Guarantee”** means a corporate guarantee to be executed by the Additional Corporate Guarantor in favour of the Lender pursuant to Clause 19.21(b) substantially in the form attached hereto as Schedule 5.

**“PRC Equity Pledge”** means the PRC law governed pledge of equity interests (□□□□□□) with respect to the pledge of an aggregate of 9,220,200 shares of the Target Company held by the PRC Pledgors, collectively, representing 16.5% equity interests in the Target Company between the PRC Pledgors as pledgers and the Lender as pledgee.

**“PRC Pledgors”** means collectively Management Company 1, Management Company 2 and Management Company 3.

**“PRC Security Document”** means each of the PRC Corporate Guarantee and the PRC Equity Pledge.

**“Purchase Price Consideration”** means the consideration payable under the Share Purchase Agreement by the Borrower for the acquisition of the Target Company Shares.

**“Relevant Jurisdiction”** means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to, or intended to be subject to, the Transaction Security granted or to be granted by it is situated;
- (c) any jurisdiction where it conducts its business; and

(d) the jurisdiction whose laws govern the perfection of any Security Document entered into by it.

“**RMB**” means the lawful currency for the time being of the PRC.

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

“**Representatives**” has the meaning given to it in Clause 27 (*Confidentiality*).

“**Request**” means the request for the Loan, substantially in the form of Schedule 3 (*Form of Request*).

“**SAFE**” means the State Administration of Foreign Exchange of the PRC or its competent local counterpart.

“**Sanctioned Country**” means a country or territory which is subject to any Sanctions.

“**Sanctions**” means any trade, economic or financial sanctions laws, regulations, executive orders or restrictive measures administered, enacted, imposed or enforced by:

- (a) the US;
- (b) the United Nations Security Council;
- (c) the European Union or any of its member states (including United Kingdom);
- (d) the Commonwealth of Australia;
- (e) Hong Kong; and/or
- (f) the respective governmental institutions and agencies of any of the foregoing, including, without limitation, the Sanctions Authorities.

“**Sanctions Authorities**” means OFAC, the United States Department of State, Her Majesty’s Treasury, the Australia Department of Foreign Affairs and the Hong Kong Monetary Authority.

“**Security Document**” means any of the

- (a) the Borrower Share Mortgage;
- (b) the Debenture;
- (c) the PRC Security Documents;
- (d) each Personal Guarantee; and
- (e) any other document evidencing or creating any guarantee or security over any asset of any Obligor to secure any obligation of any Obligor to the Lender under the Finance Documents.

“**Security Interest**” means any mortgage, pledge, lien, charge (fixed or floating), assignment, conditional or forward or prepaid sale, fiduciary security, hypothecation, set-off or trust arrangement for the purpose of creating security, reservation of title or

security interest or any other agreement or arrangement having a substantially similar effect.

“**Share Purchase Agreement**” means the share purchase agreement dated 6 February 2018 entered into, between, among others, the Borrower as buyer and ATA Inc. as seller in respect of the acquisition of 100% of the equity securities of the Target Company, directly and indirectly.

“**Subsidiary**” means:

- (a) an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise; or
- (b) an entity treated as a subsidiary in the financial statements of any person pursuant to the Accounting Standards.



“**Swap Funding**” means a funding with a principal amount of US\$60,000,000 made to the Swap Funding Borrower by the Swap Funding Lender under a Funding Swap Transaction Confirmation dated 6 November 2015 between the Swap Funding Lender and the Swap Funding Borrower, as amended, extended or supplemented from time to time.

“**Swap Funding Borrower**” means Joingear Limited, a BVI business company incorporated with limited liability, (company number 1417522), having its registered office at OMC Chambers, Wickhams Cay I, Road Town, Tortola, British Virgin Islands.

“**Swap Funding Lender**” means Haitong International Financial Solutions Limited.

“**Target Company**” means ATA Online (Beijing) Educational Technology Co., Ltd (□□□□□□□□□□□□□□□□), a company limited by shares incorporated under the laws of the PRC.

“**Target Company Shares**” means 51% of the equity securities of the Target Company being a subject of the Acquisition.

“**Tax**” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any government authority, including any interest, additions to tax or penalties applicable thereto.

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

“**Tax Payment**” means either the increase in a payment made by an Obligor to the Lender under Clause 12.1 (*Tax gross-up*) or a payment under Clause 12.2 (*Tax indemnity*).

“**Third Party**” means any person other than a Party to this Agreement.

“**Third Party Holder**” has the meaning assigned to it by Clause 6 (*Loan Conversion*).

“**Total Commitment**” means US\$40,000,000 on the Effective Date.

“**Transaction Documents**” means:

- (a) the Finance Documents; and
- (b) the Acquisition Documents.

“**Transaction Security**” means the Security Interest created or evidenced or expressed to be created or evidenced under the Security Documents.

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

“**U.S. Dollars**” and “**US\$**” means the lawful currency for the time being of the United States of America.

“**Utilisation Date**” means the date of a utilisation of the Loan, being the date on which the Loan is made.

## 1.2 Construction

- (a) In this Agreement, unless the contrary intention appears, a reference to:
  - (i) a document being in the **agreed form** means that the document is in a form previously agreed in writing by or on behalf of the Borrower and the Lender;
  - (ii) an **amendment** includes an amendment, supplement, novation, re-enactment, replacement, restatement or variation and **amend** will be construed accordingly;
  - (iii) **assets** includes businesses, undertakings, securities, properties, revenues or rights of every description and whether present or future, actual or contingent;
  - (iv) an **authorisation** includes an authorisation, consent, approval, resolution, permit, licence, exemption, filing, registration or notarisation;
  - (v) **disposal** means a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and whether pursuant to a single transaction or a series of transactions, and **dispose** will be construed accordingly;
  - (vi) **guarantee** means any guarantee, bond, letter of credit, indemnity or similar assurance against financial loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to

any person or to purchase assets of any person, where, in each case, that obligation is assumed in order to maintain or assist the ability of that person to meet any of its indebtedness;

- (vii) **incorporation** includes the formation or establishment of a partnership or any other person and **incorporate** will be construed accordingly;
- (viii) **indebtedness** includes any obligation (whether incurred as principal or as surety and whether present or future, actual or contingent) for the payment or repayment of money;
- (ix) **jurisdiction of incorporation** includes any jurisdiction under the laws of which a person is incorporated;
- (x) **know your customer requirements** are the identification checks that the Lender requests in order to meet its obligations under any applicable law or regulation to identify a person who is (or is to become) its customer;
- (xi) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
- (xii) a **regulation** includes any regulation, rule, order, official directive, request or guideline (in each case, whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (xiii) a currency is a reference to the lawful currency for the time being of the relevant country;
- (xiv) a Default being **outstanding** means that it has not been remedied or expressly waived in writing in accordance with Clause 25.3 (*Waivers and remedies cumulative*);
- (xv) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- (xvi) a Clause, a sub-clause or a Schedule is a reference to a clause or sub-clause of, or a schedule to, this Agreement;
- (xvii) a Party or any other person includes its successors in title, permitted assigns and permitted transferees;

- (xviii) a Finance Document or other document includes (without prejudice to any prohibition on amendments) all amendments (however fundamental) to that Finance Document or other document, including any amendment providing for any increase (however great) in the amount of a facility or any additional facility (however great);
  - (xix) words denoting the singular shall include the plural and vice versa;
  - (xx) a time of day is, unless otherwise stated, a reference to Beijing time;
  - (xxi) a quarter is, unless otherwise stated, a reference to a calendar quarter;
  - (xxii) the term **includes** shall be deemed to be followed by the phrase “without limitation” and **including** and **include** shall be construed accordingly; and
  - (xxiii) the term **agree** shall be deemed to be followed by the phrase “in writing” and **agrees** and **agreed** shall be construed accordingly.
- (b) Unless the contrary intention appears, a reference to a month or months is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that if the numerically corresponding day is not a Business Day, the period will end on the preceding Business Day;
- (c) Unless the contrary intention appears:
- (i) a reference to a Party will not include that party if it has ceased to be a party under this Agreement;
  - (ii) a word or expression used in any other Finance Document or in any notice given in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement;

- (iii) if there is an inconsistency between this Agreement and another Finance Document, this Agreement will prevail;
  - (iv) any obligation of an Obligor under the Finance Documents which is not a payment obligation remains in force for so long as any payment obligation of an Obligor is or may be or is capable of becoming outstanding under the Finance Documents; and
  - (v) any obligation of an Obligor under the Finance Documents includes an obligation on that Obligor not to contract or agree to do something or not to do something which would breach that first obligation unless such contract or agreement is entered into with the prior approval of the Lender or the Lender (as required under this Agreement).
- (d) The index to and headings in this Agreement do not affect its interpretation.

### 1.3 Third party rights

15

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

## 2. TOTAL COMMITMENT

Subject to the terms of this Agreement, the Lender shall make available to the Borrower a U.S. Dollar term loan in an aggregate amount equal to the Total Commitment (the “**Loan**”).

## 3. PURPOSE

### 3.1 Loan

The proceeds of the Loan shall only be used to:

- (a) be applied towards the Purchase Price Consideration; and
- (b) pay any fees, costs and expenses, stamp duty, registration and any other Taxes incurred by the Borrower in connection with the Acquisition.

### 3.2 No obligation to monitor

The Lender shall not be obligated to monitor or verify the utilization of the Loan; in addition, the Lender shall not be responsible for the consequences of the utilisation of the Loan.

## 4. CONDITIONS PRECEDENT

### 4.1 Conditions precedent documents

After a Request is made by the Borrower pursuant to Clause 5 (*Utilisation*), such Request may not be honoured by the Lender until the Lender has notified the Borrower that it has received (or waived receipt of) all of the documents and evidence set out in Schedule 2 (*Conditions Precedent Documents*) in form and substance satisfactory to the Lender. The Lender shall give this notification to the Borrower promptly upon being so satisfied.

### 4.2 Further conditions precedent

The obligations of the Lender to make the Loan are subject to the further conditions precedent that on the date of a Request and the Utilisation Date:

- (a) the Repeating Representations are correct in all material respects;
- (b) no Borrower Change of Control has occurred; and
- (c) no Default is outstanding or would result from the making of the Loan.

16

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## **5. UTILISATION**

### **5.1 Giving of the Request**

- (a) The Borrower may draw down the Loan by giving to the Lender a duly completed Request within the Availability Period.
- (b) Unless the Lender otherwise agrees, the latest time for receipt by the Lender of the duly completed Request is 11:00 a.m. three (3) Business Days before the Utilisation Date.
- (c) The Request is irrevocable.

### **5.2 Completion of Request**

- (a) The Request will not be regarded as having been duly completed unless the payment instructions specify that the proceeds of the Loan must be used in accordance with Clause 3.1 (*Loan*).
- (b) There shall be no more than one (1) Request and the Request shall specify the whole Loan in an amount equal to the Total Commitment.

### **5.3 Cancellation of Available Facility**

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

## **6. LOAN CONVERSION**

### **6.1 Conversion Option**

At the option of the Lender, the Conversion Amount may, upon the occurrence of the IPO of the Target Company and while any amount of the Loan equal to the Conversion Amount remains outstanding, be converted, in whole or in part, into fully paid and non-assessable Conversion Shares at the Conversion Price.

### **6.2 Conversion Procedures**

- (a) To exercise the Conversion Option, the Lender shall give written notice to the Borrower specifying (i) that it elects to convert such Conversion Amount or a stated portion thereof to Conversion Shares, (ii) the name of the entity the Conversion Shares shall be issued or transferred to (the “**Third Party Holder**”), and (iii) the number of Conversion Shares to be issued or transferred to the Lender upon conversion. After the receipt of such notice, the Borrower and Mr. Ma shall cause the Conversion Shares to be issued or transferred to the Lender or the Third Party Holder on the Conversion Date and cause a certificate evidencing the Conversion Shares to be delivered to the Lender within five (5) Business Days from the Conversion Date.
- (b) Upon the occurrence of the conversion, on the Conversion Date (i) the Borrower shall pay to the Lender the interest accrued to and including the Conversion Date in respect of the amount of the Loan so converted into the

Conversion Shares; (ii) the amount of the Loan so converted into the Conversion Shares ceases to accrue any interest, and (iii) the principal amount of the Loan shall be reduced by the amount so converted into the Conversion Shares.

## **7. REPAYMENT**

### **7.1 Repayment upon Maturity**

- (a) The Borrower shall repay entire outstanding principal balance of, all accrued and unpaid interest on, and all other amounts due and payable with respect to the Loan under the Finance Documents in full on the Maturity Date.
- (b) No amounts repaid may be re-borrowed.

### **7.2 Other Repayment Events**

If an Event of Default occurs, then, at the option of the Lender:

- (a) cancel all or any part of the Total Commitments whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or

- (c) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

## **8. LENDER ILLEGALITY, PREPAYMENT AND CANCELLATION**

### **8.1 Lender illegality**

If, in any applicable jurisdiction, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this agreement or to fund or maintain its participation in any Loan:

- (a) that Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon the Lender notifying the Borrower, the Total Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall, within two (2) Business Days from such notice, repay the Lender of the Loan together with accrued interest and all other amounts then owing under the Finance Documents to the Lender.

### **8.2 Voluntary prepayment of the Loan**

The Borrower may, if it gives the Lender not less than five Business Days' prior written notice and subject to Clause 8.3 (*Prepayment*), prepay the whole or any part

18

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of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of US\$5,000,000 and in integral multiple of US\$1,000,000).

### **8.3 Prepayment**

- (a) No amount of the Loan prepaid under this Agreement may subsequently be re-borrowed.
- (b) Where there is a mandatory or involuntary prepayment of the Loan, the Total Commitment will, at the same time, be permanently reduced by the amount prepaid.

### **8.4 Partial payments**

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lender shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
  - (i) first, in or towards payment of any unpaid fees, costs and expenses of, and other amounts owing to, the Lender under the Finance Documents;
  - (ii) secondly, in or towards payment pro rata of any accrued interest and default interest due but unpaid under the Finance Documents;
  - (iii) thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
  - (iv) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Lender may vary the order set out in Clauses 8.4 (a)(i) to 8.4 (a)(iv) (*Partial payments*).
- (c) Clauses 8.4 (a) and 8.4 (b) (*Partial payments*) will override any appropriation made by an Obligor.

### **8.5 Miscellaneous provisions**

- (a) Any notice of prepayment and/or cancellation under this Agreement is irrevocable and shall specify the relevant date(s).
- (b) All prepayments under this Agreement shall be made with accrued and unpaid interest on the amount prepaid.
- (c) No amount of the Total Commitment cancelled under this Agreement may subsequently be reinstated.

## **9. INTEREST**

### **9.1 Interest Rate**

19

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- (a) The outstanding principal balance of the Loan shall accrue interest during each Interest Period at the Interest Rate.
- (b) Interest shall accrue from and including the first day of the relevant Interest Period to and excluding the last day of such Interest Period.
- (c) The Lender shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

## **9.2 Calculation of interest**

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and shall be calculated on the basis of the actual number of days elapsed and a year of 360 days.
- (b) The determination by the Lender of a rate of interest or the amounts of interest payable by the Borrower under this Agreement shall be conclusive and binding on the Borrower in the absence of manifest error.

## **9.3 Payment of interest**

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

## **10. INTEREST PERIODS**

### **10.1 Selection**

The Loan has successive Interest Periods.

### **10.2 No overrunning the Maturity Date**

If an Interest Period for the Loan would otherwise overrun the Maturity Date, it will be shortened so that it ends on that date.

### **10.3 Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall instead end on the preceding Business Day.

## **11. DEFAULT INTEREST**

If any Obligor fails to pay any sum payable under this Agreement when due (the “**Unpaid Sum**”), it shall pay default interest on such unpaid sum from and including the due date up to and including the date of actual payment (both before and after judgment) at 20% per annum (the “**Default Rate**”). Such default interest shall be calculated daily. If any sum due shall remain unpaid for more than thirty (30) calendar days after its due date, default interest will be calculated on the sum of principal amount of the Loan outstanding and the Unpaid Sum on a compounded basis for the period from the due date up to and including the date of actual payment (both before and after the judgment) at the Default Rate (subject to any cap imposed by all applicable laws) and shall be payable from time to time on demand. The default interest shall be paid without prejudice to the Lender’s rights or remedies against the

Obligors under this Agreement or any other Finance Documents, including, but not limited to, the Lender’s right to declare an Event of Default and accelerate the Loan.

## **12. TAXES**

### **12.1 Tax gross-up**

- (a) Any and all payments by or on account of any obligation of any Obligor hereunder or any other Finance Document shall be made free and clear of and without a Tax Deduction, provided that if an Obligor is required by applicable law to make a Tax Deduction from such payments, then (i) the sum payable shall be increased as necessary so that after making the required Tax Deduction (including deductions applicable to additional sums payable under this Clause 12), the Lender receives an amount equal to the sum it would have received had no such Tax Deduction been made, (ii) the Obligor shall make such Tax Deduction, and (iii) the Obligor shall timely pay the full amount deducted to the relevant government authority in accordance with applicable law.
- (b) If an Obligor is aware that an Obligor shall make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction), it shall promptly notify the Lender.
- (c) Within thirty (30) days of making either a Tax Deduction or a payment required in connection with a Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Lender a valid original certificate of deduction of tax or evidence satisfactory to the Lender that the Tax Deduction has been made or (as applicable) the appropriate payment has been paid to the relevant taxing authority.

## **12.2 Tax indemnity**

- (a) Except as provided in paragraph (b) below, each Obligor shall indemnify the Lender, within ten (10) days after demand therefor, against any loss, liability or reasonable cost (including any additional Taxes) which the Lender reasonably determines will be or has been suffered (directly or indirectly) by the Lender for or on account of Tax or a FATCA Deduction in relation to a payment received or receivable (or any payment deemed to be received or receivable) from that Obligor under a Finance Document.
- (b) Clause 12.2(a) above does not apply to any Tax assessed on the Lender under the laws of the jurisdiction in which the Lender is incorporated, if that Tax is imposed on or calculated by reference to the net income received or receivable by the Lender.
- (c) If the Lender makes, or intends to make, a claim under Clause 12.2(a) above, the Lender shall promptly notify the Borrower of the event which has given, or will give, rise to the claim.

## **12.3 Tax refund**

21

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If an Obligor makes a Tax Payment, and the Lender receives a refund of the Tax Deduction or Tax giving rise to the Obligor's obligation to make such Tax Payment from the applicable Tax authority requiring or imposing such Tax Deduction or Tax, the Lender shall pay such Obligor an amount equal to such refund received (less any costs and expenses that the Lender reasonably determines are associated with the obtaining of such refund).

## **12.4 FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party;
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA;
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige the Lender to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If the Borrower is a US Tax Obligor or the Lender reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, the Borrower shall within ten Business Days of becoming a US Tax Obligor,

22

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supply to the Lender a withholding certificate on Form W-8, Form W-9 or any other relevant form or any withholding

statement or other document, authorisation or waiver as the Lender may require to certify or establish the status of the Lender under FATCA or that other law or regulation.

## **12.5 FATCA Deduction and gross-up by Obligor**

- (a) If an Obligor is required to make a FATCA Deduction, that Obligor shall make that FATCA Deduction and any payment required in connection with that FATCA Deduction within the time allowed and in the minimum amount required by FATCA.
- (b) If a FATCA Deduction is required to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any FATCA Deduction) leaves an amount equal to the payment which would have been due if no FATCA Deduction had been required.
- (c) The Borrower shall promptly upon becoming aware that an Obligor must make a FATCA Deduction (or that there is any change in the rate or the basis of a FATCA Deduction) notify the Lender accordingly.
- (d) Within 30 days of making either a FATCA Deduction or any payment required in connection with that FATCA Deduction, the Obligor making that FATCA Deduction or payment shall deliver to the Lender evidence reasonably satisfactory to the Lender that the FATCA Deduction has been made or (as applicable) any appropriate payment has been paid to the relevant governmental or taxation authority.

## **12.6 FATCA Deduction by the Lender**

- (a) The Lender may make any FATCA Deduction it is required by FATCA to make, and any payment required in connection with that FATCA Deduction, and the Lender shall not be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction. If the Lender becomes aware that it must make a FATCA Deduction in respect of a payment to another Party (or that there is any change in the rate or the basis of such FATCA Deduction), it shall notify that Party.
- (b) If the Lender is required to make a FATCA Deduction in respect of a payment by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after the Lender has made such FATCA Deduction) leaves the Lender with an amount equal to the payment which would have been received by the Lender if no FATCA Deduction had been required.
- (c) The Lender shall promptly upon becoming aware that it must make a FATCA Deduction in respect of a payment by an Obligor (or that there is any change in the rate or the basis of such a FATCA Deduction) notify the Company.
- (d) The Borrower shall (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered by it as a result

of making a FATCA Deduction in respect of a payment due to it under a Finance Document. This paragraph shall not apply to the extent a loss, liability or cost is compensated for by an increased payment under paragraph (b) above.

## **12.7 Other Taxes**

The Borrower shall pay, within five (5) Business Days of demand, and indemnify the Lender against any loss, liability or reasonable cost that the Lender incurs in relation to, all Other Taxes payable in connection with the entry into, performance or enforcement of any Finance Document.

## **13. FEES**

### **13.1 Commitment fee**

The Borrower shall pay to the Lender, on the Effective Date, a fee computed at the rate of 1 per cent on the Total Commitment.

**13.2** The commitment fee shall not be refundable regardless of whether the Loan is actually made to the Borrower.

### **13.3 Annual fee**

The Borrower shall pay to the Lender annual fees computed at the rate of:

- (a) 1 per cent on the Total Commitment for the first year from the Utilisation Date to, but excluding, the first anniversary of Utilisation Date, and such amount shall be earned on and payable on the Utilisation Date and may be deducted from the proceeds of the utilisation of the Loan; and
- (b) 2 per cent on the principal amount then outstanding for the second year and such amount shall be earned on and payable on the anniversary of the Utilisation Date.



The annual fees are fully earned upon the utilisation of the Loan and upon each anniversary payment and are non-refundable in any circumstances.

#### **13.4 Prepayment fee**

- (a) The Borrower must pay to the Lender a prepayment fee on the date of prepayment of all or any part of a Loan pursuant to Clause 8.2 (*Voluntary Prepayment of the Loan*).
- (b) The amount of the prepayment fee shall be calculated as follows:
  - (i) if a prepayment of the Loan occurs during the period from the Utilisation Date to and including the date that is six (6) months after the Utilisation Date, the prepayment fee shall be the amount equal to (i) the interest that would have accrued on the principal amount of the Loan so prepaid or repaid from the date of such repayment or prepayment until and including the date that is six (6) months after the Utilisation Date; and

24

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- (ii) if a prepayment of the Loan occurs any time after the date that is six (6) months after the Drawdown Date, the prepayment fee shall be zero.

#### **14. INCREASED COSTS**

##### **14.1 Increased Costs**

Except as provided below in Clause 14.2 (*Exceptions*), and, if applicable, subject to the provisions of Clause 8 (*Lender Illegality, Prepayment and Cancellation*), the Borrower shall pay to the Lender the amount of any Increased Cost incurred by the Lender or any of its Affiliates as a result of:

- (a) the introduction of, or any change in, or any change in the interpretation, administration or application of, any law or regulation; or
- (b) compliance with any law or regulation made after the Utilisation Date.

##### **14.2 Exceptions**

The Borrower need not make any payment for an Increased Cost to the extent that the Increased Cost is:

- (a) compensated for under another Clause or would have been but for an exception to that Clause; or
- (b) attributable to the Lender or its Affiliate failing to comply with any law or regulation.

##### **14.3 Claims**

- (a) If the Lender intends to make a claim for an Increased Cost, the Lender shall promptly notify the Borrower of the circumstances giving rise to, and the amount of, the claim.
- (b) The Lender shall, as soon as practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Cost.

#### **15. PAYMENTS**

##### **15.1 Place**

Unless a Finance Document specifies that payments under it are to be made in another manner, all payments by a Party (other than the Lender) under the Finance Documents shall be made to the Lender to its account at such office or bank as it may notify to that Party.

##### **15.2 Funds**

Payments under the Finance Documents shall (unless otherwise expressly provided) be made to the Lender for value by 11:00 a.m. on the due date in U.S. Dollars.

##### **15.3 Currency**

25

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- (a) The currency of each amount payable under the Finance Documents is US\$.

- (b) Amounts payable in respect of Taxes, fees, costs and expenses are payable in the currency in which they are incurred.

#### **15.4 No set-off or counterclaim**

All payments made by an Obligor under the Finance Documents shall be made without set-off or counterclaim.

#### **15.5 Business Days**

If a payment under the Finance Documents is due on a day which is not a Business Day, the due date for that payment will instead be the preceding Business Day or whatever day the Lender determines is market practice.

#### **15.6 Timing of payments**

If a Finance Document does not provide for when a particular payment is due, that payment will be due within three (3) Business Days of demand by the Lender.

### **16. GUARANTEE AND INDEMNITY**

#### **16.1 Guarantee and indemnity**

Subject to Clause 16.10 (*Release of guarantee*), the Personal Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Lender due and punctual performance by the Borrower of all its obligations under the Finance Documents;
- (b) undertakes with the Lender that, whenever the Borrower does not pay any amount when due under or in connection with any Finance Document, it shall immediately on demand by the Lender pay that amount as if it were the principal obligor in respect of such amount; and
- (c) indemnifies the Lender immediately on demand against any loss or liability suffered by the Lender if any payment obligation expressed to be guaranteed by it is or becomes unenforceable, invalid or illegal and the amount of the loss or liability under this indemnity will be equal to the amount the Lender would otherwise have been entitled to recover.

#### **16.2 Continuing guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of all sums payable by the Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

#### **16.3 Reinstatement**

- (a) If any discharge (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) or arrangement is made in whole or in part following the application or on the faith of any payment, security or

other disposition which is avoided or shall be restored on insolvency, liquidation, administration or otherwise without limitation, the liability of the Personal Guarantor under this Clause 16 will continue or be reinstated as if the discharge or arrangement had not occurred.

- (b) The Lender may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

#### **16.4 Waiver of defences**

The obligations of the Personal Guarantor under this Clause 16 (*Guarantee and Indemnity*) will not be affected by any act, omission or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Clause 16 (whether or not known to it or the Lender). This includes:

- (a) any time or waiver granted to, or composition with, any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;

- (f) any amendment (however fundamental) of a Finance Document or any other document or security; or
- (g) any unenforceability, illegality, invalidity or non-provability of any Finance Document or any other document or security or obligation of any person under any Finance Document or any other document or security or the failure by any Obligor to enter into or be bound by any Finance Document.

#### **16.5 Immediate recourse**

The Personal Guarantor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person or file any proof or claim in any insolvency, administration, winding-up or liquidation proceedings in relation to the Borrower or any other person before claiming from the Personal Guarantor under this Clause 16.

#### **16.6 Appropriations**

Until all amounts which may be or become payable by the Obligors under the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on

27

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its behalf) may without affecting the liability of the Personal Guarantor under this Clause 16:

- (a) (i) refrain from applying or enforcing any other moneys, security or rights held or received by the Lender (or any trustee or agent on its behalf) against those amounts; or (ii) apply and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise); and
- (b) hold in an interest-bearing suspense account any moneys received from the Personal Guarantor or on account of the Personal Guarantor's liability under this Clause 16.

#### **16.7 No Subrogation Rights**

Unless:

- (a) all amounts which may be or become payable by the Obligors under the Finance Documents have been irrevocably paid in full; or
- (b) the Lender otherwise directs,

the Personal Guarantor will not, after a claim has been made or by virtue of any payment or performance by it under this Clause 16:

- (i) be subrogated to any rights, security or moneys held, received or receivable by the Lender (or any trustee or agent on its behalf);
- (ii) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Personal Guarantor's liability under this Clause 16;
- (iii) claim, rank, prove or vote as a creditor of any Obligor or its estate in competition with the Lender (or any trustee or agent on its behalf); or
- (iv) receive, claim or have the benefit of any payment, distribution or security from or on account of any Obligor, or exercise any right of set-off as against any Obligor.

The Personal Guarantor shall hold in trust for and shall immediately pay or transfer to the Lender any payment or distribution or benefit of security received by it contrary to this Clause 16 or in accordance with any directions given by the Lender under this Clause 16.

#### **16.8 Additional security**

- (a) This guarantee is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Lender.
- (b) This guarantee will not prevent or limit any obligations of the Personal Guarantor to enter into separate guarantees as required under the Finance Documents.

28

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- (c) This guarantee will not restrict or affect the obligations of the Personal Guarantor to comply with any separate guarantee given under the Finance Documents.

#### **16.9 Release of guarantee**

This guarantee shall be automatically released and the Personal Guarantor shall be discharged from their respective obligations under this Clause 16 upon the full, unconditional and irrevocable payment to the Lender of all amounts outstanding under or payable in connection with the Finance Documents.

### **17. REPRESENTATIONS AND WARRANTIES**

#### **17.1 Representations and warranties**

Each of the Obligor makes the representations and warranties set out in this clause 17(*Representations and Warranties*) to the Lender on the date of this Agreement.

#### **17.2 Status**

- (a) Each of the Borrower and the Additional Corporate Guarantor is a limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of organisation, and (where relevant) in good standing under the laws of the Relevant Jurisdiction.
- (b) Each Obligor is acting as principal for its own account and not as agent or trustee in any capacity on behalf of any party in relation to the Finance Documents.
- (c) Each member of the Borrower Group has the power to own its assets and carry on its business as it is being and will be conducted.
- (d) No Obligor is a US Tax Obligor.
- (e) The Personal Guarantor or the Additional Personal Guarantor is not a minor and is of sound mind and has the full capacity to enter into and perform its obligations under this Agreement.
- (f) The Personal Guarantor or the Additional Personal Guarantor is not bankrupt nor has any person presented a petition for his bankruptcy nor has any order been made for his bankruptcy.

#### **17.3 Powers and authority**

It or he has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, the Finance Documents to which it or he is or will be a party and the transactions contemplated by the Finance Documents.

#### **17.4 Legal validity**

- (a) Each Transaction Document to which it is a party is its legally binding, valid and enforceable obligation.

- (b) Each Security Document to which it is a party creates the Security Interests which that Security Document purports to create and such Security Interests are valid and effective.

#### **17.5 Non-conflict**

The entry into and performance by each Obligor, and the transactions contemplated by, the Transaction Documents to which it is or will be party do not and will not:

- (a) conflict with any law or regulation applicable to it;
- (b) other than in the case of the Personal Guarantor or the Additional Personal Guarantor, conflict with its constitutional documents; or
- (c) conflict with any other document which is binding upon it or any of its assets or constitute a default or termination event (however described) under any such document.

#### **17.6 No default**

- (a) No Default has occurred, is continuing or is reasonably likely to result from the entry into, the performance of, or any transaction contemplated by, any Transaction Document to which it and each of the Obligors is a party.
- (b) There is no material breach of any term of any Transaction Document to which it is a party and no person has disputed,

repudiated or disclaimed liability under any Transaction Document to which it is a party or evidenced an intention to do so.

- (c) No other event or circumstance is outstanding which constitutes (or with the expiry of a grace period, the giving of notice, the making of any determination or the satisfaction of any other applicable condition will constitute) a default or termination event (however described) or an event resulting in an obligation to create security under any document which is binding on it or any of its assets.

#### **17.7 Authorisations**

- (a) Except for the completion of the Perfection Requirements in respect of the relevant Security Document, all authorisations required by it:
  - (i) in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Transaction Documents, have been obtained or effected (as appropriate) and are in full force and effect; and
  - (ii) to carry on its business in the ordinary course and in all material respects as it is being conducted have been obtained or effected (as appropriate) and are in full force and effect.
- (b) None of the members of the Borrower Group is or has at any time been in violation of any applicable law or regulation, which may have a Material

30

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Adverse Change on the ability of the Borrower Group to conduct its business as currently conducted or as contemplated to be conducted.

#### **17.8 Governing law and enforcement**

- (a) The choice of the governing law as the governing law of the Finance Documents to which an Obligor is party will be recognised and enforced in its Relevant Jurisdictions; and
- (b) Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document to which it is party will be recognised and enforced in its Relevant Jurisdictions.

#### **17.9 No misleading information**

- (a) Any factual information contained in or provided by any member of Borrower Group was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Any financial projections provided by any Obligor have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) All information supplied by any Borrower Group was true, complete and accurate in all material respects as at the date it was given and was not misleading in any respect.

#### **17.10 Financial statements**

- (a) The latest Accounts supplied under this Agreement if any:
  - (i) have been prepared in accordance with the Accounting Standards, consistently applied; and
  - (ii) give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the Accounting Date to which they were drawn up, and the consolidated results of operations for the Accounting Period for which they were drawn up.
- (b) The budgets and forecasts supplied under this Agreement or any other Finance Document were arrived at after careful consideration, have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied and were not misleading in any material respect.
- (c) Since the date of the latest Accounts delivered to the Lender there has been no material adverse change in the assets or financial condition of any member of the Borrower Group.

#### **17.11 Litigation etc.**

31

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- (a) No litigation, arbitration, expert determination, alternative dispute resolution or administrative proceedings are current or, to its knowledge, pending or threatened, which have or, if adversely determined, could have a Material Adverse Change.
- (b) It has not breached any law or regulation which breach could have a Material Adverse Change.
- (c) There is no dispute in connection with any Transaction Document that could have a Material Adverse Change.

#### 17.12 Registration in Hong Kong

The Borrower and the Additional Corporate Guarantor are not registered and have not attempted to register as a non-Hong Kong company under Part 16 of the Companies Ordinance (Cap. 622 of the Laws of Hong Kong).

#### 17.13 Acquisition Document

- (a) The Acquisition Documents contain all the terms of the Acquisition.
- (b) Except as otherwise disclosed to the Lender in writing prior to the date of this Agreement or otherwise expressly disclosed in the Acquisition Documents, there is no other material disclosure under or in connection with the Acquisition Documents which qualifies or would have the effect of qualifying any of the representations and/or warranties given by ATA Inc. as seller under the Acquisition Documents, or which would or could reasonably be expected to materially and adversely affect any of the information, opinions, intentions, forecasts and/or projections delivered or supplied by or on behalf of any member of the Borrower Group to the Lender.
- (c) no representation or warranty (as qualified by any disclosures made under the Acquisition Documents or otherwise and notified to the Lender by the Borrower in writing prior to the date of this Agreement) given by any party to any Acquisition Document is untrue or misleading in any material respect; and
- (d) no party to any Acquisition Document is in default under or breach of any of its obligations under such Acquisition Document in any material respect.
- (e) Except as otherwise disclosed in writing to the Lender prior to the date on which the representation under this Clause 17.13 (*Acquisition Document*) is given and/or with the prior written consent of the Lender, there has been no amendment, variation or supplement of or to, or waiver by any member of the Borrower Group of, any of the terms of the Acquisition Documents, and no member of the Borrower Group has given any consent under any Acquisition Document, and there has been no termination, rescission or cancellation of any Acquisition Document.
- (f) Each Acquisition Document, upon being executed and delivered, is in full force, effect and enforceable (save for any discharge through performance in full).

#### 17.14 Personal Guarantor representations

- (a) The Personal Guarantor understands and acknowledges:
  - (i) that he has the choice not to proceed with the transaction in connection with this deed;
  - (ii) that he has the choice to seek independent legal advice in relation to his obligations and liabilities under this deed;
  - (iii) that he has obtained and reviewed the financial information of the Borrower and is aware of the financial condition of the Borrower in relation to the discharging of payment and any other obligation under the Finance Documents by the Borrower before signing this deed;
  - (iv) that by signing this deed, he may be liable instead of or as well as the other Obligor:
    - (A) for the punctual performance by each other Obligor of all of its obligations under the Finance Documents in accordance with Clause 16 (*Guarantee and indemnity*); and
    - (B) to indemnify the Lender in accordance with of Clause 16 (*Guarantee and indemnity*);
  - (v) that if any other Obligor does not pay any amount when due under a Finance Document or if the Lender suffers any loss or liability if any obligation of a Obligor under any Finance Document is or becomes unenforceable, invalid or illegal, he will be called upon to honour his obligations under this deed;
  - (vi) that his liabilities under this deed are payable on demand;
  - (vii) that his obligations under this deed will be extinguished when all amounts owed by the Obligor to the Lender

under the Finance Documents have been unconditionally and irrevocably paid and discharged in full; and

(viii) that he has been or will be provided with a copy of each of the Loan Agreement and the other Finance Documents.

(b) He fully understands the nature and extent of his obligations and liabilities under this deed and has acted independently and free from any undue influence of any person.

#### **17.15 Shares**

(a) As at the Effective Date:

(i) Subject to the Security Documents, 99% of the issued shares of the Borrower are legally and beneficially owned by Mr. Ma, which shares are fully paid, non-assessable and held free and clear of all

33

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Security Interests other than Security Interests expressly permitted under this Agreement and, prior to the date of the Release of the BOSHK Loan Borrower Share Charge (as defined below), the BOSHK Loan Borrower Share Charge.

(ii) The Additional Corporate Guarantor is the legal and beneficial owner of 28,498,800 shares of the Target Company, representing 51% equity interests therein.

(iii) Management Company 1 is the legal and beneficial owner of 2,151,380 shares of the Target Company, representing 3.85% of the equity interests therein.

(iv) Management Company 2 is the legal and beneficial owner of 1,816,100 shares of the Target Company, representing 3.25% of the equity interests therein.

(v) Management Company 3 is the legal and beneficial owner of 5,252,720 shares of the Target Company, representing 9.4% of the equity interests therein.

(vi) The issued share capital or number of authorised and issued shares (as appropriate) of the Borrower is as set forth in Part I of Schedule 1 (*Parties*).

(b) The shares which are, or are intended to be, subject to the Transaction Security created under the Security Documents are fully paid and not subject to any option to purchase or similar rights, other than as contemplated by the BOSHK Loan Borrower Share Charge.

(c) The constitutional documents of the companies whose shares are subject to the Security Interest created under the Security Documents do not and could not restrict or inhibit:

(i) the creation of any Security Interest under the applicable Security Documents; and/or

(ii) any transfer of those shares on creation or enforcement of such Security Interest.

(d) There are no agreements in force which provide for the issuance or allotment of, or grant any person the right to call for the issuance or allotment of, any share or loan capital (including any option or right of pre-emption or conversion).

#### **17.16 Assets**

(a) It is or will be at the time of grant of the relevant Security Document, the sole legal and beneficial owner of the Charged Property. It owns or has leased or licensed to it all material assets necessary to conduct its business as it is being or will be conducted.

34

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(b) It shall maintain its property in good condition and make all reasonable and necessary renewals, replacements, additions, improvements, thereof so that the business carried out at the Effective Date in connection therewith may be conducted at all times.

(c) It shall undertake all actions reasonably necessary to maintain, preserve and protect its property and assets and to enforce its rights and title to such property and assets.

#### **17.17 Security Documents**

Upon execution and delivery thereof and the completion of the applicable Perfection Requirements, the Security Documents will

be effective to create, in favour of the Lender a legal, valid, enforceable and perfected first priority Security Interest on the Charged Property described therein. There is no Security Interests encumbering the Charged Property except for the Security Documents and as contemplated by the BOSHK Loan Borrower Share Charge.

#### **17.18 Stamp duties**

As at the Effective Date, no stamp or registration duty or similar Tax or charge is payable in its jurisdiction of incorporation in respect of any Finance Document.

#### **17.19 Ranking of security**

Each Security Document creates first priority security interests of the type described, over the assets referred to, in that Security Document and those assets are not subject to any prior or pari passu Security Interest.

#### **17.20 Immunity**

- (a) The execution by it of each Finance Document constitutes, and the exercise by it of its rights and performance of its obligations under each Finance Document will constitute, private and commercial acts performed for private and commercial purposes; and
- (b) it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to any Finance Document.

#### **17.21 No adverse consequences**

- (a) It is not necessary under the Relevant Jurisdiction:
  - (i) in order to enable the Lender to enforce its rights under any Finance Document; or
  - (ii) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,

that the Lender should be licensed, qualified or otherwise entitled to carry on business in its jurisdiction of incorporation; and

- (b) the Lender is not and will not be deemed to be resident, domiciled or carrying on business in its jurisdiction of incorporation by reason only of the execution, performance and/or enforcement of any Finance Document.

#### **17.22 Anti-corruption law**

Each member of the Borrower Group has conducted its businesses in compliance with applicable anti-corruption laws and has initiated and maintained policies and procedures designed to promote and achieve compliance with such laws.

#### **17.23 Anti-money laundering**

The operations of each Obligor are and have been conducted at all times in compliance with all applicable Anti-Money Laundering Laws and no action, suit or proceeding by or before any court or Governmental Entities involving any Obligor with respect to Anti-Money Laundering Laws is pending or, to the best of each Obligor's knowledge, threatened or contemplated.

#### **17.24 Anti-Terrorism — Sanctions**

Neither it, nor as far as any Obligor is aware (or ought reasonably to be aware), after due enquiry and diligence by that Obligor, any director, officer, agent, employee, Affiliate or person acting on behalf of the Borrower:

- (a) is currently subject to any Sanctions;
- (b) is in violation of, or is the subject of any action, proceeding, litigation, claim or investigation concerning, any Sanctions;
- (c) is a Designated Person;
- (d) has received funds or other property from a Designated Person or conducted any activities or business dealings, directly or indirectly, with or for the benefit of a Designated Person;
- (e) has engaged or is engaging, directly or indirectly, in any transaction or conduct that would reasonably be expected to result in it or any of its Affiliates becoming a Designated Person, or which evades or avoids, or is entered into for the purpose of evading or avoiding, any prohibitions or restrictions set forth in any Sanctions; or
- (f) has dealt or engaged in, or deals or engages in, directly or indirectly, any transaction or activities relating to any



property or interest in property blocked pursuant to any Sanctions.

## **17.25 Times for making representations and warranties**

- (a) Unless otherwise specified, the representations and warranties set out in this Clause 17 are made by each Obligor on the Effective Date and the Utilisation Date.

36

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- (b) Unless a representation and warranty is expressed to be given at or as of a specific date or dates only, each representation and warranty is deemed to be repeated by each Obligor on the date of the Request and on each Interest Payment Date and in the case of the Additional Corporate Guarantor, the day on which the Additional Corporate Guarantor executes the PRC Corporate Guarantee.
- (c) When a representation and warranty is deemed to be repeated, it is deemed to be made by reference to the circumstances existing at the time of repetition.

## **18. INFORMATION COVENANTS**

### **18.1 Financial statements**

- (a) The Borrower shall supply to the Lender:
  - (i) commencing with the annual Accounting Period ending on 31 December 2018, the management accounts of the Borrower and the consolidated audited financial statements of the Borrower Group other than the Borrower for each annual Accounting Period; and
  - (ii) commencing with the Accounting Period ending on September December 2018 the management accounts of the Borrower and the consolidated unaudited financial statements and management report (which report shall be in a form acceptable to the Lender) of the Borrower Group other than the Borrower for each quarterly Accounting Period.
- (b) All Accounts shall be supplied as soon as they are available and:
  - (i) in the case of the audited Accounts, within one hundred and twenty (120) days of the end of the relevant Accounting Period; and
  - (ii) in the case of the unaudited quarterly Accounts and the management report or management accounts, within sixty (60) days of the end of the relevant Accounting Period.

### **18.2 Information - miscellaneous**

The Borrower and Mr. Ma shall procure each Member of the Borrower Group shall supply to the Lender:

- (a) at the same time as they are despatched, copies of all documents despatched by it to its shareholders generally (or any class of them) or despatched by it to its creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending and which have or might, if adversely determined, have a Material Adverse Change or involve liability in an amount the Base Currency Equivalent of which, when taken together with any related proceedings, is in excess of US\$1,000,000;

37

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- (c) promptly upon becoming aware of them, details of any information or notice received or obtained by it that any of its assets, mines and/or mineral deposits is, may be or may come, under investigation by a Government Entity;
- (d) promptly on request, copies of any authorisation required under any law or regulation to enable it to perform its obligations under, or for the validity or enforceability of, any Finance Document or to carry on its business as it is being or will be conducted;
- (e) promptly on request, an up to date copy of its shareholders' register (or the equivalent under the law of its jurisdiction of incorporation);
- (f) promptly on request, such further information regarding its financial condition, assets and operations (including any requested amplification or explanation of any item in the Accounts or other material provided by any Obligor under this Agreement) as the Lender may reasonably request;

- (g) promptly upon becoming aware of them, details of any event which has or may reasonably be expected to have a Material Adverse Change; and

### **18.3 Notification of Default**

- (a) Each Obligor shall notify the Lender of any Default (and the steps, if any, being or proposed to be taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly on request by the Lender, the Borrower shall supply to the Lender a certificate, signed by any one director on its behalf, certifying that no Default is outstanding or, if a Default is outstanding, specifying the Default and the steps, if any, being or proposed to be taken to remedy it.

### **18.4 Year end**

Each Obligor shall ensure, and shall procure that each member of the Borrower Group shall ensure, that the last day of each of its annual Accounting Periods falls on an Accounting Date (including that the last day of each of its financial years falls on 31 December).

### **18.5 Know your customer requirements**

Each Obligor shall promptly on the request of the Lender supply to the Lender any documentation or other evidence which is reasonably requested by the Lender (whether for itself or any prospective new Lender) to enable the Lender or prospective new Lender to carry out and be satisfied with the results of all applicable know your customer requirements.

## **19. GENERAL COVENANTS**

### **19.1 General**

Each Obligor agrees to be bound by the covenants set out in this Clause 19 relating to it.

### **19.2 Authorisations**

- (a) Each Obligor shall promptly obtain, maintain and comply with the terms of any authorisation required to enable it to perform its obligations under, or for the validity or enforceability of, any Transaction Document and the transactions contemplated by them.
- (b) Each Obligor shall obtain, maintain and comply with the terms of any authorisation required to enable it to carry on its business in the ordinary course where failure to do so may have a Material Adverse Change.

### **19.3 Compliance with laws**

Each Obligor shall comply in all respects with all laws and regulations to which it is subject.

### **19.4 Pari passu ranking**

Each Obligor shall ensure that its payment obligations under the Finance Documents at all times rank at least pari passu with all its present and future unsecured unsubordinated payment obligations, except for obligations mandatorily preferred by law applying to companies generally in its jurisdiction of incorporation or any other jurisdiction where it carries on business.

### **19.5 Negative pledge**

- (a) Except as provided in Clause 19.5(c) below, no Obligor (other than the Additional Personal Guarantor) shall create or allow to exist any Security Interest on any of its assets.
- (b) The Borrower shall not (and shall ensure that no other member of the Borrower Group will):
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any other member of the Borrower Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into or permit to subsist any title retention arrangement;
  - (iv) enter into or permit to subsist any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (v) enter into or permit to subsist any other preferential arrangement having a similar effect;

- (c) Clauses 19.5(a) and 19.5(b) above does not apply to:
  - (i) any netting or set-off arrangement entered into by any Obligor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
  - (ii) any Security Interest arising by operation of law and in the ordinary course of trading provided that the debt which is secured thereby is paid when due or contested in good faith by appropriate proceedings and properly provisioned;
  - (iii) the Security Interest created under the BOSHK Loan Borrower Share Charge;
  - (iv) any Security Interest which is created with the prior written consent of the Lender; or
  - (v) the ATA Learning Restructuring.

#### **19.6 Disposals**

- (a) Except as provided in Clause 19.6(b) below, and without limiting any other provision of this Agreement, the Borrower shall not, either in a single transaction or in a series of transactions and whether related or not and whether voluntarily or involuntarily, dispose of all or any part of its assets.
- (b) Clause 19.6(a) above does not apply to any disposal:
  - (i) of cash where such disposal is permitted by the other terms of the Finance Documents;
  - (ii) of any assets approved in writing by the Lender;
  - (iii) made in the ordinary course of trading of the disposing entity;
  - (iv) of assets in exchange for other assets comparable or superior, as to type, value and quality;
  - (v) arising solely by virtue of the entry into of any Security Document; or
  - (vi) the ATA Learning Restructuring.

#### **19.7 Loans and guarantees**

The Borrower shall not make or allow to subsist any loans, grant any credit (save in the ordinary course of business) or give or allow to remain outstanding any guarantee or indemnity (except as required under any of the Finance Documents) to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any person, other than any intercompany loan made or to be made to the Borrower and the BOSHK Loan.

#### **19.8 Payment and performance of obligations**

Each Obligor shall make all payments, and perform all of its obligations, in connection with the Loan in accordance with the terms of this Agreement and the other Finance Documents to which it is a party.

#### **19.9 Financial Indebtedness**

The Borrower shall not incur or permit to remain outstanding any Financial Indebtedness except the Financial Indebtedness incurred in connection with the BOSHK Loan and any Financial Indebtedness incurred pursuant to any Transaction Documents.

#### **19.10 Mergers**

- (a) The Borrower shall not enter into any amalgamation, demerger, merger or corporate reconstruction.
- (b) This Clause 19.10 does not apply to:
  - (i) the Acquisition;
  - (ii) any amalgamation, demerger, merger or corporate reconstruction of an Obligor which, after such

amalgamation, demerger, merger or corporate reconstruction, that the Borrower is the surviving entity; or

- (iii) the ATA Learning Restructuring.

#### **19.11 Equity Interests and Dividends**

- (a) The Borrower shall not issue any shares, warrants, options or other equity interests or securities without the prior written consent of the Lender.
- (b) The Borrower shall not:
  - (i) declare, make or pay, or pay interest on any unpaid amount of, any dividend, charge, fee or other distribution (whether in cash or in kind) on or in respect of its shares or share capital (or any class of its share capital), without the prior approval of the Lender;
  - (ii) repay or distribute any share premium account; or
  - (iii) pay or allow any Obligor to pay any management, advisory or other fee to or to the order of the shareholders of the Borrower or any other Obligor (or any of their respective Affiliates which is not an Obligor).

#### **19.12 Change of Business**

The Borrower and Mr. Ma shall procure that no substantial change is made to the general nature of its the business or the business of the Borrower Group from that carried on at the date of this Agreement.

41

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#### **19.13 Access**

- (a) Upon reasonable notice being given by the Lender, each Obligor (other than the Additional Personal Guarantor) shall allow any one or more representatives of the Lender and/or accountants or other professional advisers appointed by the Lender (at the Borrower's risk and the Lender's expense) to have access during normal business hours to the premises, assets, books and records of the any member of the Borrower Group.
- (b) Each Obligor (other than the Additional Personal Guarantor) shall permit the Lender or its representatives reasonable access to inspect the technical and statistical data, accounting books, records and other data of each member of the Borrower Group as the Lender may reasonably require at reasonable times with at least five (5) Business Days' notice and so as not unreasonably to interfere with such member's operations for the purposes of performing its duties under the Finance Documents and to take copies of any documents inspected.
- (c) Each Obligor (other than the Additional Personal Guarantor) shall keep and maintain up to date in accordance with good business practice and applicable laws all of its statutory books, books of account, bank statements and other records.

#### **19.14 Distribution of cash dividend and prepayment of the swap funding**

- (a) Mr. Ma shall procure the Board of ATA Inc. shall, as soon as practicable, but in any event no later than twenty (20) days from the Utilisation Date, distribute the cash dividend with an amount not less than US\$51,000,000 to the Swap Funding Borrower.
- (b) Mr. Ma shall procure the Swap Funding Borrower shall use the entire cash dividend received to prepay the Swap Funding within two (2) Business Days from the receipt of such cash dividend.

#### **19.15 Custody of shares of the Target Company upon IPO**

Upon the occurrence of an IPO, Mr. Ma shall procure the shares of the Target Company with the market value of not less than RMB800,000,000 (calculated by reference to the Offering Price) to be deposited into a securities account opened with Haitong Securities Company Limited. For the avoidance of doubt, unless otherwise agreed by the parties thereto, such deposit pursuant to this Clause shall not be deemed to create any Security Interest over the deposited shares in favour of the Lender or Haitong Securities Company Limited or any of their Affiliates.

#### **19.16 Taxes**

- (a) Each Obligor shall pay all Taxes due and payable (or, where payments of Tax shall be made by reference to estimated amounts, such estimated Tax (calculated in good faith) as due and payable for the relevant period) by it prior to the accrual of any fine or penalty for late payment, unless (and only to the extent that):

42

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- (i) payment of those Taxes is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them, which have been disclosed in its latest financial statements delivered to the Lender under Clause 18 (*Information Covenants*); and
  - (iii) failure to pay those Taxes would not have or would not be reasonably likely to result in a Material Adverse Change.
- (b) No Obligor may change its residence for Tax purposes and become a US Tax Obligor.

#### **19.17 Acquisition Documents**

- (a) The Borrower shall ensure that the Acquisition Completion Date will occur before the Acquisition Long Stop Date.
- (b) The Borrower shall procure any and all amounts payable to the seller under the Acquisition Documents will be paid as and when such amounts become due.
- (c) Without prejudice to this Clause the Borrower shall:
  - (i) comply in all material respects with the provisions of each Acquisition Document to which it is a party;
  - (ii) take all reasonable and practical steps to preserve and enforce its rights and remedies under or in connection with, and pursue any claims under, the Acquisition Documents;
  - (iii) inform the Lender of any material default under or breach of or non-compliance with the terms of the Acquisition Documents by any party thereto (including without limitation any breach of warranty thereunder) or the existence of any claim against any party to any Acquisition Document, in each case promptly upon becoming aware of the same; and
  - (iv) not, without the prior written consent of the Lender:
    - (A) make or agree to any amendment or variation of or supplement to any provision of any Acquisition Document in any material respect;
    - (B) terminate, rescind, supersede, cancel or agree to terminate, rescind, supersede or cancel any Acquisition Document;
    - (C) grant or agree to any waiver of any of its material rights or remedies under or in connection with any Acquisition Document;

- (D) give any consent (which could reasonably be expected to be materially adverse to the interests of any member of the Borrower Group or the Lender ) under any Acquisition Document; or
- (E) assign, transfer, novate or otherwise dispose of any or all of its rights and/or obligations under any Acquisition Document except pursuant to the Security Documents.

#### **19.18 Compliance with Anti-Bribery and Corruption Laws**

- (a) Each Obligor shall:
  - (i) conduct its business in compliance with all applicable Anti-Bribery and Corruption Laws; and
  - (ii) maintain systems, controls, policies and procedures designed to promote and achieve ongoing compliance with all applicable Anti-Bribery and Corruption Laws.
- (b) No Obligor shall, directly or indirectly, use (or permit the use of) the proceeds of the Loan for any purpose that would breach any applicable Anti-Bribery and Corruption Laws.

#### **19.19 Compliance with Anti-Money Laundering Laws**

Each Obligor shall ensure that its operations are conducted at all times in compliance with all applicable Anti-Money-Laundering Laws.

#### **19.20 Compliance with Anti-Terrorism Law**

- (a) No Obligor shall, directly or indirectly, engage in any transaction that violates any Sanctions.

- (b) No Obligor shall, directly or indirectly, use all or any part of the proceeds of any Loan, or lend, make payments, contribute or otherwise make available all or part of such proceeds (or permit or authorise any of the foregoing activities) to any Subsidiary, joint venture partner or other person, to fund any activities or business with any Designated Person that could result in a violation of any Sanctions by any Obligor or the Lender.
- (c) Each Obligor shall ensure that none of the funds or assets of any Obligor that are used to repay the Loan shall constitute property of, or shall be beneficially owned directly or indirectly by, any Designated Person and shall ensure that no Designated Person has any direct or indirect interest in any Obligor that would constitute a violation of any Sanctions.
- (d) No Obligor shall fund all or any part of any payment under this Agreement or any other Finance Document out of proceeds derived from transactions that violate any Sanctions.

## 19.21 Conditions subsequent

44

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- (a) Each Obligor shall promptly after the signing of any Finance Document ensure that all Perfection Requirements specified in the relevant Security Document are completed and, in any event, in accordance with the timeframes in the relevant Security Document.
- (b) Mr. Ma and the Borrower shall cause the Additional Corporate Guarantor to execute the PRC Corporate Guarantee on the date of the Release of the BOSHK Loan Borrower Share Charge.
- (c) As soon as practicable, and in any event within five (5) Business Days, of all amounts outstanding under or payable in connection with the BOSHK Loan being paid in full to BOSHK, the Borrower shall provide evidence, to the reasonable satisfaction of the Lender in respect of the release, de-registration, discharge or otherwise of the BOSHK Loan Borrower Share Charge (the “**Release of the BOSHK Loan Borrower Share Charge**”).
- (d) Upon the date of the Release of the BOSHK Loan Borrower Share Charge, Mr. Ma shall mortgage the additional 44% issued shares in the Borrower previously subject to the security interest created under the BOSHK Loan Borrower Share Charge in favour of the Lender (the “**Further Mortgaged Shares**”) and shall, deliver the documents, do such things, make such filings and take such other actions as reasonably required by the Lender to perfect and protect the Security Interests in respect of the Further Mortgaged Shares, in each case pursuant to the terms of the Borrower Share Mortgage.

## 19.22 Further Assurances

Each Obligor shall at its sole cost and expense:

- (a) promptly do all such acts (including the giving of any notice, order or direction, the making of any filing or registration) or execute all such documents, (including instruments, certificates, assignments, deeds, transfers, mortgages, charges, notices, instructions and other documents) (the “Supplemental Documentation”) as the Lender may reasonably specify:
  - (i) to create, perfect or protect the Transaction Security created or intended to be created under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other Charge over all or any of the assets which are, or are intended to be, the subject of the Transaction Security);
  - (ii) to facilitate the exercise of any right, power, discretion or remedy of the Lender provided by or pursuant to the Finance Documents or by law;
  - (iii) to confer on the Lender a Security Interest over any property and assets of an Obligor located in any jurisdiction equivalent or similar to the Transaction Security intended to be conferred by or pursuant to the Security Documents; and/or

45

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- (iv) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security;
- (b) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Transaction Security conferred or intended to be conferred on the Lender by or pursuant to the Finance Documents; and
- (c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for carrying out of the intents and purposes of this Agreement and the other Finance Documents as the Lender shall reasonably require from time to time, including, without limitation, amendments to the organizational documents of the Obligors.

## 20. DEFAULT

## **20.1 Events of Default**

Each of the events set out from Clause 20.2 (*Non-payment*) to Clause 20.21 (*Acquisition*) is an Event of Default.

## **20.2 Non-payment**

An Obligor does not pay on the due date any amount payable by it under the Finance Documents in the manner required under the Finance Documents unless its failure to pay is caused by an administrative or technical error and payment is made within three (3) Business Days of its due date.

## **20.3 Swap Funding prepayment failure**

The failure of Mr. Ma or any other Obligor's failure to cause the cash dividend to be distributed to the Swap Funding Borrower and the prepayment of the Swap Funding to the Swap Funding Lender by the Swap Funding Borrower in accordance with Clause 19.14 (*Distribution of Cash Dividend and Prepayment of the Swap Funding*).

## **20.4 Breach of other obligations**

An Obligor does not comply with any term of the Finance Documents (other than any term referred to in Clauses 20.2 (*Non-payment*) 20.3 (*Swap Funding Prepayment Failure*) and, unless the non-compliance:

- (a) is capable of remedy; and
- (b) is remedied within ten (10) Business Days of the earlier of the Lender giving notice of the breach to the Borrower and any Obligor becoming aware of the non-compliance.

## **20.5 Misrepresentation**

A representation, warranty or certification made or deemed to be repeated by an Obligor (including the Borrower on behalf of any Borrower Group member) and/or a shareholder of the Borrower, in any Finance Document or in any document delivered

by or on behalf of any such person under any Finance Document is incorrect, misleading or false in any material respect when made or deemed to be repeated.

## **20.6 Cross-default**

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

except where the aggregate of all such Financial Indebtedness and trade indebtedness is less than US\$ 5,000,000.

## **20.7 Insolvency**

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

## **20.8 Insolvency proceedings**

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

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

- (c) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager, provisional supervisor or other similar officer in respect of any member of the Borrower Group or any of its assets; or
  - (d) enforcement of any Security over any assets of any member of the Borrower Group,
- or any analogous procedure or step is taken in any jurisdiction.

Clause 20.8(a) (*Insolvency proceedings*) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within seven (7) days of commencement.

#### **20.9 Creditors' process**

Any attachment, sequestration, distress, execution or analogous event affects any asset or assets of a member of the Borrower Group and is not discharged within seven (7) days.

#### **20.10 Analogous proceedings**

There occurs, in relation to any Obligor, in any jurisdiction to which it or any of its assets are subject, any analogous proceeding or step to any of those mentioned in Clauses 20.7 (*Insolvency*) to 20.9 (*Creditors' process*) (inclusive).

#### **20.11 Cessation of business**

Any member of the Borrower Group suspends, ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business or changes the general nature of its business from that undertaken at the Utilisation Date.

#### **20.12 Finance documents**

- (a) It is or becomes unlawful for any Obligor to perform any of its obligations under the Finance Documents.
- (b) Any Finance Document is not effective in accordance with its terms or is alleged by an Obligor to be ineffective in accordance with its terms for any reason.
- (c) A Security Document does not create the Security Interests it purports to create.
- (d) An Obligor repudiates or rescinds a Finance Document or evidences an intention to repudiate or rescind a Finance Document.

#### **20.13 Ownership**

There is a Borrower Change of Control.

#### **20.14 Expropriation**

- (a) Any asset which is material to the existing operations of an Obligor is nationalised, confiscated or requisitioned.
- (b) Any part of the rights of an Obligor or any other party to a Transaction Document are forfeited, suspended or otherwise abrogated by any Government Entity.
- (c) There is any other intervention in respect of the assets of an Obligor or any other party to a Principal Contract by or on behalf of any Government Entity and such intervention would have a Material Adverse Change.

#### **20.15 Proceedings**

There shall occur any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or enquiry concerning or arising in consequence of any of the Finance Documents or the implementation of any matter or transaction provided for in the Finance Documents, and which is reasonably likely to be determined adversely to any Obligor, and which if so determined could have a Material Adverse Change.



## **20.16 Constitutional documents**

Save as permitted by Clause 19.2(a) (*Authorisations*) of this Agreement, any change is made to any of the Obligor's memorandum or articles of association or other constitutional documents in a way which may be prejudicial to the interests of the Lender or inconsistent with the terms of this agreement or any other Finance Document, other than such change arising out of or in connection with the ATA Learning Restructuring.

## **20.17 Repudiation**

- (a) An Obligor repudiates a Finance Document or an Acquisition Document to which it is party or evidences an intention to repudiate a Finance Document to which it is party.
- (b) Any Finance Document or Acquisition Document ceases for any reason (or is claimed by an Obligor) to be in full force and effect or to be the legal, valid and binding obligation of any Obligor a party thereto, enforceable in accordance with its terms.

## **20.18 Change of Law**

The introduction of, or any change in, or any change in the interpretation, administration or application of, any law or regulation where such change prevents any of the Obligors (other than the Additional Personal Guarantor) from continuing with the operation of its business or would likely result in a Material Adverse Change.

## **20.19 Material Adverse Change**

Any one event or more events or changes (whether related or not) occurs that are likely to cause or constitute, either in a case or in the aggregate, a Material Adverse Change for a period in excess of five (5) Business Days.

## **20.20 Personal Guarantor and the Additional Personal Guarantor defaults**

Any of the following occurs in respect of the Personal Guarantor and the Additional Personal Guarantor:

- (a) the Personal Guarantor or the Additional Personal Guarantor dies or ceases to be of sound mind.
- (b) An order is made or receiver appointed in respect of the Personal Guarantor or the Additional Personal Guarantor under the Mental Health Ordinance (Cap. 136 of the laws of Hong Kong) or a step or procedure is taken in any jurisdiction which results in the Personal Guarantor or the Additional Personal Guarantor's lack or loss of ability or legal capacity to perform his obligations under any Finance Document to which he is a party.

## **20.21 Acquisition**

The Acquisition does not occur by the Acquisition Long Stop Date.

## **21. ACCELERATION**

### **21.1 Acceleration**

If an Event of Default has occurred and is continuing, the Lender may by notice to the Obligors, and at the Lender's option:

- (a) declare that an Event of Default has occurred; and/or
- (b) cancel all or any part of the Total Commitment; and/or
- (c) declare that all of part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents are:
  - (i) immediately due and payable; and/or
  - (ii) payable on demand by the Lender; and/ or
- (d) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

### **21.2 SET-OFF RIGHTS**

On and at any time after the occurrence of an Event of Default, the Lender shall have the right, without prior notice to the Borrower or any other Obligors, to set off and apply any credit balance in any currency upon any accounts and any deposit (whether current or deposit, general or special, and whether at or prior to maturity and whether subject to notice or not) to which any Obligor or its Affiliate is at any time beneficially entitled on any account at any office of the Lender (or of its Affiliates)

towards the satisfaction of any of the obligation of any Obligor under any of the Finance Documents. Promptly following such set off, the Lender shall give the relevant Obligor written notice setting forth the details thereof; provided, however, that such notice shall not be a condition to the right to set off and failure to give such

notice shall not invalidate or impair the set off. The Lender is hereby authorized to purchase with the monies standing to the credit of any such accounts such other currencies to satisfy such obligations.

## **22. EVIDENCE AND CALCULATIONS**

### **22.1 Accounts**

Accounts maintained by the Lender in connection with this Agreement are prima facie evidence of the matters to which they relate for the purpose of any litigation or arbitration proceedings.

### **22.2 Certificates and determinations**

Any certification or determination by the Lender of a rate or amount under the Finance Documents will be, in the absence of proven or manifest error, conclusive evidence of the matters to which it relates.

### **22.3 Release and Discharge**

Upon the Lender being satisfied that all amounts outstanding under or payable in connection with this Agreement have been unconditionally and irrevocably paid in full, the Borrower may request that:

- (a) the Lender provide to it written confirmation that such payments have been made and that as a result the Borrower is no longer subject to the restrictions provided for in this Agreement; and
- (b) the Lender take all steps reasonably necessary to give effect to the release and reassignment of Security Interests granted under the Security Documents.

## **23. INDEMNITIES**

### **23.1 Currency indemnity**

- (a) The Obligors shall, as an independent obligation, indemnify the Lender against any loss or liability which the Lender incurs as a consequence of:
  - (i) the Lender receiving an amount in respect of an Obligor's liability under the Finance Documents; or
  - (ii) that liability being converted into a claim, proof, judgment or order,in a currency other than the currency in which the amount is expressed to be payable under the relevant Finance Document.
- (b) Unless otherwise required by law, each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

### **23.2 Other indemnities**

- (a) The Obligors shall indemnify the Lender against any loss or liability which the Lender incurs as a consequence of:
  - (i) the occurrence of any Event of Default;
  - (ii) any failure by an Obligor to pay any amount due under a Finance Document on its due date; or
  - (iii) the Loan (or part of the Loan) not being prepaid in accordance with this Agreement.

The Obligors' liability in each case includes any loss or expense incurred on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document, any amount repaid or prepaid with respect to the Loan.

- (b) The Obligors shall indemnify the Lender against any loss or liability reasonably incurred by the Lender as a result of:
  - (i) investigating any event which is a Default; or

- (ii) acting or relying on any notice which the Lender reasonably believes to be genuine, correct and appropriately authorised.

## **24. EXPENSES**

### **24.1 Initial costs**

The Borrower, within three (3) Business Days of demand, pay the Lender the amount of all costs and expenses (including fees and disbursements of counsel, financial advisers and accountants) reasonably incurred by the Lender in connection with the negotiation, preparation and execution of this Agreement, the Finance Documents and/or other documents contemplated by this Agreement and/or the Finance Documents.

### **24.2 Subsequent costs**

- (a) If an Obligor requests an amendment, waiver or consent, or an amendment is required pursuant to Clause 25.2 (*change of currency*), the Borrower, shall, within three (3) Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.
- (b) Subject to Clause 23 (Indemnities) of this Agreement, the Obligors shall pay to the Lender the amount of all costs and expenses (including legal fees) incurred by it or any of its Affiliates in connection with any other matter not of an ordinary administrative nature arising out of or in connection with any Finance Document (including in connection with any litigation, arbitration, administrative, governmental, regulatory or other investigation, proceedings or enquiries concerning or arising as a consequence of the Lender entering into this Agreement).

### **24.3 Enforcement costs**

Subject to Clause 23 (*Indemnities*) of this Agreement, the Obligors shall pay to the Lender the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

## **25. AMENDMENTS AND WAIVERS**

### **25.1 Procedure**

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

### **25.2 Change of currency**

If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognised at the same time as the lawful currency of a country), the Finance Documents will be amended to the extent the Lender (acting reasonably and after consultation with the Borrower) determines is necessary to reflect the change.

### **25.3 Waivers and remedies cumulative**

The rights of the Lender under the Finance Documents:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

## **26. CHANGES IN THE PARTIES**

### **26.1 Assignments and Transfers by the Obligors**

No Obligor may assign or transfer any of its rights and obligations under any Finance Document without the prior consent of the Lender.

### **26.2 Assignments and Transfers by the Lender**

Subject to this Clause 26, the Lender (the “**Existing Lender**”) may:

- (a) assign any of its rights; or
  - (b) transfer by novation any of its rights and obligations,
- under the Finance Documents to its Affiliate or any third party (the “**New Lender**”).

### 26.3 Requirements of Assignment or Transfer

53

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- (a) The consent of the Borrower is not required for any assignment or transfer by the Lender pursuant to this Clause 26.
- (b) A transfer will be effective only if the procedure set out in Clause 26.5 (*Procedure for transfer*) is complied with.
- (c) An assignment will be effective only if the procedure and conditions set out in Clause 26.6 (*Procedure for assignment*) are complied with.

### 26.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, the Existing Lender makes no representation or warranty and assumes no responsibility to the New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) The New Lender confirms to the Existing Lender that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or the Total Commitment is in force.
- (c) Nothing in any Finance Document obliges the Existing Lender to:
  - (i) accept a re-transfer or re-assignment from the New Lender of any of the rights and obligations assigned or transferred under this Clause 26; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

54

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### 26.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 26.3 (*Requirements of Assignment or Transfer*) a transfer is effected in accordance with paragraph (b) below when the Existing Lender executes an otherwise duly completed Transfer Certificate delivered to it by the New Lender.
- (b) On the date of transfer (the “**Transfer Date**”):
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the “**Discharged Rights and Obligations**”);

- (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender; and
- (iii) the New Lender shall become a Party as a “Lender”.
- (c) The procedure set out in this Clause 26.5 shall not apply to any right or obligation under any Finance Document (other than this Agreement) if and to the extent its terms, or any laws or regulations applicable thereto, provide for or require a different means of transfer of such right or obligation or prohibit or restrict any transfer of such right or obligation, unless such prohibition or restriction shall not be applicable to the relevant transfer or each condition of any applicable restriction shall have been satisfied.

## 26.6 Procedure for assignment

- (a) Subject to the conditions set out in paragraph (d) below and in Clause 26.3 (*Requirements of Assignment or Transfer*), an assignment may be effected in accordance with paragraph (b) below when the Existing Lender executes an otherwise duly completed assignment agreement delivered to it by the New Lender (the “**Assignment Agreement**”).
- (b) On the Transfer Date:
  - (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released by each Obligor from the obligations owed by it (the “**Relevant Obligations**”) and expressed to be the subject of the release in the Assignment Agreement; and

55

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- (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (c) Lenders may utilise procedures other than those set out in this Clause 26.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 26.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in paragraph (d) below.
- (d) An assignment (whether pursuant to an Assignment Agreement or paragraph (c) above) will only be effective on receipt by the Existing Lender (whether in an Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Existing Lender) that the New Lender will assume the same obligations as it would have been under if it was the Existing Lender.
- (e) The procedure set out in this Clause 26.6 shall not apply to any right or obligation under any Finance Document (other than this Agreement) if and to the extent its terms, or any laws or regulations applicable thereto, provide for or require a different means of assignment of such right or release or assumption of such obligation or prohibit or restrict any assignment of such right or release or assumption of such obligation, unless such prohibition or restriction shall not be applicable to the relevant assignment, release or assumption or each condition of any applicable restriction shall have been satisfied.

## 26.7 Copy of Transfer Certificate or Assignment Agreement to Borrower

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

## 26.8 Existing consents and waivers

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

## 27. CONFIDENTIALITY

### 27.1 General Obligation

- (a) Each Party undertakes to the other Parties that it shall not disclose, and that it shall procure that its respective directors, equity interest holders, current or prospective partners, members, advisors and bankers, officers, employees, agents, consultants, auditors and professional advisors (collectively, the “**Representatives**”) do not disclose, to any third party any Confidential Information without the prior written consent of the Lender and the Borrower, or the concerned Party, as the case may be, or use any Confidential Information in such manner that is detrimental to the Lender or the Borrower.

56

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- (b) The term “**Confidential Information**” as used in this Clause 27 means, (a) any information concerning the organization, business, technology, safety records, investment, finance, transactions or affairs of any Party or any of their respective directors, officers or employees furnished after the Effective Date; (b) the terms or existence of this Agreement and the terms or existence of any of the other Finance Document, and the identities of the Parties and their respective Affiliates; (c) the consolidated unaudited financial statements and management report of the Borrower and the Borrower Group under Clause 18.1(a) and (d) any other information or materials prepared by a Party or its Representatives that contains or otherwise reflects, or is generated from, Confidential Information.

## **27.2 Exceptions**

The provisions of Clause 27.1 above shall not apply to:

- (a) disclosure of Confidential Information that is or becomes generally available to the public other than as a result of disclosure by or at the direction of a Party or any of the Representatives in violation of this Agreement;
- (b) disclosure by a Party to a Representative; provided that such Representative (i) is under a similar obligation of confidentiality or (ii) is otherwise under a binding professional obligation of confidentiality;
- (c) disclosure by a Party to its Affiliates and their respective Representatives; provided that such Affiliate or Representative (i) is under a similar obligation of confidentiality or (ii) is otherwise under a binding professional obligation of confidentiality;
- (d) disclosure, after giving prior notice to the other Parties to the extent practicable under the circumstances and subject to any practicable arrangements to protect confidentiality, to the extent required under the rules of any stock exchange on which the shares of a Party or its parent company are listed or by applicable laws or governmental regulations or judicial or regulatory process or in connection with any judicial process regarding any legal action, suit or proceeding arising out of or relating to this Agreement; and / or
- (e) in the case where the Lender is the disclosing party, disclosure to any person
  - (i) to (or through) whom the Lender assigns, novates or transfers (or may potentially assign, novate or transfer) all or any of its rights and obligations under the Finance Documents (or any agent or adviser of such person);
  - (ii) with (or through) whom the Lender enters into (or may potentially enter into) any participation or sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Loan, the Finance Documents or any Obligor (or any agent or adviser of such person); or

- (iii) with the consent of the Borrower.

## **27.3 Publicity**

Except as required by law, by any Government Entity, by any relevant stock exchange on which the shares of a Party or its parent company are listed or otherwise agreed by all the Parties, no publicity release or public announcement concerning the relationship or involvement of the Parties shall be made by any Party without the advance written approval of the Lender on one hand and the Borrower (on behalf of the Borrower Group and the Obligors) on the other hand.

## **28. SEVERABILITY**

If a term of a Finance Document is or becomes illegal, invalid or unenforceable in any jurisdiction in relation to any party to that Finance Document, that will not affect:

- (a) in respect of such party the legality, validity or enforceability in that jurisdiction of any other term of the Finance Documents;
- (b) in respect of any other party to such Finance Document the legality, validity or enforceability in that jurisdiction of that or any other term of the Finance Documents; or
- (c) in respect of any party to such Finance Document the legality, validity or enforceability in other jurisdictions of that or any other term of the Finance Documents.

## **29. COUNTERPARTS**

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

### 30. NOTICES

#### 30.1 In writing

- (a) Any communication in connection with a Finance Document shall be in writing and, unless otherwise stated, may be given by fax or letter.
- (b) Unless it is agreed to the contrary, any consent or agreement required under a Finance Document shall be given in writing.

#### 30.2 Contact details

- (a) Except as provided below, the contact details of each Party for all communications in connection with the Finance Documents are those notified by that Party for this purpose to the Lender on or before the date it becomes a Party.
- (b) The contact details of the Borrower are set out in Part I of Schedule 1 (*Parties*) and of the Personal Guarantor in Part II of Schedule 1 (*Parties*).

58

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- (c) The contact details of the Lender for this purpose are:

**Haitong International Investment Solutions Limited**

22/F Li Po Chun Chambers, 189 Des Voeux Road Central, Hong Kong

Attention: Financial Product Department

Email: SP-OPS@htisec.com

- (d) Any Party may change its contact details by giving three (3) Business Days' notice to the Lender to the other Parties.
- (e) Where a Party nominates a particular department or officer to receive a communication, a communication will not be effective if it fails to specify that department or officer.

#### 30.3 Effectiveness

- (a) Except as provided below, any communication in connection with a Finance Document will be deemed to be given as follows:
  - (i) if delivered in person, at the time of delivery;
  - (ii) if posted, five (5) days after being deposited in the post, postage prepaid, in a correctly addressed envelope; and
  - (iii) if by fax, when received in legible form.
- (b) A communication given under Clause 30.3 (a) above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.
- (c) A communication to the Lender will only be effective on actual receipt by it.

#### 30.4 Electronic Communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and the Lender may only be made in that way to

59

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the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of

communication.

- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Lender only it is addressed in such manner as the Lender shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 30.4.

### **31. LANGUAGE**

- (a) Any notice given in connection with a Finance Document shall be in English.
- (b) Any other document provided in connection with a Finance Document shall be:
  - (i) in English; or
  - (ii) (unless the Lender otherwise agrees) accompanied by a certified English translation. In such case, the English translation prevails unless the document is a statutory or other official document.

### **32. GOVERNING LAW**

This Agreement, and all non-contractual obligations arising from or in connection with it, are governed by Hong Kong law.

### **33. ENFORCEMENT**

#### **33.1 Jurisdiction of Hong Kong courts**

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

60

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- (c) This clause 33.1 (*Jurisdiction of Hong Kong courts*) is for the benefit of the Lender only. As a result, no Lender y shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

#### **33.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in Hong Kong):
  - (i) irrevocably appoints Sharpview Consultants Ltd. at 1299, Wing Tuck Comm. Centre, 177 Wing Lok Street, Sheungwan as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) Each Obligor expressly agrees and consents to the provisions of this clause 33.2 (Service of process).

#### **33.3 Waiver of immunities**

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

- (c) suit;
- (d) jurisdiction of any court;
- (e) relief by way of injunction or order for specific performance or recovery of property;



- (f) attachment of its assets (whether before or after judgment); and
- (g) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction (and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any immunity in any such proceedings)

### 34. ACKNOWLEDGEMENT

Without limiting any provision of any Finance Document, each Obligor acknowledges and agrees that any increase in the Total Commitment and any additional principal amounts that may become outstanding under this Agreement as a result thereof or of any amendment, modification or amendment and restatement of this Agreement shall constitute secured indebtedness for the purposes of each of the Security Documents and shall be guaranteed by the Personal Guarantor under Clause 16 (*Guarantee and Indemnity*).

61

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

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62

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## Schedule 1 PARTIES

### Part I Borrower

#### BORROWER

#### NEW BEAUTY HOLDINGS LIMITED

Country of incorporation: British Virgin Islands  
Registered Shareholder: Mr. Kevin Xiaofeng Ma and Mr. Hongxing Qian  
Issued Shares: 1,000 shares  
Authorized Shares: 50,000 shares  
Registered Office Address:  
Portcullis Chambers, 4th Floor, Ellen Skelton Building  
3076 Sir Francis Drake Highway  
Road Town, Tortola, British Virgin Islands VG1110

Address for notices:  
1/F East Gate, Building No.2, Jian Wai Soho  
No.39 Dong San Huan Zhong Road  
Chao Yang District, Beijing 100022, the PRC

Attention: Mr. Patrick Pei Yang  
Facsimile Number: +86 10 5869 7350

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### Part II Personal Guarantor

#### MR. MA

#### KEVIN XIAOFENG MA □□□

Address for notices:  
1/F East Gate, Building No.2, Jian Wai Soho  
No.39 Dong San Huan Zhong Road  
Chao Yang District, Beijing 100022, the PRC

Attention: Mr. Kevin Xiaofeng Ma  
Facsimile Number: +86 10 5869 7350

**Schedule 2**  
**CONDITIONS PRECEDENT DOCUMENTS**

**To be delivered on or before the Utilisation Date**

**1. CORPORATE DOCUMENTS**

- (a) A copy of the constitutional documents and all amendments thereto of the Borrower (including, in respect of the Borrower, all statutory registers).
- (b) A copy of the approval of the board of directors of the Borrower,
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute and deliver the Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute and deliver the Finance Documents to which it is a party on its behalf;
  - (iii) authorising a specified person or persons, on its behalf, to execute, sign and/or despatch all documents and notices (including, if relevant, any Request) to be executed, signed and/or despatched by it under or in connection with the Finance Documents to which it is a party;
  - (iv) in the case of the Borrower, authorising the registered agent of the Borrower to enter the particulars of the Debenture on the register of charges of the Borrower pursuant to the BCA;
  - (v) in the case of the Borrower, authorising the registered agent of the Borrower to make a notation in its register of members of the security interest created by the Borrower Share Mortgage pursuant to the BCA; and
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A copy of a resolution signed by all the holders of the issued shares in the Borrower in respect of amendments required to be made to the memorandum and articles of association of the Borrower to comply with the terms of the Borrower Share Mortgage.
- (e) A certificate from the Borrower signed by an authorised signatory confirming that borrowing, guaranteeing and/or granting security in respect of the Total Commitments (as appropriate) would not cause any borrowing, guaranteeing, security or similar limit binding on it to be exceeded.
- (f) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Schedule 2 (Conditions precedent documents) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

- (g) A certificate of incumbency in respect of the Borrower issued by its registered agent dated not earlier than one (1) month from the Effective Date.

**2. PERSONAL GUARANTOR DOCUMENTS**

In respect of the Personal Guarantor, certified true copies of:

- (a) his identification document;
- (b) document(s) in respect of any change of name (if applicable); and
- (c) proof of residential address (by documents issued by banks, credit card companies, insurance companies, mandatory provident fund trustee companies or utility company bearing of his name or other document accepted by the Lender).

**3. FINANCE DOCUMENTS**

Originals of the following Finance Documents, duly executed and delivered by the parties thereto and effective pursuant to the terms thereof:

- (a) this Agreement; and
- (b) any other Finance Document.

4        **SECURITY DOCUMENTS**

Originals of the following Security Documents, duly executed and delivered by the parties thereto and effective pursuant to the terms thereof:

- (a)        the Borrower Share Mortgage;
- (b)        the Debenture;
- (c)        the PRC Equity Pledge;
- (d)        each Personal Guarantee;
- (e)        a copy of all notices required to be sent, and other documents required to be executed and any acknowledgments, consents and/or direct agreements required to be obtained under the Security Documents; and
- (f)        a copy of all share certificates, transfers, stock transfers forms or their equivalent, each duly executed by the relevant Obligor in blank in relation to the assets subject to, or expressed to be subject to, the Security created pursuant to the relevant Security Document, and any other documents of title and/or other statutory forms or documents which are required in order to perfect such Security (including deeds of appointment of proxy resignation letters, authorisation letters and letters of instruction to the registered agent).

5.        **ACQUISITION DOCUMENTS**

66

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- (a)        Copies of the following, duly executed and delivered by the parties thereto and effective pursuant to the terms thereof:
  - (i)        the Share Purchase Agreement;
  - (ii)       the Deed of Assignment; and
  - (iii)      any other Acquisition Document.
- (b)        A copy of the ATA Learning SPA.

6        **LEGAL OPINIONS**

A legal opinion as to the British Virgin Islands law from Mourant Ozannes addressed to the Lender substantially in the form distributed to the Lender prior to signing this Agreement.

7        **OTHER DOCUMENTS AND EVIDENCE**

- (a)        Evidence satisfactory to the Lender that there has been no material adverse change in the business, assets or consolidated financial condition and performance of any Obligor or in the international or domestic money, debt, bank or capital financial markets since the Effective Date.
- (a)        The notice and acknowledgment to the Personal Guarantor and the Additional Personal Guarantor signed by them pursuant to the Code of Banking Practice of Hong Kong, the relevant circular issued by The Hong Kong Association of Banks and the Law Society of Hong Kong.
- (b)        The payment instructions duly executed and delivered by the Borrower, the Lender and BOSHK whereby the Borrower instructs BOSHK to transfer the full amount of the proceeds of the Loan to the bank account designated therein.
- (c)        The cross-pledge agreement with respect to the cross-collateralisation of the collateral under the Swap Funding for the Loan duly executed and delivered by the Swap Funding Borrower, the Swap Funding Lender, the Lender, the Borrower and Mr. Ma.
- (d)        A copy of the BOSHK Loan Agreement.
- (e)        A copy of the board resolutions of ATA Inc. dated on or about 7 August 2018 in respect of the declaration of cash dividends.
- (f)        Evidence satisfactory to the Lender that ATA Inc. has published the announcement regarding the declaration of the cash dividends.
- (g)        A copy of the latest management accounts of the Borrower and financial statements of the Additional Corporate Guarantor.

- (h) A copy of any other authorisation or other document, opinion or assurance which the Lender notifies to the Borrower is necessary or desirable in

connection with the entry into and performance of, and the transactions contemplated by, any Finance Document or for the validity and enforceability of any Finance Document.

- (i) Evidence of the appointment of the process agent as required by the relevant Finance Documents to which an Obligor is a party.
- (j) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clauses 13 (*Fees*) and 24 (*Expenses*) have been paid or will be paid by the Utilisation Date.

5. **DUE DILIGENCE**

The Lender shall be satisfied with the results of its due diligence exercise in connection with the transactions contemplated under the Finance Documents.

**Schedule 3**  
**FORM OF REQUEST**

To: **HAITONG INTERNATIONAL INVESTMENT SOLUTIONS LIMITED** as Lender

From: **NEW BEAUTY HOLDINGS LIMITED** □□□□□□□□

Date: [·]

**New Beauty Holdings Limited** □□□□□□□□ - **US\$40,000,000 Secured Loan Agreement dated [·] 2018 (the “Agreement”)**

1. We refer to the Agreement. This is the Request. Terms defined in the Agreement shall have the same meaning in this Request.
2. We wish to draw-down the Loan on the following terms:
  - (a) Utilisation Date: [·]
  - (b) Amount: US\$[·]
3. The proceeds of the Loan shall be credited to:

Beneficiary Bank: Bank of Shanghai (Hong Kong) Limited

SWIFT Code: BOSHHKHH

Correspondent Bank: Deutsche Bank Trust Company Americas, N.Y.

SWIFT Code: BKTRUS33

Account Name: New Beauty Holdings Limited

Account Number: 200257
4. the Proceeds of the Loan shall only be used to
  - (a) be applied towards the Purchase Price Consideration; and
  - (b) pay any fees, costs and expenses, stamp duty, registration and any other Taxes incurred by the Borrower in connection with the Acquisition.
4. We confirm that each condition precedent under the Agreement which shall be satisfied on the date of this Request is so satisfied.
5. This Request is irrevocable.

By: **New Beauty Holdings Limited**

□□□□□□□□

Name:  
Title:

**Schedule 4**  
**FORM OF TRANSFER CERTIFICATE**

To: Haitong International Investment Solutions Limited (the “Existing Lender”)

From: [the New Lender] (the “New Lender”)

Dated:

**NEW BEAUTY HOLDINGS LIMITED (□□□□□□□□)—US\$40,000,000 Loan Agreement dated [ ] (the “Agreement”)**

1. We refer to Clause 26.5 (*Procedure for transfer*) of the Agreement. This is a Transfer Certificate. Terms used in the Agreement shall have the same meaning in this Transfer Certificate.
2. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 26.5 (*Procedure for transfer*), all of the Existing Lender’s rights and obligations under the Agreement and the other Finance Documents.
3. The proposed Transfer Date is [·].
4. The address, fax number and attention particulars for notices of the New Lender for the purposes of Clause 30.2 ( *Contact details*) are set out in the Schedule.
5. The New Lender expressly acknowledges:
  - (a) the limitations on the Existing Lender’s obligations set out in paragraphs (a) and (c) of Clause 26.4 (*Limitation of responsibility of the Existing Lender*); and
  - (b) that it is the responsibility of the New Lender to ascertain whether any document is required or any formality or other condition requires to be satisfied to effect or perfect the transfer contemplated by this Transfer Certificate or otherwise to enable the New Lender to enjoy the full benefit of each Finance Document.
6. The New Lender confirms that it is a “New Lender” within the meaning of Clause 26.2 (*Assignments and transfers by the Lender*).
7. The Existing Lender and the New Lender confirm that the New Lender is not an Obligor or an Affiliate of an Obligor.
8. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
9. This Transfer Certificate and all non-contractual obligations arising from or in connection with this Transfer Certificate are governed by English law.

10. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

**Schedule 5**  
**FORM OF PRC CORPORATE GUARANTEE**

SIGNATURE PAGE

The Borrower

EXECUTED and DELIVERED as a deed )  
for and on behalf of )  
**NEW BEAUTY HOLDINGS LIMITED** )  
( )  
a BVI business company incorporated in )  
the British Virgin Islands, )  
signed by Kevin Xiaofeng Ma )  
being a director )

\_\_\_\_\_  
Director

in the presence of:  
Witness name:  
Witness occupation:  
Witness address:

\_\_\_\_\_  
[·]  
Witness

The Personal Guarantor

EXECUTED and DELIVERED as a deed by )  
**KEVIN XIAOFENG MA**( )  
as a Guarantor )  
)

\_\_\_\_\_  
Kevin Xiaofeng Ma

in the presence of:  
Witness name:  
Witness occupation:  
Witness address:

\_\_\_\_\_  
[·]  
Witness

The Lender

**Haitong International Investment Solutions Limited**

By \_\_\_\_\_  
**Name: ZHAO YANG**  
**Title: Director**

in the presence of:  
Witness name:  
  
Witness occupation:  
Witness address:

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



**EXECUTION VERSION**

US\$32,000,000 Term Loan  
FACILITY AGREEMENT

dated 7 August 2018

for

**New Beauty Holdings Limited** ☐☐☐☐☐☐  
acting as Borrower

**Able Knight Development Limited**  
**Mutual Step Holdings Limited** ☐☐☐☐☐☐  
**Art Grace Development Limited**  
**Art Kind Technology Limited**  
and  
**Joy Spread Development Limited**  
each acting as a Corporate Guarantor

with

**Bank of Shanghai (Hong Kong) Limited**  
acting as Lender

**King & Wood Mallesons**  
13th Floor Gloucester Tower  
The Landmark  
15 Queen's Road Central  
Central Hong Kong  
T +852 3443 1000  
F +852 3443 1299  
www.kwm.com

**CONTENTS**

<b>CLAUSE</b>	<b>PAGE</b>
<b>SECTION 1 INTERPRETATION</b>	<b>1</b>
1 Definitions and Interpretation	1
2 Construction	15
<b>SECTION 2 THE FACILITY</b>	<b>18</b>
3 The Facility	18
4 Purpose	18
5 Conditions of Utilisation	18
<b>SECTION 3 UTILISATION</b>	<b>20</b>
6 Utilisation	20
<b>SECTION 4 REPAYMENT, PREPAYMENT AND CANCELLATION</b>	<b>21</b>
7 Repayment	21
8 Prepayment and cancellation	21
<b>SECTION 5 COSTS OF UTILISATION</b>	<b>23</b>
9 Interest	23
10 Interest Periods	24



11	Changes to the calculation of interest	24
12	Fees	25
<b>SECTION 6 ADDITIONAL PAYMENT OBLIGATIONS</b>		<b>26</b>
13	Tax gross up and indemnities	26
14	Increased costs	31
15	Mitigation by the Lender	32
16	Other indemnities	33
17	Costs and expenses	35
<b>SECTION 7 GUARANTEE</b>		<b>36</b>
18	Guarantee and indemnity	36
<b>SECTION 8 REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT</b>		<b>40</b>
19	Representations	40
20	Information undertakings	46
21	General undertakings	47
22	Events of Default	51
<b>SECTION 9 CHANGES TO PARTIES</b>		<b>55</b>
23	Changes to the Lender	55
24	Changes to the Obligors	56
25	Disclosure of information	56
<b>SECTION 11 ADMINISTRATION</b>		<b>59</b>
26	Payment mechanics	59
27	Set-off	61
28	Notices	61
29	Calculations and certificates	62
30	Partial invalidity	63
31	Remedies and waivers	63
i		
<hr/>		
32	Amendments and waivers	63
33	Counterparts	63
34	Indemnities and reimbursement	63
35	General	64
<b>SECTION 12 GOVERNING LAW AND ENFORCEMENT</b>		<b>65</b>
36	Governing law	65
37	Enforcement	65
<b>Schedule 1 Conditions Precedent</b>		<b>67</b>
<b>Schedule 2 Form of Utilisation Request</b>		<b>70</b>

**THIS AGREEMENT** is dated 7 August 2018 and made between:

- New Beauty Holdings Limited** (with company number 1417522), a company incorporated under the laws of the British Virgin Islands with its registered address at Portcullis Chambers, 4th Floor, Ellen Skelton Building, 3076 Sir Francis Drake Highway, Road Town, Tortola, British Virgin Islands VG1110 (the “**Borrower**”);
- Able Knight Development Limited** (with company number 1416654), a company incorporated under the laws of the British Virgin Islands with its registered address at Portcullis Chambers, 4th Floor, Ellen Skelton Building, 3076 Sir Francis Drake Highway, Road Town, Tortola, British Virgin Islands VG1110 (the “**Able Knight**”);
- Mutual Step Holdings Limited** (with company number 1430420), a company incorporated under the laws of the British Virgin Islands with its registered address at Portcullis Chambers, 4th Floor, Ellen Skelton Building, 3076 Sir Francis Drake Highway, Road Town, Tortola, British Virgin Islands VG1110 (the “**Mutual Step**”);

4. **Art Grace Development Limited** (with company number 1437750), a company incorporated under the laws of the British Virgin Islands with its registered address at Portcullis Chambers, 4th Floor, Ellen Skelton Building, 3076 Sir Francis Drake Highway, Road Town, Tortola, British Virgin Islands VG1110 (“**Art Grace**”);
5. **Art Kind Technology Limited** (with company number 1434382), a company incorporated under the laws of the British Virgin Islands with its registered address at Portcullis Chambers, 4th Floor, Ellen Skelton Building, 3076 Sir Francis Drake Highway, Road Town, Tortola, British Virgin Islands VG1110 (“**Art Kind**”);
6. **Joy Spread Development Limited** (with company number 1439791), a company incorporated under the laws of the British Virgin Islands with its registered address at Portcullis Chambers, 4th Floor, Ellen Skelton Building, 3076 Sir Francis Drake Highway, Road Town, Tortola, British Virgin Islands VG1110 (“**Joy Spread**” and together with Able Knight, Mutual Step, Art Grace, Art Kind, the “**Corporate Guarantors**” and each a “**Corporate Guarantor**”); and
7. **Bank of Shanghai (Hong Kong) Limited** (the “**Lender**”).

IT IS AGREED as follows:

## SECTION 1 INTERPRETATION

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

“**Able Knight Account Charge**” means the Hong Kong law governed account charge in respect of the Dividends Account (Able Knight) to be executed by Able Knight as chargor and the Lender as chargee.

1

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“**Able Knight Share Charge**” means the Hong Kong law governed share charge in respect of 4,998,988 common shares represented by share certificates number(s) 79 and 80 in ATAI owned by Able Knight, representing not less than 10.4% of all issued common shares of ATAI as at the date of this Agreement, to be executed by Able Knight as chargor and the Lender as chargee.

“**Acquisition**” means the acquisition by the Borrower in accordance with the terms of the Acquisition Agreement.

“**Acquisition Agreement**” means the share purchase agreement dated 6 February 2018 and entered into by, among others, the Borrower as purchaser and ATA BVI as seller in respect of the acquisition by the Borrower of the entire issued share capital of ATA Learning, together with all exhibits, schedules, amendments and assignments thereto.

“**Acquisition Completion Date**” means the date on which the completion of the Acquisition occurs in accordance with the terms of the Acquisition Agreement.

“**ADR**” means American depositary receipts;

“**ADR Pledge Agreement**” means the New York law governed pledge agreement in respect of the Art Grace ADR Pledge, the Art Kind ADR Pledge, the Joy Spread ADR Pledge and the Mutual Step ADR Pledge, in aggregate representing 5,440,052 common shares of ATAI, being not less than 11.3% of all issued common shares of ATAI as at the date of this Agreement, dated on or about the date of this Agreement and executed by Art Grace, Art Kind, Joy Spread and Mutual Step as grantors and the Lender as the secured party.

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

“**Alpha Metric**” means Alpha Metric Horizon Limited ☐☐☐☐☐☐☐ a company incorporated under the laws of Hong Kong with company registration number 2203763 and registered office at Unit 606, 6th Floor, Alliance Building, 133 Connaught Road Central, Hong Kong.

“**Alpha Metric Share Pledge**” means the PRC law governed share pledge agreement in respect of 7.5% of the issued share capital in ATA Online owned by Alpha Metric to be executed by Alpha Metric as chargor and the Lender as chargee.

“**Art Grace ADR Pledge**” means the New York law governed pledge granted pursuant to the ADR Pledge Agreement in respect of 800,000 ADRs (representing 1,600,000 common shares) issued by ATAI owned by Art Grace to be executed by Art Grace.

“**Art Grace Custodian Agreement**” means the Hong Kong law governed custodian agreement in relation to the Custodian Account (Art Grace) to be executed by Art Grace, the Custodian and the Lender.

“**Art Kind ADR Pledge**” means the New York law governed pledge granted pursuant to the ADR Pledge Agreement in respect of 800,000 ADRs (representing 1,600,000 common shares) issued by ATAI owned by Art Kind.

“**Art Kind Custodian Agreement**” means the Hong Kong law governed custodian agreement in relation to the Custodian Account (Art Kind) to be executed by Art Kind, the Custodian and the Lender.

“**APLMA**” means the Asia Pacific Loan Market Association Limited.

“**ATAI**” means ATA Inc., a company incorporated under the laws of Cayman Islands with registration number 174577 and registered office at Cricket Square, Hutchins Drive, P.O. Box 2681, Grand Cayman, KY1-1111, Cayman Islands, the American depositary receipts of which are listed on the NASDAQ (Stock Code: NASDAQ: ATAI).

“**ATAI Resolutions**” means the resolutions to be passed by the board of directors of ATAI in relation to the declaration of dividends.

“**ATA Online**” means 北京( )教育科技有限公司(ATA Online (Beijing) Education Technology Co., Ltd.), a company incorporated under the laws of PRC with unified social credit code 91110108793409876E and registered office at A912, A913, A914, A915, 9th Floor, 18 North Taipingzhuang Road, Haidian District, Beijing (10000010000018090A9120A9130A9140A915).

“**ATA BVI**” means ATA Testing Authority (Holdings) Limited, a company incorporated under the laws of the British Virgin Islands with company number 470462 and registered office at Sea Meadow House, Blackburne Highway, (P.O. Box 116), Road Town, Tortola, British Virgin Islands.

“**ATA Learning**” means 北京( )教育科技服务有限公司(ATA Learning Education Technology Service Co., Ltd.), a company incorporated under the laws of PRC with unified social credit code 91110108752150159D and registered office at Room 106, Building 1, 136, West Fourth Ring North Road, Haidian District, Beijing (1000001000001361001060).

“**Authorisation**” means:

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

“**Availability Period**” means the period from and including the date of this Agreement to and including the date falling one (1) Month from the date of this Agreement.

“**Available Commitment**” means the Commitment minus:

- (a) the aggregate amount of any outstanding Loan (for such purpose taking into account the principal amount of each such Loan when it is made and disregarding any subsequent reduction in such principal amount); and
- (b) in relation to any proposed Utilisation, the aggregate amount of any Loan (other than the Loan the subject of such proposed Utilisation) that is due to be made on or before the Utilisation Date for such proposed Utilisation.

“**Borrower Account**” means the account with account number 200257 (and any renewal, replacement or re-designation thereof) maintained with the Lender by the Borrower.

“**Borrower Account Charge**” means the Hong Kong law governed account charge in respect of the Borrower Account to be executed by the Borrower as chargor and the Lender as chargee.

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

- (a) the interest which the Lender should have received pursuant to the terms of this Agreement for the period from the date of receipt of all or any part of the principal amount of a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;  
  
exceeds:
- (b) the amount of interest which the Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Market for a period starting on the Business

Day following receipt or recovery and ending on the last day of the current Interest Period.

**“Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in Hong Kong and (in respect of any payment in US Dollars) New York City.

**“Code”** means the US Internal Revenue Code of 1986.

**“Commitment”** means the lower of (i) US\$32,000,000 and (ii) the amount of dividend to be declared by ATAI in the ATAI Resolutions and payable to the Corporate Guarantors in proportion to their shareholding in ATAI determined in the Lender’s discretion, to the extent not cancelled, reduced or transferred by the Lender under this Agreement.

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

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 25 (*Disclosure of information*); or
- (b) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (c) is known by the Lender before the date the information is disclosed to it by any member of the Group or any of its advisers or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Group and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

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

**“Corporate Obligors”** means the Borrower, the Security Providers (other than the Personal Guarantor) and the Corporate Guarantors and **“Corporate Obligor”** means each one of them;

**“Custodian”** means Huatai Financial Holdings (Hong Kong) Limited;

**“Custodian Account”** means each of Custodian Account (Art Grace), Custodian Account (Art Kind), Custodian Account (Joy Spread) and Custodian Account (Mutual Step), and collectively, the **“Custodian Accounts”**.

**“Custodian Account (Art Grace)”** means the account with account number A00000247 (and any renewal, replacement or re-designation thereof) maintained with the Custodian by Art Grace.

**“Custodian Account (Art Kind)”** means the account with account number A00000248 (and any renewal, replacement or re-designation thereof) maintained with the Custodian by Art Kind.

**“Custodian Account (Joy Spread)”** means the account with account number A00000249 (and any renewal, replacement or re-designation thereof) maintained with the Custodian by Joy Spread.

**“Custodian Account (Mutual Step)”** means the account with account number A00000250 (and any renewal, replacement or re-designation thereof) maintained with the Custodian by Mutual Step.

**“Custodian Accounts Charge”** means a charge over the Custodian Accounts executed by Mutual Step, Art Grace, Art Kind and Joy Spread as chargors in favour of the Lender as chargee.

**“Custodian Agreement”** means each of the following:

- (a) the Art Grace Custodian Agreement;
- (b) the Art Kind Custodian Agreement;
- (c) the Joy Spread Custodian Agreement; and
- (d) the Mutual Step Custodian Agreement.

**“Default”** means an Event of Default or any event or circumstance specified in Clause 22 (*Events of Default*) which would (with the expiry of a grace period, lapse of time, the fulfilment of any condition, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

**“Delegate”** means any delegate, agent, attorney or co-trustee appointed by the Lender.



any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**“FATCA Deduction”** means a deduction or withholding from a payment under a Finance Document required by FATCA.

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

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

**“Final Repayment Date”** means, subject to Clause 7.2 (*Extension*), the Initial Repayment Date.

**“Finance Document”** means this Agreement, any Security Document, any Custodian Agreement, the Personal Guarantee, any Utilisation Request and any other document designated as such by the Lender and the Borrower.

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

7

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- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, 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) shares which are expressed to be redeemable by the relevant company at the option of the holder of those 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) above.

**“GAAP”** means generally accepted accounting principles and practices in the US (in respect of ATAI), PRC (in respect of ATA Learning, Zhongxiao, ATA Online and its Subsidiaries) and Hong Kong (in relation to any other Obligor and other members of the Group), in each case including IFRS.

**“Governmental Agency”** means any government or any governmental agency, semi-governmental, intergovernmental, supranational or judicial entity, body, agency, department, or regulatory, self-regulatory or other or authority (including, without limitation, any stock exchange or any self-regulatory organisation established under statute).

**“Group”** means the Borrower and its Subsidiaries from time to time and from the Acquisition Completion Date shall include the Target Group.

**“Haitong Facility”** means the US\$40,000,000 secured loan facility granted by Haitong International Investment Solutions Limited to the Borrower as borrower pursuant to the Haitong Facility Agreement.

**“Haitong Facility Agreement”** means the loan agreement dated on or about the date of this Agreement between Haitong International Investment Solutions Limited as lender and

8

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the Borrower as borrower (in such form as delivered to the Lender pursuant to Clause 5 (*Conditions of Utilisation*)).

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

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

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

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

“**Initial Repayment Date**” means the date falling one (1) Month from the first Utilisation Date.

“**Interest Period**” means, in relation to a Loan, each period determined in accordance with Clause 10 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.3 (*Default interest*).

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

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

each as of 11:00 a.m. London time on the Quotation Day for US Dollars.

“**Joy Spread ADR Pledge**” means the New York law governed pledge granted pursuant to the ADR Pledge Agreement in respect of 317,226 ADRs (representing 634,452 common shares) issued by ATAI owned by Joy Spread.

“**Joy Spread Custodian Agreement**” means the Hong Kong law governed custodian agreement in relation to the Custodian Account (Joy Spread) to be executed by Joy Spread, the Custodian and the Lender.

“**LIBOR**” means, in relation to any Loan:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:
  - (i) no Screen Rate is available for the currency of that Loan; or

- (ii) no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,

the arithmetic mean of the rates (rounded upwards to four decimal places) as the rate at which the Lender could borrow funds in the London interbank market in US Dollars and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in US Dollars and for that period,

as of, in the case of paragraphs (a) and (c) above, 11:00 a.m. London time on the Quotation Day for US Dollars and for a period equal in length to the Interest Period for that Loan and, if any such rate is below zero, LIBOR will be deemed to be zero.

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

“**London Business Day**” means a day (excluding Saturday and Sunday) on which banks are open for business in London.

“**Margin**” means four per cent. (4%) per annum.

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

- (a) the business, operations, assets, property, condition or prospects (financial or otherwise) of the Borrower, the Group taken as a whole and any Obligor;
- (b) the ability of any of the Obligors to perform its obligations under the Finance Documents;
- (c) the validity, legality or enforceability of, or the effectiveness or ranking of any Security granted or purposed to be

granted pursuant to, or the rights or remedies of the Lender, under the Finance Documents; or

- (d) the value of the Transaction Security.

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

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

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

“**Mutual Step ADR Pledge**” means the New York law governed pledge granted pursuant to the ADR Pledge Agreement in respect of 802,800 ADRs (representing 1,605,600 common shares) issued by ATAI owned by Mutual Step to be executed by Mutual Step as pledgor and the Lender as pledgee.

“**Mutual Step Custodian Agreement**” means the Hong Kong law governed custodian agreement in relation to the Custodian Account (Mutual Step) to be executed by Mutual Step, the Custodian and the Lender.

“**NASDAQ**” means the National Association of Securities Dealers Automated Quotations.

“**New Lender**” has the meaning given to that term in Clause 23.1 (*Assignment and Transfers by the Lender*).

“**Obligors**” means the Corporate Obligors and the Personal Guarantor and “**Obligor**” means each one of them.

“**Original Financial Statements**” means:

- (a) in relation to ATAI, its audited consolidated financial statements for the financial year ended 31 December 2017 and its consolidated financial statements for the financial quarter ended 31 March 2017; and
- (b) in relation to ATA Online, its audited financial statements for its financial year ended 31 December 2017.

“**Party**” means a party to this Agreement.

“**Permitted Security**” means:

- (a) any Security or Quasi-Security created pursuant to the Finance Documents or pursuant to the Haitong Facility;
- (b) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (c) any payment or close-out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
  - (i) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
  - (ii) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,

excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;

- (d) any lien arising by operation of law and in the ordinary course of trading **provided that** the debt which is secured thereby is paid when due or contested in good faith by appropriate proceedings and properly provisioned;

- (e) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this



Agreement if:

- (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
  - (iii) the Security or Quasi-Security is removed or discharged within one (1) Months of the date of acquisition of such asset;
- (f) any Security or Quasi-Security over or affecting any asset of any person which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that person becomes a member of the Group, if:
- (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that person;
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that person; and
  - (iii) the Security or Quasi-Security is removed or discharged within one (1) Months of that person becoming a member of the Group; or
- (g) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group.

**"Personal Guarantee"** means the PRC law governed guarantee agreement, in form and substance satisfactory to the Lender, entered or to be entered into by the Personal Guarantor in favour of the Lender.

**"Personal Guarantor"** means Ma Xiaofeng □□□, holder of PRC identity card number 110102196310212334.

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

**"Quotation Day"** means, in relation to any period for which an interest rate is to be determined, two London Business Days before the first day of that period unless market practice differs in Relevant Market in which case the Quotation Day will be determined by the Lender in accordance with market practice in the Relevant Market (and if quotations would normally be given by leading banks in the Relevant Market on more than one day, the Quotation Day will be the last of those days).

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Secured Property.

**"Relevant Jurisdiction"** means:

12

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- (a) in relation to a Corporate Obligor, its jurisdiction of incorporation or (in relation to the Personal Guarantor) its place of residence;
- (b) in relation to a Corporate Obligor, any jurisdiction where it conducts its business;
- (c) in relation to an Obligor, any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated; and
- (d) in relation to an Obligor, the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

**"Relevant Market"** means the London interbank market.

**"Repeating Representations"** means each of the representations set out in Clause 19 (representations) except those in Clauses 19.7 (*Deduction of Tax*), 19.8 (*No filing or stamp taxes*), 19.9 (*No Default*), 19.14 (*Authorised signatories*) and 19.26 (*Ownership of ADRs*).

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

**"Screen Rate"** means the London interbank offered rate administered by The ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period displayed on page LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays the rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service

ceases to be available, the Lender may specify another page or service displaying the relevant rate after consultation with the Borrower.

**“Secured Party”** means the Lender, a Receiver or any Delegate.

**“Secured Property”** means all of the assets which from time to time are, or are expressed to be, the subject of Transaction Security.

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

**“Security Document”** means:

- (a) the ADR Pledge Agreement;
- (b) the Able Knight Share Charge;
- (c) the Able Knight Account Charge;
- (d) the Borrower Account Charge;
- (e) the Alpha Metric Share Pledge;
- (f) the Delta Horizon Share Pledge;
- (g) the Zhongxiao Share Pledge;
- (h) the Share Charge (Borrower);

- (i) the Custodian Accounts Charge; and
- (j) and any other document executed from time to time evidencing or creating or expressed to evidence or create Security over any asset or any guarantee to secure or guarantee any obligation of any Obligor in favour of the Lender under the Finance Documents, or entered into in connection with the creation, validity, perfection or priority of any such guarantee or Security or otherwise any other document designated as such by the Lender and the Borrower.

**“Security Perfection Requirements”** means:

- (a) the making of any other appropriate registrations, filings or notifications in respect of a Security Document as specifically contemplated by that Security Document or any other Finance Document or any legal opinion related thereto;
- (b) the execution and delivery of any notices required to be delivered to counterparties of contracts which are assigned pursuant to the Security Documents; and
- (c) any other registration or notice requirement which the Lender may request to perfect the Security in the Security Documents.

**“Security Provider”** means each party to the Security Documents (other than the Lender) which grants or purports to grant Transaction Security.

**“Share Charge (Borrower)”** means the Hong Kong law governed share charge in respect of 440 ordinary shares represented by share certificate number 6 in the Borrower, owned by the Personal Guarantor, representing not less than 44% of the issued share capital in the Borrower, to be executed by the Personal Guarantor as chargor and the Lender as chargee.

**“Subsidiary”** means, in relation to any company or corporation, a company or corporation:

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

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

**“Target Group”** means ATA Learning and its Subsidiaries from time to time.

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

“**Tax Deduction**” has the meaning given to such term in Clause 13.1 (*Tax definitions*).

“**Transaction Security**” means the Security created or evidenced or expressed to be created or evidenced in favour of the Lender pursuant to the Security Documents.

“**Unpaid Sum**” means any sum due and payable but unpaid by an Obligor under the Finance Documents.

“**US**” means the United States of America.

“**US Tax Obligor**” means:

- (a) the Borrower, if it is resident for tax purposes in the United States of America; or
- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the United States for US federal income tax purposes.

“**Utilisation**” means a utilisation of the Facility.

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

“**Utilisation Request**” means a notice substantially in the form set out in Schedule 2 (*Form of Utilisation Request*).

“**Zhongxiao**” means 北京中交置业有限公司, a company incorporated under the laws of PRC with unified social credit code 911101015996473282 and registered office at Room 805, 8th Floor, Building E, Jia 6/6 Gongyuan West Street, Dongcheng District, Beijing (北京中交置业有限公司6层E座805室).

“**Zhongxiao Share Pledge**” means the PRC law governed share pledge agreement in respect of 10% of the issued share capital in ATA Online owned by Zhongxiao to be executed by Zhongxiao as pledgor and the Lender as pledgee.

## 2 CONSTRUCTION

### 2.1 Construction

- (a) Unless a contrary indication appears, any reference in a Finance Document to:
  - (i) the “**Lender**”, any “**Obligor**” or any “**Party**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
  - (ii) “**assets**” or “**property**” includes present and future properties, revenues and rights of every description;
  - (iii) one person being “**controlled**” by another means that that other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to appoint and/or remove the majority of the members of the governing body of that person or otherwise controls or has the power to control the affairs and policies of that person, and “**control**” shall be construed accordingly;

- (iv) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, restated or replaced;
- (v) “**guarantee**” means (other than in Clause 18 (*Guarantee*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (vi) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (vii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

- (viii) a “**regulation**” includes any regulation, rule, treaty, official directive, requirement, request, guideline or policy (whether or not having the force of law) of any Governmental Agency (and, if not having the force of law, with which responsible entities in the position of the relevant Party would normally comply);
  - (ix) a provision of law or regulation is a reference to that provision as consolidated, amended, re-enacted or replaced;
  - (x) a time of day is a reference to Hong Kong time;
  - (xi) “**law**” means common law, principles of equity and laws made by legislative council (and law made by legislative council include statutes, statutory instruments and other instruments under them);
  - (xii) the words “**including**”, “**for example**” or “**such as**” when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
  - (xiii) a “**derivative transaction**” includes any derivative transaction entered in connection with protection against, or benefit from, fluctuation in any rate or price;
  - (xiv) any thing (including an amount) is a reference to the whole and each part of it; and
  - (xv) “**know your customer checks**” means any “know your customer” or other identification checks or procedures under any law or regulation.
- (b) Section, Clause and Schedule headings are for ease of reference only.

- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived.
- (e) Where this Agreement specifies an amount in a given currency (the “**specified currency**”) “**or its equivalent**”, the “**equivalent**” is a reference to the amount of any other currency which, when converted into the specified currency utilising the Lender’s spot rate of exchange for the purchase of the specified currency with that other currency at or about 11 a.m. on the relevant date, is equal to the relevant amount in the specified currency.
- (f) In the Finance Documents, the singular includes the plural and vice versa, and references to the masculine gender includes the feminine gender and the neuter gender, and vice versa.
- (g) Unless a contrary indication appears, any reference to a “Clause”, a “Sub-Clause” and a “Schedule” is a reference to a Clause or Sub-Clause or a Schedule to this Agreement.

## 2.2 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) (the “**Third Parties Ordinance**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver or Delegate may, subject to this Clause 2.2 and the Third Parties Ordinance, rely on any Clause of this Agreement which expressly confers rights on it.

## 2.3 Currency Symbols and Definitions

- (a) “**HK\$**” and “**HK Dollars**” denote the lawful currency of Hong Kong; and
- (b) “**US\$**” or “**US Dollars**” means the lawful currency of the US.

### **3 THE FACILITY**

#### **3.1 The Facility**

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

### **4 PURPOSE**

#### **4.1 Purpose**

The Borrower shall apply all amounts borrowed by it under the Facility towards payment of the consideration for the Acquisition payable by the Borrower to ATA BVI under the Acquisition Agreement, the cost and expenses in relation thereto and the cost and expenses in relation to the Facility.

#### **4.2 Monitoring**

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

### **5 CONDITIONS OF UTILISATION**

#### **5.1 Initial conditions precedent**

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

#### **5.2 Further conditions precedent**

The Lender will be obliged to comply with Clause 6.4 (*Availability of Loans*) only if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan and none of the circumstances described in Clause 8.2 (*Mandatory Prepayment - Change of control*) has occurred;
- (b) the Repeating Representations to be made by each Obligor are true in all material respects; and
- (c) the representations and/or warranties deemed to be repeated by all or any of the Obligors under all or any of the Finance Documents (other than this Agreement) are true in all material respects.

18

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#### **5.3 Maximum number of Loans**

The Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation more than two (2) Loans would be outstanding.

19

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## **SECTION 3 UTILISATION**

### **6 UTILISATION**

#### **6.1 Delivery of a Utilisation Request**

The Borrower may utilise the Facility by delivery to the Lender of a duly completed Utilisation Request not later than two (2) Business Days prior to the proposed Utilisation Date.

#### **6.2 Completion of a Utilisation Request**

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
  - (i) the proposed Utilisation Date is a Business Day within the Availability Period;
  - (ii) the currency and amount of the Utilisation comply with Clause 6.3 (*Currency and amount*);
  - (iii) the proposed Interest Period complies with Clause 10 (*Interest Periods*); and

- (iv) the account into which the proceeds of the Loan shall be deposited shall be an account opened in the name of ATA BVI with the Lender.

- (b) Only one Loan may be requested in each Utilisation Request.

### **6.3 Currency and amount**

- (a) The currency specified in a Utilisation Request must be US Dollars.
- (b) The amount of the proposed Loan must be an amount which is not more than the Available Commitment and which is a minimum of US\$10,000,000 (and an integral multiple of US\$2,000,000) or, if less, the Available Commitment.

### **6.4 Availability of Loans**

If the conditions set out in this Agreement have been met, the Lender shall make the Loan available by the Utilisation Date through its Facility Office.

### **6.5 Cancellation of Available Facility**

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

## **SECTION 4 REPAYMENT, PREPAYMENT AND CANCELLATION**

### **7 REPAYMENT**

#### **7.1 Repayment of Loans**

Subject to Clause 7.2 (*Extension*) below, the Borrower shall repay the aggregate Loans in full on the Final Repayment Date.

#### **7.2 Extension**

The Final Repayment Date shall be extended to the Extended Repayment Date if:

- (a) the Borrower so requests by notice received by the Lender not less than five (5) Business Days before the Initial Repayment Date;
- (b) at the time of such notice no Event of Default has occurred and is continuing; and
- (c) the Lender has notified the Borrower of its consent to such extension at least three (3) Business Days before the Initial Repayment Date. For the avoidance of doubt, the Lender is not obliged to give its consent to such request for extension.

#### **7.3 Reborrowing**

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

### **8 PREPAYMENT AND CANCELLATION**

#### **8.1 Illegality**

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

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

#### **8.2 Mandatory Prepayment - Change of control**

If a Change of Control Event occurs:

- (a) the Borrower shall promptly notify the Lender upon becoming aware of that event;
- (b) the Lender shall not be obliged to fund any Utilisation; and

- (c) all outstanding Loans, together with accrued interest and all other amounts accrued or owing to the Lender under the Finance Documents, shall be due and payable within three (3) Business Days from the date the Change of Control Event occurs.

For the purpose of this Agreement, “**Change of Control Event**” means any of the following events:

- (a) the Personal Guarantor ceases to be the single largest shareholder (direct or indirect) of any of the Borrower, Able Knight and ATAI;
- (b) the Personal Guarantor ceases to be the beneficial owner of at least 99 per cent. of the issued shares in the Borrower or in control of the voting rights of at least 99 per cent. of the issued shares in the Borrower; or
- (c) the Personal Guarantor ceases to control (directly or indirectly) any of ATAI and the Borrower.

### **8.3 Voluntary prepayment of Loans**

The Borrower may, if it gives the Lender not less than five (5) Business Days’ (or such shorter period as the Lender may agree) prior notice, prepay on the last day of the Interest Period applicable thereto the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of US\$10,000,000 and an integral multiple of US\$2,000,000).

### **8.4 Restrictions**

- (a) Any notice of cancellation, repayment or prepayment given by any Party under this Clause 8 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation, repayment or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) The Borrower may not reborrow any part of the Facility which is repaid or prepaid.
- (d) The Borrower shall not repay or prepay all or any part of any Loan or reduce any Commitment except at the times and in the manner expressly provided for in this Agreement.
- (e) If any Commitment is reduced in accordance with this Agreement, the amount of such reduction may not be subsequently reinstated.
- (f) If all or part of a Loan is repaid or prepaid and is not available for redrawing (other than by operation of Clause 5.2 (*Further conditions precedent*)), an amount of the Commitment (equal to the amount of the Loan which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

## **SECTION 5 COSTS OF UTILISATION**

### **9 INTEREST**

#### **9.1 Calculation of interest**

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

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

#### **9.2 Payment of interest**

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

### 9.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which is, subject to paragraphs (b) and (c) below, two (2) per cent. higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted a Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Lender. Any interest accruing under this Clause 9.3 shall be immediately payable by the Obligor on demand by the Lender.
- (b) If any Unpaid Sum consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the Unpaid Sum during that first Interest Period shall be two (2) per cent. higher than the rate which would have applied if the Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

### 9.4 Notification of rates of interest

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

## 10 INTEREST PERIODS

### 10.1 Interest Periods

- (a) Each Interest Period of a Loan will have a duration of one (1) week.
- (b) An Interest Period for a Loan shall not extend beyond the Final Repayment Date.
- (c) Each Interest Period for a Loan shall start on the Utilisation Date or (if a Loan has already been made) on the last day of the preceding Interest Period of such Loan.

### 10.2 Non-Business Days

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

### 10.3 Consolidation

Subject to paragraph (b) below, if the Interest Periods of two Loans end on the same date, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

## 11 CHANGES TO THE CALCULATION OF INTEREST

### 11.1 Market disruption

- (a) Subject to any alternative basis agreed and consented to as contemplated by paragraphs (a) and (b) of Clause 11.2 (*Alternative basis of interest or funding*), if a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and
  - (ii) the percentage rate per annum notified to the Borrower by the Lender as soon as practicable and in any event not later than five Business Days before interest is due to be paid in respect of that Interest Period (or such later date as may be acceptable to the Lender), as the cost to the Lender of funding that Loan from whatever source(s) it may reasonably select.
- (b) In relation to a Market Disruption Event under paragraph (c) below, if the percentage rate per annum notified by the Lender pursuant to paragraph (a)(ii) above shall be less than LIBOR or if the Lender shall fail to notify the Borrower of any such percentage rate per annum, the cost to the Lender of funding the relevant Loan for the relevant Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.
- (c) In this Agreement “**Market Disruption Event**” means at 5:00 p.m. (London time) on the Business Day immediately following the Quotation Day for the relevant Interest Period, the Borrower receives notifications from the Lender that the



it or them of obtaining matching deposits in the London interbank market would be in excess of LIBOR.

- (d) If a Market Disruption Event shall occur, the Lender shall promptly notify the Borrower thereof.

## 11.2 Alternative basis of interest or funding

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

## 11.3 Break Costs

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

## 12 FEES

### 12.1 Front-end fee

The Borrower shall pay to the Lender a non-refundable fee in the amount of HK\$4,000,000 on or before the date falling three (3) Business Days after the date of this Agreement.

## SECTION 6 ADDITIONAL PAYMENT OBLIGATIONS

## 13 TAX GROSS UP AND INDEMNITIES

### 13.1 Tax definitions

- (a) In this Clause 13:

“**FATCA Payment**” means either:

- (i) the increase in a payment made by an Obligor to the Lender under Clause 13.8 (*FATCA Deduction and gross-up by Obligor*) or paragraph (b) of Clause 13.9 (*FATCA Deduction by Lender*); or
- (ii) a payment under paragraph (d) of Clause 13.9 (*FATCA Deduction by Lender*).

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

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

“**Tax Payment**” means an increased payment made by an Obligor to the Lender under Clause 13.2 (*Tax gross-up*) or a payment under Clause 13.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 13 a reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

### 13.2 Tax gross-up

- (a) All payments to be made by an Obligor to the Lender under the Finance Documents shall be made free and clear of and

without any Tax Deduction unless such Obligor is required to make a Tax Deduction, in which case the sum payable by such Obligor (in respect of which such Tax Deduction is required to be made) shall be increased to the extent necessary to ensure that the Lender receives a sum net of any deduction or withholding equal to the sum which it would have received had no such Tax Deduction been made or required to be made.

- (b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, the Lender shall notify the Borrower and the relevant Obligor on becoming so aware in respect of a payment payable to the Lender.
- (c) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

26

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- (d) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Lender evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

### 13.3 Tax indemnity

- (a) Without prejudice to Clause 13.2 (*Tax gross-up*), if the Lender is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under the Finance Documents (including any sum deemed for purposes of Tax to be received or receivable by the Lender whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against the Lender, the Borrower shall, within three Business Days of demand of the Lender, promptly indemnify the Lender against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith, provided that this Clause 13.3 shall not apply to:
  - (i) any Tax imposed on and calculated by reference to the net income actually received or receivable by the Lender (but, for the avoidance of doubt, not including any sum deemed for purposes of Tax to be received or receivable by the Lender but not actually receivable) by the jurisdiction in which the Lender is incorporated; or
  - (ii) any Tax imposed on and calculated by reference to the net income of the Facility Office of the Lender actually received or receivable by the Lender (but, for the avoidance of doubt, not including any sum deemed for purposes of Tax to be received or receivable by the Lender but not actually receivable) by the jurisdiction in which its Facility Office is located.
- (b) If the Lender makes or intends to make a claim under paragraph (a) above, it shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

### 13.4 Tax credit

If an Obligor makes a Tax Payment and the Lender determines that:

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

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

27

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### 13.5 FATCA Information

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

Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation or exchange of information regime.

- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige the Lender to do anything, and paragraph (a)(iii) shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If the Borrower is or has become a US Tax Obligor, or where the Lender reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, then the Lender shall provide to the Borrower:
  - (i) a withholding certificate on Form W-8 or Form W-9 (or any successor form) (as applicable); or
  - (ii) any withholding statement and other documentation, authorisations and waivers as the Lender may require to certify or establish the status of the

28

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Lender under FATCA or that other law or regulation.

- (f) The Lender shall not be liable for any action taken by it under or in connection with paragraph (e) above.
- (g) If any withholding certificate, withholding statement, document, authorisation and waiver provided to the Borrower pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, the Lender must promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation and waiver or promptly notify the Borrower in writing of its legal inability to do so. The Lender shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) and (g).

### **13.6 Stamp taxes**

The Borrower shall:

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

### **13.7 Indirect tax**

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

### **13.8 FATCA Deduction and gross-up by Obligor**

- (a) If an Obligor is required to make a FATCA Deduction, that Obligor must make that FATCA Deduction and any payment required in connection with that FATCA Deduction within the time allowed and in the minimum amount required by FATCA.
- (b) If a FATCA Deduction is required to be made by an Obligor, the amount of the payment due from that Obligor must be

increased to an amount which (after making any FATCA Deduction) leaves an amount equal to the payment which would have been due if no FATCA Deduction had been required.

- (c) The Borrower must promptly upon becoming aware that an Obligor must make a FATCA Deduction (or that there is any change in the rate of the basis of a FATCA Deduction) notify the Lender accordingly. Similarly, the Lender must also notify the Borrower and that Obligor upon the Lender becoming so aware in respect of a payment payable to it.
- (d) Within 30 days of making either a FATCA Deduction or any payment required in connection with that FATCA Deduction, the Obligor making that FATCA Deduction or payment must deliver to the Lender evidence reasonably satisfactory to the Lender that the FATCA Deduction has been made or (as applicable) any appropriate payment paid to the relevant governmental or taxation authority.

### **13.9 FATCA Deduction by the Lender**

- (a) The Lender may make any FATCA Deduction it is required by FATCA to make, and any payment required in connection with that FATCA Deduction, and the Lender shall not be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction. The Lender must, when it becomes aware that it must make a FATCA Deduction in respect of a payment to another Party (or that there is any change in the rate or the basis of such FATCA Deduction), notify that Party.
- (b) If the Lender is required to make a FATCA Deduction which relates to a payment by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after the Lender has made such FATCA Deduction), leaves the Lender with an amount if no FATCA Deduction had been required.
- (c) The Lender must promptly upon becoming aware that it must make a FATCA Deduction which relates to a payment by an Obligor (or that there is any change in the rate of the basis of such a FATCA Deduction) notify the Borrower and the relevant Obligor.
- (d) The Borrower must (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered by the Lender as a result of it making a FATCA Deduction in respect of a payment due to it under a Finance Document. This paragraph shall not apply to the extent a loss, liability or cost is compensated for by an increased payment under paragraph (b) above.
- (e) If the Lender makes, or intends to make, a claim under payable (d) above, the Lender must promptly notify the Borrower of the FATCA Deduction which will give, or has given, rise to the claim.

### **13.10 Tax Credit and FATCA**

If an Obligor makes a FATCA Payment and the Lender determines that:

- (a) a Tax Credit is attributable to an increased payment of which that FATCA Payment forms part, to that FATCA Payment or to a FATCA Deduction in consequence of which that FATCA Payment was required; and

- (b) the Lender has obtained, utilised and retained that Tax Credit,

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

## **14 INCREASED COSTS**

### **14.1 Increased costs**

- (a) Subject to Clause 14.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Lender, pay for the account of the Lender the amount of any Increased Costs incurred by the Lender or any of its Affiliates as a result of:
  - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
  - (ii) compliance with any law or regulation,

made after the date of this Agreement. The terms “law” and “regulation” in this paragraph (a) shall include any law or regulation concerning capital adequacy, prudential limits, liquidity, reserve assets or Tax and capital requirements, leverage ratio, liquidity standards or other standards, rules or requirements under or following Basel III as published by the Basel Committee on Banking Supervision (as amended, supplemented or restated)).

(b) In this Agreement “**Increased Costs**” means:

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

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

(c) In this Agreement “**Basel III**” means:

- (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

31

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- (ii) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement — Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to or known as “Basel III”.

## 14.2 Increased cost claims

If the Lender intends to make a claim pursuant to Clause 14.1 (*Increased costs*), it shall notify the Borrower of the event giving rise to the claim.

## 14.3 Exceptions

(a) Clause 14.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (i) attributable to a Tax Deduction required by law to be made by an Obligor;
- (ii) attributable to a FATCA Deduction required to be made by an Obligor or the Lender;
- (iii) compensated for by paragraph (d) of Clause 13.9 (*FATCA Deduction by the Lender*);
- (iv) compensated for by Clause 13.3 (*Tax indemnity*) (or would have been compensated for under Clause 13.3 (*Tax indemnity*) but was not so compensated solely because the exclusion in paragraph (a) of Clause 13.3 (*Tax indemnity*) applied);
- (v) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.

(b) In this Clause 14.3, a reference to a “**Tax Deduction**” has the same meaning given to the term in Clause 13.1 (*Tax definitions*).

## 15 MITIGATION BY THE LENDER

### 15.1 Mitigation

(a) The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 (*Illegality*), Clause 13 (*Tax gross up and indemnities*) or Clause 14 (*Increased costs*), including:

- (i) providing such information as the Borrower may reasonably request in order to permit the Borrower to determine its entitlement to claim any exemption or other relief (whether pursuant to a double taxation treaty or otherwise) from any obligation to make a Tax Deduction; and

32

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- (ii) in relation to any circumstances which arise following the date of this Agreement, transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

## **15.2 Limitation of liability**

- (a) The Borrower shall promptly indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) The Lender is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it.

## **15.3 Conduct of business by the Lender**

No provision of this Agreement will:

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

## **16 OTHER INDEMNITIES**

### **16.1 Currency indemnity**

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
  - (i) making or filing a claim or proof against that Obligor; or
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
  - (iii) that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Lender to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.
- (c) Payment of an amount in a currency other than the due currency does not discharge the amount except to the extent of the amount of the due currency actually obtained when the recipient converts the amount received into the due currency.

### **16.2 Other indemnities**

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

- (a) the occurrence of any Event of Default;
- (b) the information produced or approved by any Obligor being or being alleged to be misleading and/or deceptive in any respect (including by omission);
- (c) any enquiry, investigation, subpoena, summons (or similar order), litigation, arbitration or administrative proceedings before any court, arbitral body or agency with respect to any Obligor or with respect to the transactions contemplated or financed under this Agreement;
- (d) a failure by any Obligor to pay any amount due under a Finance Document on its due date or in the relevant currency;
- (e) funding, or making arrangements to fund a Loan requested by the Borrower in a Utilisation Request but not made by

reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone) including where conditions to funding have not been fulfilled either by the time required under this Agreement or by any later time specified by the Lender;

- (f) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower;
- (g) the taking, holding, protection or enforcement of the Transaction Security; or
- (h) the exercise of any of the rights, powers, discretions and remedies vested in the Lender and each Receiver and Delegate by the Finance Documents or by law.

### **16.3 Indemnity to the Lender**

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

- (a) investigating any event which it reasonably believes is a Default;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or

34

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- (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement and the other Finance Documents.

## **17 COSTS AND EXPENSES**

### **17.1 Transaction expenses**

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

- (a) this Agreement, each Security Document and any other documents referred to in this Agreement; and
- (b) any other Finance Documents.

### **17.2 Amendment costs**

If an Obligor requests an amendment, waiver or consent, the Borrower shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender, any Receiver or Delegate in responding to, evaluating, negotiating or complying with that request or requirement.

### **17.3 Enforcement and preservation costs**

The Borrower shall, within three Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with the enforcement of, or the preservation of any rights under, any Finance Document and the Transaction Security and any proceedings instituted by or against the Lender as a consequence of taking or holding the Transaction Security or enforcing these rights.

35

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## **SECTION 7 GUARANTEE**

## **18 GUARANTEE AND INDEMNITY**

### **18.1 Guarantee and indemnity**

Each Corporate Guarantor irrevocably and unconditionally:

- (a) guarantees to the Lender punctual performance by the Borrower of all the Borrower's obligations under the Finance Documents;
- (b) undertakes with the Lender that whenever the Borrower does not pay any amount when due under or in connection with any Finance Document (or anything which would have been due if the Finance Document or the amount was enforceable, valid and not illegal), the Corporate Guarantor shall immediately on demand pay that amount as if it was the principal

obligor; and

- (c) agrees with the Lender that, if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Lender immediately on demand against any cost, loss or liability which the Lender incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the Corporate Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 18 if the amount claimed had been recoverable on the basis of a guarantee.

## **18.2 Continuing guarantee**

This guarantee, undertaking and indemnity is a continuing guarantee, undertaking and indemnity and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

## **18.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by the Lender in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Corporate Guarantor under this Clause 18 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

## **18.4 Waiver of defences**

The obligations of each Corporate Guarantor under this Clause 18 will not be affected by any act, omission, matter or thing which, but for this Clause 18, would reduce, release or prejudice any of its obligations under this Clause 18 (without limitation and whether or not known to it or the Lender) including:

36

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- (a) any time, waiver or other concession or consent granted to, or composition with, any Obligor or other person;
- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, execute, take up or enforce, any rights against, or Security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or Security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security;
- (g) any set off, combination of accounts or counterclaim;
- (h) any insolvency or similar proceedings;
- (i) this Agreement or any other Finance Document not being executed by or binding against the Borrower or any other party; or
- (j) any assignment or other dealing with this guarantee, undertaking and indemnity or any Finance Document.

References in Clause 18.1 (*Guarantee and indemnity*) to obligations of an Obligor or amounts due will include what would have been obligations or amounts due but for any of the above, as well as obligations and amounts due which result from any of the above.

## **18.5 Guarantor Intent**

Without prejudice to the generality of Clause 18.4 (*Waiver of Defences*), each Corporate Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any Finance Documents for the purposes of or in connection with any of the following: business, acquisitions of any nature, increasing working capital, enabling



investor distributions to be made, carrying out restructurings, refinancing existing facilities, refinancing any other indebtedness, making facilities available to new borrowers, any other variation or extension of purposes for which any such facility or amount might be made

available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **18.6 Immediate recourse**

Each Corporate Guarantor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from such Corporate Guarantor under this Clause 18. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### **18.7 Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, Security or rights held or received by the Lender (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Corporate Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Corporate Guarantor or on account of any Corporate Guarantor's liability under this Clause 18 for as long as it sees fit and need not apply moneys towards satisfying any amount due to it under or in connection with the Finance Documents.

#### **18.8 Deferral of Guarantor's rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, no Corporate Guarantor shall:

- (a) exercise any rights or otherwise enjoy the benefit of any right which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 18:
  - (i) to be indemnified by the Borrower, or any provider of Security for the Borrower's obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 18;
  - (ii) to claim any contribution from any other guarantor of or provider of Security for any Obligor's obligations under the Finance Documents; or
  - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents by the Lender;
  - (iv) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which the

Corporate Guarantor has given a guarantee, undertaking or indemnity under Clause 18 (*Guarantee and indemnity*);

- (v) to exercise any right of set-off against any Obligor; and/or
- (vi) to claim or prove as a creditor of any Obligor in competition with the Lender;
- (b) exercise a right of proof or claim in any form of administration of any Obligor or guarantor of or any provider of Security for any Obligor's obligations under the Finance Documents (including in any liquidation, winding up, bankruptcy, voluntary administration, dissolution or receivership or any analogous process) or exercise any vote or other rights in respect of, any indebtedness of any nature owed to it by the Borrower or the other Obligors; or
- (c) reduce its liability under this guarantee, undertaking or indemnity by claiming that it or the Borrower or any other person has a right of set-off or counterclaim or any other right against the Lender.

If any Corporate Guarantor shall receive any benefit, payment or distribution in relation to any such right it shall hold that benefit,

payment or distribution (or so much of it as may be necessary to enable all amounts which may be or become payable to the Lender by the Obligors under or in connection with the Finance Documents to be paid in full) on trust for the Lender, and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with Clause 26 (*Payment mechanics*).

#### **18.9 No set-off against assignees**

If the Lender assigns or otherwise deals with its rights under the Finance Documents, no Corporate Guarantor shall claim against any assignee (or any other person who has an interest in this guarantee, undertaking and indemnity) any right of set-off or counterclaim or any other right any Corporate Guarantor has against the Lender.

#### **18.10 Additional security**

This guarantee, undertaking and indemnity is in addition to and is not in any way prejudiced by any other guarantee, undertaking and indemnity or Security now or subsequently held by the Lender.

### **SECTION 8 REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

#### **19 REPRESENTATIONS**

Each Obligor which is a party to this Agreement makes the representations and warranties set out in this Clause 19 to the Lender on the date of this Agreement and, in the case of the Repeating Representations on the other dates set out in Clause 19.27 (*Repetition*).

##### **19.1 Status**

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

##### **19.2 Binding obligations**

Subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered in accordance with Clause 5 (*Conditions of Utilisation*):

- (a) the obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective.

##### **19.3 Non-conflict with other obligations**

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

- (a) any law or regulation applicable to it;
  - (b) its and each of its Subsidiaries' constitutional documents; or
  - (c) any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets,
- nor (except as provided in any Security Document) result in the existence of, or oblige it to create, any Security over any of its assets.

#### **19.4 Power and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

#### **19.5 Validity and admissibility in evidence**

- (a) All Authorisations required or desirable:
  - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party;
  - (ii) to ensure the Finance Documents to which it is a party are legal, valid, binding and enforceable, and admissible in evidence in its Relevant Jurisdiction;
  - (iii) for it and its Subsidiaries to carry on their business, and which are material; and
  - (iv) to enable it to create the Security to be created by it pursuant to any Security Document and to ensure that such Security has the priority and ranking it is expressed to have,

have been obtained or effected and are in full force and effect.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect.

#### **19.6 Governing law and enforcement**

- (a) The choice of Hong Kong, PRC or New York law (as the case may be) as the governing law of the Finance Documents to which it is a party will be recognised and enforced in its Relevant Jurisdiction.
- (b) Any judgment obtained in Hong Kong, the PRC or New York (as the case may be) in relation to a Finance Document will be recognised and enforced in its Relevant Jurisdiction.

#### **19.7 Deduction of Tax**

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

#### **19.8 No filing or stamp taxes**

It is not necessary under the laws of its Relevant Jurisdictions that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar tax or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

#### **19.9 No default**

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

#### **19.10 No misleading information**

- (a) Any factual information provided by or on behalf of any Obligor or any member of the Group in connection with the Facility or otherwise provided in connection with the Finance Documents or the transactions they contemplate (excluding financial projections) was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Any financial projections provided by or on behalf of any Obligor or any other member of the Group has been prepared by appropriately qualified persons on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) In relation to any information provided in connection with the Finance Documents or the transactions they contemplate, nothing has occurred or been omitted, and no information has been given or withheld that results in the information

provided being untrue or misleading in any material respect.

- (d) All information supplied by any member of the Group was true, complete and accurate in all material respects as at the date it was given and was not misleading in any respect.

#### **19.11 Financial statements**

- (a) Its financial statements or management accounts most recently supplied to the Lender and the Original Financial Statements were prepared in accordance with GAAP consistently applied save to the extent expressly disclosed in such financial statements.
- (b) Its financial statements or management accounts most recently supplied to the Lender and the Original Financial Statements give a true and fair view of its financial condition and operations (consolidated in the case of the Borrower) during the relevant financial year save to the extent expressly disclosed in such financial statements.

42

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- (c) There has been no material adverse change in the assets, business or financial condition of each Obligor (or the assets, business or consolidated financial condition of the Group) since the date to which its Original Financial Statements were prepared.

#### **19.12 Pari passu ranking**

- (a) Subject to the requirements specified at the end of Clause 21.1 (*Authorisations*), each Security Document creates (or, once entered into, will create) in favour of the Lender the Security which it is expressed to create with first ranking priority and it is not subject to any prior ranking or pari passu ranking Security.
- (b) Without limiting paragraph (a) above, its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

#### **19.13 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or Governmental Agency affecting it or any of its Subsidiaries or their assets which, if adversely determined, might reasonably be expected to have a Material Adverse Effect (either alone or together with other decisions) have been started or threatened against it or any of its Subsidiaries.

#### **19.14 Authorised signatures**

Each person specified as its authorised signatory under Schedule 1 (*Conditions precedent*) or Clause 20.1(f) (*Information: miscellaneous*) is authorised to sign all Utilisation Requests (in the case of the Borrower only) and other notices and other documents on its behalf under or in connection with the Finance Documents.

#### **19.15 Benefit**

It benefits by entering into the Finance Documents to which it is a party.

#### **19.16 No immunity**

Neither it nor any of its Subsidiaries or their assets has immunity from the jurisdiction of a court or from legal process.

#### **19.17 Environmental laws**

- (a) Each Obligor is in compliance with Clause 21.7 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

43

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#### **19.18 Anti-corruption law and anti-bribery law**

Each member of the Group has conducted its businesses in compliance with applicable anti-corruption and anti-bribery laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

#### 19.19 Anti-money laundering

- (a) The operations of each Obligor, its Subsidiaries and their Affiliates are and have been conducted at all times in material compliance with applicable financial recordkeeping and reporting requirements and the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over such Obligor Company or any of its other Subsidiaries (collectively the “**Money Laundering Laws**”).
- (b) No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving any Obligor, any of its Subsidiaries, any of their Affiliates or any of their respective directors, officers, agents or employees, in each case, with respect to the Money Laundering Laws is pending or threatened.

#### 19.20 No breach of laws

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

#### 19.21 Security and Financial Indebtedness

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group or any Obligor other than the Permitted Security.
- (b) No member of the Group and no Obligor has any Financial Indebtedness outstanding other than:
  - (i) any Financial Indebtedness incurred or subsisting under a Finance Document or pursuant to the Haitong Facility provided that the principal amount due under the Haitong Facility shall not at any time exceed US\$40,000,000; or
  - (ii) any Financial Indebtedness incurred for the ordinary course of its day-to-day business.

#### 19.22 Good title to assets

It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of the assets necessary to carry on its business as presently conducted.

#### 19.23 Solvency

It is able to meet its obligations and pay its debts as they fall due, and it has not admitted any inability to pay its debts as they fall due and has not suspended making payments on any of its debts.

#### 19.24 Acquisition Agreement

- (a) The Acquisition Agreement and all ancillary documents thereto contain all the terms of the Acquisition.
- (b) None of the Acquisition Agreement or the terms therein have been amended, varied or modified, and the Borrower has not waived any of its rights under or pursuant to the Acquisition Agreement.
- (c) The Borrower has not assigned, transferred or otherwise disposed of any of its rights or obligations under the Acquisition Agreement except pursuant to the Finance Documents or Security granted in connection with the Haitong Facility.

#### 19.25 Sanctions

- (a) None of the Obligors, any of its Subsidiaries or joint ventures, any director or officer, employees or any agent, or affiliate, of any Obligor, any of its Subsidiaries or joint ventures is an individual or entity (the “**Person**”) that is, or is owned or controlled by Persons that are:
  - (i) the target or subject of any sanctions administered or enforced by the United States government (including the US Department of the Treasury’s Office of Foreign Assets Control and the US Department of State), the United Nations (including the United Nations Security Council), the European Union, the United Kingdom (including Her Majesty’s Treasury), Hong Kong (including the Hong Kong Monetary Authority) or Australia (including the Department of Foreign Affairs and Trade) (collectively “**Sanctions**” and such governments, governmental institutions and agencies, together the “**Sanctions Authorities**”); or
  - (ii) located in, organised under the laws of or resident in a country or territory that is, or whose government is, the target or subject of Sanctions, including, without limitation, the Crimea region, Cuba, Iran, North Korea, Sudan

and Syria.

- (b) None of the Company, any of its Subsidiaries or joint ventures, any director or officer, employees or any agent, or affiliate, of the Company or any of its Subsidiaries or joint ventures has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to Sanctions by any Sanction Authority.

#### **19.26 Ownership of ADRs**

The Art Grace ADR Pledge, the Art Kind ADR Pledge, the Joy Spread ADR Pledge and the Mutual Step ADR Pledge in aggregate represent not less than 11.3% of all issued common shares of ATAI as at the date of this Agreement.

#### **19.27 Repetition**

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of each Utilisation Request and the first day of each Interest Period.

#### **19.28 Reliance**

Each Obligor acknowledges that the Lender has entered into the Finance Documents in reliance on the representations and warranties in this Clause 19.

### **20 INFORMATION UNDERTAKINGS**

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

#### **20.1 Information: miscellaneous**

The Borrower shall supply to the Lender:

- (a) all documents dispatched by the Borrower to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
- (b) promptly, any announcement, notice or other document relating specifically to the Borrower posted onto any electronic website maintained by any stock exchange on which shares in or other securities of the Borrower are listed or any electronic website required by any such stock exchange be maintained by or on behalf of the Borrower;
- (c) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect (either alone or together with other such adverse determinations);
- (d) promptly, such information as the Lender may reasonably require about the Secured Property and compliance of the Obligors with the terms of any Security Documents;
- (e) promptly, such further information regarding the financial condition, business and operations of any member of the Group as the Lender may reasonably request; and
- (f) promptly, notice of any change in authorised signatories of any Obligor signed by a director or company secretary of such Obligor (whose specimen signature has previously been provided to the Lender) accompanied by specimen signatures of any new authorised signatories.

#### **20.2 Notification of default**

- (a) Each Obligor shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Lender, the Borrower shall supply to the Lender a certificate signed by its director on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### **20.3 “Know your customer” checks**

Each Obligor shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other

evidence as is reasonably requested by the Lender (for itself or on behalf of any prospective new Lender)) in order for the Lender or any prospective new Lender to conduct any and be satisfied it has complied with all necessary “know your customer” or other similar procedures under applicable laws and regulations.

#### **20.4 Access to books and records**

Upon the request of the Lender, the Borrower shall provide the Lender and any of its representatives, professional advisers and contractors with access to and permit inspection by them of the assets, premises, books and records of any member of the Group in each case at reasonable times and upon reasonable notice.

### **21 GENERAL UNDERTAKINGS**

The undertakings in this Clause 21 are made by each Obligor party to this Agreement and shall remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

#### **21.1 Authorisations**

Each Obligor shall promptly:

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

any Authorisation required or desirable under any law or regulation of a Relevant Jurisdiction to enable it to perform its obligations under the Finance Documents, to ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document and to carry on its business.

#### **21.2 Compliance with laws**

Each Obligor shall comply in all respects with all laws and regulations (including laws and regulations relating to the Environment) to which it or its assets may be subject, if failure so to comply has, or is likely to have a Material Adverse Effect.

#### **21.3 Pari passu ranking**

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

#### **21.4 Negative pledge**

In this Clause 21.4, “**Quasi Security**” means an arrangement or transaction described in paragraph (b) below.

- (a) No Obligor shall (and the Borrower shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets, including but not limited to ATA Learning’s interest in 51% of the issued share capital in ATA Online.
- (b) No Obligor shall (and the Borrower shall ensure that no other member of the Group will):
  - (i) sell, transfer or otherwise dispose of any of its assets including but not limited to ATA Learning’s interest in 51% of the issued share capital in ATA Online, on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into or permit to subsist any title retention arrangement;
  - (iv) enter into or permit to subsist any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (v) enter into or permit to subsist any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising or securing Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to the Permitted Security.

#### **21.5 Disposals**

- (a) No Obligor shall (and the Borrower shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, license, transfer or otherwise dispose of any asset or any interest in any asset except pursuant to the Finance Documents or pursuant to the Haitong Facility.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:

- (i) made in the ordinary course of trading of the disposing entity; or
- (ii) of assets in exchange for other assets comparable or superior as to type, value and quality and for a similar purpose.

#### **21.6 Merger**

No Obligor shall (and the Borrower shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction other than (in relation to the Borrower) the Acquisition.

#### **21.7 Environmental Compliance**

Each Obligor shall (and the Borrower shall ensure that each member of the Group will) comply in all material respects with all Environmental Law, obtain and maintain any Environmental Permits, implement procedures to monitor compliance with and to prevent liability thereunder and take all reasonable steps in anticipation of known or expected future changes to or obligations under Environmental Law or any Environmental Permits.

#### **21.8 Environmental Claims**

Each Obligor shall inform the Lender in writing as soon as reasonably practicable upon becoming aware of:

- (a) any Environmental Claim which has been commenced, is pending or (to the best of such Obligor's knowledge and belief) is threatened against any member of the Group, or
- (b) any facts or circumstances which will or might reasonably be expected to result in any Environmental Claim being commenced or threatened against any member of the Group,

in each case where such Environment Claim might reasonably be expected, if determined against that member of the Group, to have a Material Adverse Effect.

#### **21.9 Subordination**

The Borrower ensure that any loan granted or to be granted by another member of the Group or a shareholder of the Borrower to the Borrower is subordinated to the Borrower's obligations owed to the Lender and to the respective rights and claims of the Lender, in each case under or in connection with the Finance Documents, on terms satisfactory to the Lender.

#### **21.10 Insurance**

- (a) Each Obligor shall (and the Borrower shall ensure that each member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.
- (b) All insurances must be with reputable independent insurance companies or underwriters.

#### **21.11 Incurring Financial Indebtedness**

No Obligor shall (and the Borrower shall ensure that no member of the Group will) incur or permit to subsist any Financial Indebtedness other than:

- (a) any Financial Indebtedness incurred or subsisting under a Finance Document or pursuant to the Haitong Facility provided that the principal amount due under the Haitong Facility shall not at any time exceed US\$40,000,000; or
- (b) any Financial Indebtedness incurred for the ordinary course of its day-to-day business.

#### **21.12 Financial Assistance**

Each Obligor shall (and the Borrower shall procure each other member of the Group will) comply in all respects with section 275



of the Hong Kong Companies Ordinance (Cap. 622 of the Laws of Hong Kong) and any equivalent legislation in other jurisdictions including in relation to the execution of any Finance Document and payment of amounts due under this Agreement.

### **21.13 Anti-corruption law and anti-bribery law**

- (a) Each Obligor shall (and the Borrower shall ensure that each other member of the Group will):
  - (i) conduct its businesses in compliance with all applicable anti-corruption laws and anti-bribery laws; and
  - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.
- (b) No Obligor shall, and the Borrower shall ensure that none of its Subsidiaries and its employees will:
  - (i) engage in offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another person including the Lender and its employees; and
  - (ii) directly or indirectly, use the proceeds of the Facility for any purpose which would breach the laws of anti-corruption or anti-bribery or other similar legislation in any jurisdictions.
- (c) Each Obligor shall, and the Borrower shall ensure and procure that each member of the Group will, conduct their businesses in compliance with applicable anti-corruption laws and anti-bribery laws and maintain policies and procedures designed to prevent bribery and corruption by its employees.

### **21.14 Application of FATCA**

The Borrower must procure that no Obligor shall become a FATCA FFI or a US Tax Obligor.

### **21.15 Dividends Distribution**

50

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- (a) Able Knight shall, by no later than 5 p.m. (Hong Kong time) on the day on which any dividends, cash distributions of any kind and any other sum in respect of, or arising from or in connection with, the common shares in ATAI owned by it are received, deposit or transfer the same to the Dividends Account (Able Knight).
- (b) Each of the Corporate Guarantors (other than Able Knight) shall procure the Custodian to, by no later than 5 p.m. (Hong Kong time) on the day on which any and all dividends, cash distributions of any kind and any other sum received in respect of, or arising from or in connection with, the ADRs (or any other shares or securities) owned by it are deposited in the Custodian Account maintained with the Custodian by it, transfer the entire balance standing to the credit of such Custodian Account into the Borrower Account, provided that such dividends and cash distributions are deposited in the Custodian Account no later than 2 p.m. (Hong Kong time) on the same day. In the event such dividends and cash distributions are deposited in the Custodian Account after 2 p.m., each of the Corporate Guarantors (other than Able Knight) shall procure the Custodian to transfer the entire balance standing to the credit of such Custodian Account into the Borrower Account no later than 5 p.m. (Hong Kong time) on the next Business Day

### **21.16 Condition Subsequent**

- (a) The Borrower shall ensure that all Security Perfection Requirements will be completed by the timeline stipulated in the relevant Finance Document.
- (b) The Lender shall have received the confirmation in relation to the Personal Guarantee duly signed by the spouse of the Personal Guarantor within one (1) Month from the first Utilisation Date.

## **22 EVENTS OF DEFAULT**

Each of the events or circumstances set out in the following sub-clauses of this Clause 22 (other than 22.14 (*Acceleration*)) is an Event of Default.

### **22.1 Non-payment**

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable.

### **22.2 Other obligations**

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (*Non-payment*)).
- (b) No Event of Default under paragraph (a) above in relation to Clause 21.1 (*Authorisations*), 21.2 (*Compliance with laws*), 21.7 (*Environmental compliance*), or 21.8 (*Environmental claims*), or 21.10 (*Insurance*) will occur if the failure to comply

is capable of remedy and is remedied within three (3) Business Days of the earlier of (A) the Lender giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

- (c) Any condition attached to any waiver or consent given under this Agreement is not fulfilled.

### **22.3 Misrepresentation**

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

### **22.4 Cross default**

- (a) Any Financial Indebtedness of any member of the Group or any Obligor is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group or any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any member of the Group or any Obligor is cancelled or suspended by a creditor of any member of the Group or any Obligor as a result of an event of default (however described).
- (d) Any creditor of any member of the Group or any Obligor becomes entitled to declare any Financial Indebtedness of such member of the Group or such Obligor due and payable prior to its specified maturity as a result of an event of default (however described).

except where the aggregate of all such Financial Indebtedness is less than US\$1,000,000.

### **22.5 Insolvency**

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

### **22.6 Insolvency proceedings**

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

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group which is not an Obligor;

- (b) a composition, compromise, assignment or arrangement with any creditor of any member of the Group or any Obligor, or an assignment for the benefit of creditors generally of any member of the Group or any Obligor or a class of such creditors;
- (c) the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group which is not an Obligor), receiver, administrator, administrative receiver, compulsory manager, provisional supervisor or other similar officer in respect of any member of the Group or any Obligor or any of its assets; or
- (d) enforcement of any Security over any assets of any member of the Group or an Obligor, or any analogous procedure or step is taken in any jurisdiction.

### **22.7 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous procedure in any jurisdiction affects any asset or assets of a member of the Group or any Obligor.

## **22.8 Unlawfulness**

- (a) It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents.
- (b) Any Finance Document ceases to be in full force and effect or any obligation or obligations of any Obligor under any Finance Documents are not or cease to be legal, valid, binding or enforceable or is alleged by a party to a Finance Document (other than the Lender) to be ineffective.
- (c) Any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than the Lender) to be ineffective.

## **22.9 Repudiation**

An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document.

## **22.10 Cessation of business**

A Corporate Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business or of the business of the Group taken as a whole.

## **22.11 Material adverse change**

Any event or circumstance occurs which, in the opinion of the Lender, has or is likely to have a Material Adverse Effect.

53

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## **22.12 Suspension or Cessation of Listing**

The trading of the ADRs issued by ATAI on the NASDAQ is suspended for more than ten (10) consecutive trading days or the listing status of ATAI on the NASDAQ is terminated or otherwise ceases.

## **22.13 Default under other Finance Document**

An event occurs which is called an “event of default” under any Finance Document other than this Agreement.

## **22.14 Non-Distribution**

ATAI fails to make dividend payments or other similar forms of distribution to its shareholders (including holder of the ADRs issued by ATAI) in accordance with the ATAI Resolutions or any announcement of ATAI in relation to such dividend payments.

## **22.15 Acceleration**

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

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

54

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## **SECTION 9 CHANGES TO PARTIES**

## **23 CHANGES TO THE LENDER**

### 23.1 Assignments and transfers by the Lender

Subject to this Clause 23, the Lender (the “Existing Lender”) may:

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

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

### 23.2 Conditions of assignment or transfer

The consent of the Borrower is not required for any assignment or transfer by the Existing Lender of any of its rights and obligations under the Finance Documents.

### 23.3 Limitation of responsibility of Existing Lender

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to the New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document.
- (c) The New Lender confirms to the Existing Lender that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (d) Nothing in any Finance Document obliges the Existing Lender to:
  - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or

- (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

### 23.4 Security over Lender's rights

In addition to the other rights provided to the Lender under this Clause 23, the Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of the Lender including, without limitation:

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

except that no such charge, assignment or Security shall:

- (c) release the Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant

charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

- (d) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the Lender under the Finance Documents.

## **24 CHANGES TO THE OBLIGORS**

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents or allow any interest in them to arise or be varied, except with the prior written consent of the Lender.

## **25 DISCLOSURE OF INFORMATION**

### **25.1 Disclosure of Confidential Information**

The Lender may disclose:

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as the Lender shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:

56

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- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Representatives and professional advisers;
- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Representatives and professional advisers;
- (iii) appointed by the Lender or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation, or in connection with the registration of Security;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that the Lender charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 23.4 (*Security over Lender's right*);
- (viii) who is a Party; or
- (ix) with the consent of the Borrower.

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

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the

57

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Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

- (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;
- (c) to any person appointed by the Lender or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the Lender;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

## **25.2 Entire agreement**

This Clause 25 constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

58

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## **SECTION 11 ADMINISTRATION**

### **26 PAYMENT MECHANICS**

#### **26.1 Payments to the Lender**

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

#### **26.2 Distributions by the Lender**

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

#### **26.3 Distribution to an Obligor**

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

#### **26.4 Partial payments**

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lender shall apply that payment towards the obligations of that Obligor under the Finance Documents in any order selected by the Lender.
- (b) Paragraph (a) above will override any appropriation made by the Obligor.

## **26.5 No set-off by Obligors**

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

59

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## **26.6 Business Days**

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

## **26.7 Currency of account**

- (a) Subject to paragraphs (b) and (e) below, US Dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than US Dollars shall be paid in that other currency.

## **26.8 Disruption to Payment Systems etc.**

If either the Lender determines (in its discretion) that a Disruption Event has occurred or the Lender is notified by the Borrower that a Disruption Event has occurred:

- (a) the Lender may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Lender may deem necessary in the circumstances;
- (b) the Lender shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) any such changes agreed upon by the Lender and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 32 (*Amendments and waivers*); and
- (d) the Lender shall not be liable for any damages, costs or losses to any person, any diminution in value or liability whatsoever (including, without limitation for

60

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negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Lender) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 26.8.

## **27 SET-OFF**

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

## **28 NOTICES**

### **28.1 Communications in writing**

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

## **28.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is that identified with its name below or any substitute address, fax number or department or officer as the Party may notify to the other Parties by not less than five Business Days' notice.

## **28.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will be effective:
  - (i) if by way of fax, only when received in legible form; or
  - (ii) if by way of letter, only when it has been left at the relevant address or five Business Days (or 10 Business Days if sent overseas) after being deposited in the post postage prepaid in an envelope addressed to it at that address;and, if a particular department or officer is specified as part of its address details provided under Clause 28.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).
- (c) Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to the Obligors.

61

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- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

## **28.4 Electronic communication**

- (a) Any communication to be made between the Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means, to the extent that the Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if the Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between the Parties will be effective only when actually received in readable form and in the case of any electronic communication made by the Borrower to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
- (c) Any electronic communication or document which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

## **28.5 English language**

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

## **29 CALCULATIONS AND CERTIFICATES**

### **29.1 Accounts**



**29.2 Certificates and determinations**

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

**29.3 Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Hong Kong interbank market differs, in accordance with that market practice.

**30 PARTIAL INVALIDITY**

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

**31 REMEDIES AND WAIVERS**

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

**32 AMENDMENTS AND WAIVERS**

**32.1 Required consents**

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

**33 COUNTERPARTS**

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

**34 INDEMNITIES AND REIMBURSEMENT**

All indemnities and reimbursement obligations in each Finance Document are continuing and will survive the termination of that Finance Document, the repayment of the Loans and the cancellation or expiry of the Commitment.

**35 GENERAL**

**35.1 Application to Finance Documents**

If anything in this Section 11 and Clause 25 (*Disclosure of Information*) is inconsistent with a provision in another Finance Document, then the provision in the other Finance Document prevails to the extent of the inconsistency for the purposes of that Finance Document.

**35.2 Consents and waivers**

Each Obligor shall comply with all conditions in any consent or waiver the Lender gives under or in connection with a Finance Document.

**35.3 Discretion in exercising rights**

The Lender may exercise a right or remedy or give or refuse its consent under or in connection with a Finance Document in any way it considers appropriate (including by imposing conditions).

#### **35.4 Conflict of interest**

The Lender may exercise its rights or remedies under or in connection with a Finance Document even if this involves a conflict of interests or the Lender has a personal interest in their exercise.

#### **35.5 Inconsistent law**

To the extent permitted by law, each Finance Document prevails to the extent it is inconsistent with any law.

#### **35.6 Supervening law**

Any present or future law which varies the obligations of an Obligor under or in connection with a Finance Document with the result that the Lender's rights or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

#### **35.7 Further steps**

Each Obligor shall promptly do anything the Lender asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to enable the Lender to exercise its rights under or in connection with any Finance Document;
- (b) to bind the Obligor and any other person intended to be bound under any Finance Document;
- (c) to enable the Lender to register any power of attorney in any Finance Document or any similar power; or
- (d) to show whether the Obligor is complying with the Finance Documents.

## **SECTION 12 GOVERNING LAW AND ENFORCEMENT**

### **36 GOVERNING LAW**

This Agreement is governed by Hong Kong law.

### **37 ENFORCEMENT**

#### **37.1 Jurisdiction of Hong Kong courts**

- (a) The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including any dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 37.1 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

#### **37.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in Hong Kong):
  - (i) irrevocably appoints Sharpview Consultants Ltd. of 1209, Wing Tuck Comm. Centre, 177 Wing Lok Street, Sheungwan, H.K. as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of the Obligors) must immediately (and in any event within five (5) days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint another agent for this purpose.

#### **37.3 Waiver of immunities**

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

- (a) suit;
- (b) jurisdiction of any court;

65

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

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

66

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### **Schedule 1 Conditions Precedent**

#### **1. Obligors**

- (a) A copy of the constitutional documents (and relevant registers) of each Corporate Obligor.
- (b) A copy of the certificate of good standing of each Corporate Guarantor and the Borrower dated within a month of the date of this Agreement.
- (c) A copy of the certificate of incumbency of each Corporate Guarantor and the Borrower dated within a month of the date of this Agreement.
- (d) A copy of a resolution of the board of directors of each Corporate Obligor (in respect of Zhongxiao, a written decision of its executive director):
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (e) A specimen of the signature of each person authorised by the resolution referred to in paragraph (d) above.
- (f) A copy of a resolution of all the holders of the issued shares in a Corporate Obligor (except for Zhongxiao), approving the terms of, and the transactions contemplated by, the Finance Documents to which that Obligor is a party.
- (g) A certificate from each Corporate Obligor (signed by a director) confirming that borrowing, securing or guaranteeing, as appropriate, the Commitment would not cause any borrowing, securing, guaranteeing or similar limit binding on it to be exceeded.
- (h) A certificate of an authorised signatory of the relevant Obligor certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (i) A certified true copy of the personal identification documents of the Personal Guarantor.

#### **2. Legal opinions**

- (a) A legal opinion in relation to Hong Kong law from King & Wood Mallesons addressed to the Lender, substantially in the form distributed to the Lender prior to signing this Agreement.
- (b) A legal opinion in relation to PRC law from King & Wood Mallesons addressed to the Lender, substantially in the form distributed to the Lender prior to signing this Agreement.

- (c) A legal opinion in relation to New York law from King & Wood Mallesons addressed to the Lender, substantially in the form distributed to the Lender prior to signing this Agreement.
- (d) A legal opinion in relation to British Virgin Islands law from Ogier addressed to the Lender, substantially in the form distributed to the Lender prior to signing this Agreement.

### 3. Other documents and evidence

- (a) Execution and delivery of this Agreement and each other Finance Document and such duly executed documents as the Lender may require in connection with the completion, perfection and registration of the Transaction Security created or intended to be created pursuant to the Security Documents, where such documents are required to be delivered by the date falling on or before the first Utilisation Date.
- (b) Evidence that any process agent referred to in Clause 37.2 (*Service of process*), has accepted its appointment.
- (c) A warning notice signed by the Personal Guarantor substantially in the form and substance satisfactory to the Lender.
- (d) A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (e) The Original Financial Statements.
- (f) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 12 (*Fees*) and Clause 17 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.
- (g) A copy of the Acquisition Agreement.
- (h) Evidence that the Borrower has deposited not less than US\$50,000,000 into the Borrower Account.
- (i) Evidence that the Borrower has sufficient funds to complete the Acquisition, taking into account of any proposed Loan to be made prior to the Acquisition Completion Date.
- (j) A copy of the ATAI Resolutions.
- (k) A certificate from each of ATAI and ATA BVI signed by a director of ATAI or, as the case may be, ATA BVI, confirming that none of the circumstances set out in Clauses 22.4 (*Cross default*) to 22.7 (*Creditors process*) (such Clauses to be interpreted as if references to any member of the Group or any Obligor shall mean ATAI or, as the case may be, ATA BVI) has occurred in respect of ATAI or, as the case may be, ATA BVI.
- (l) Irrevocable remittance instructions duly executed by the Corporate Guarantors (other than Able Knight) and the Custodian such that the Custodian is irrevocably authorised to

transfer the entire balance standing to the credit of each Custodian Account to the Lender for the purposes of repayment of the Loans.

- (m) [intentionally left blank]
- (n) Evidence that dividends payable by ATAI to Able Knight will be paid directly into the Dividends Account (Able Knight).
- (o) A certificate from the Borrower (signed by a director) confirming that:
  - (i) since the date of this Agreement, the Acquisition Agreement has not been amended, varied, waived or terminated;
  - (ii) all conditions precedent under the Acquisition Agreement (other than the payment of the purchase price) has been or will be satisfied or waived by the Acquisition Completion Date; and
  - (iii) there has been no breach of any warranty by the Borrower under the Acquisition Agreement.
- (p) A copy of the duly executed Haitong Facility Agreement.
- (q) A copy of the duly executed debenture dated on or about the date of this Agreement between the Borrower as chargor and Haitong International Investment Solutions Limited as chargee in connection with the Haitong Facility Agreement.

**Schedule 2**  
**Form of Utilisation Request**

From: New Beauty Holdings Limited  
To: Bank of Shanghai (Hong Kong) Limited  
Dated:  
Dear Sirs

**New Beauty Holdings Limited** □□□□□□□□— **US\$32,000,000 Facility Agreement**  
**dated [\*] (the “Facility Agreement”)**

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

Proposed Utilisation Date: [     ] (or, if that is not a Business Day, the next Business Day)  
Amount: [     ] or, if less, the Available Commitment
3. We confirm that each condition specified in Clause 5.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to [insert bank account details].
5. This Utilisation Request is irrevocable.

Yours faithfully

\_\_\_\_\_  
authorised signatory for  
New Beauty Holdings Limited  
□□□□□□□□

70

**SIGNATURE PAGE**

**THE BORROWER**  
**New Beauty Holdings Limited**  
□□□□□□□□

By:

Address: 1/F East Gate, Building No.2, Jian Wai Soho, No.39, Dong San Huan Zhong Road,  
Chaoyang District, Beijing 100022, China  
Fax: +86 10 5869 7350  
Attention: Mr. Ma Xiaofeng

Signature page

**THE CORPORATE GUARANTORS**  
**Able Knight Development Limited**

By:

Address: 1/F East Gate, Building No.2, Jian Wai Soho, No.39, Dong San Huan Zhong Road,  
Chaoyang District, Beijing 100022, China  
Fax: +86 10 5869 7350  
Attention: Mr. Ma Xiaofeng

□ □ □ □ □ □ □ □

Address: 34<sup>th</sup>Floor, Champion Tower, Three Garden Road, Central, Hong Kong  
Fax: 852-2258 5755

Attention: Brian Ho/ Adam Li  
Signature page

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NEW BEAUTY HOLDINGS LIMITED  
(□□□□□□□□)

PROMISSORY NOTE

US\$10,000,000

Date: August 7, 2018

FOR VALUE RECEIVED, the undersigned, New Beauty Holdings Limited (□□□□□□□□) (the “Issuer”), a limited liability company organized and existing under the laws of the British Virgin Islands with 1% of its issued and outstanding shares owned by Mr. Hongxing Qian and 99% of its issued and outstanding shares owned by Mr. Xiaofeng Ma (the “Founder”), a citizen of the People’s Republic of China (the “PRC”) with the PRC identity card number 110102196310212334, hereby promises to pay, subject to the terms and conditions of this Promissory Note (this “Note”), to the order of Crystal Magic Brands Limited (together with any transferee, the “Holder”), the principal amount of ten million United States Dollars (US\$10,000,000) (the “Principal Amount”). The Principal Amount and interest on this Note shall be due and payable as set forth below.

This Note is issued pursuant to, and in accordance with, the Note Purchase Agreement, dated February 6, 2018 by and among the Founder, the Issuer and the Holder (as amended, supplemented or modified from time to time, the “Note Purchase Agreement”). All capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Note Purchase Agreement. The Holder is entitled to the benefits of this Note and the Note Purchase Agreement, and subject to the terms and conditions set forth herein and therein, may enforce the agreements contained herein and therein and exercise the remedies provided for hereby and thereby or otherwise available in respect hereto and thereto.

**SECTION 1  
INTEREST**

- 1.1 Interest. The Holder of this Note shall be entitled to simple interest (“Interest”) that accrues at eight percent (8%) per annum on the Principal Amount of this Note from the Note Issuance Date to the Initial Maturity Date. Interest accrued is payable in cash by the Issuer in arrears on an annual basis within 120 days after the end of each calendar year starting from the end of 2018. Interest shall be calculated on the basis of a 365-day year for the actual number of days elapsed. For the avoidance of doubt, no interest shall accrue on the Principal Amount of this Note from the first date following the Initial Maturity Date to the Final Maturity Date.

**SECTION 2  
REPAYMENT AND WAIVER**

- 2.1 Repayment and Purchase. Unless the repayment of the Principal Amount of and all interest accrued but not yet paid on this Note is waived in accordance with the terms of Section 2.2, the Holder shall have the right to demand the repayment and purchase of this Note pursuant to the Securities Holders’ Agreement at any time from the Initial Maturity Date until and up to the Final Maturity Date (the “Put Right”). This Note shall not be otherwise repaid by

1

the Issuer. Notwithstanding the foregoing and anything in this Note or the Securities Holders’ Agreement to the contrary, in the event the Investors fail to complete the First Closing pursuant to the SPA, the Issuer shall purchase the Note from the Holder by repaying the Principal Amount of this Note without paying any interest accrued but not yet paid on this Note, and the Note shall be deemed to have been repaid in full thereafter.

- 2.2 Waiver of Repayment. Repayment of the Principal Amount of and all interest accrued but not yet paid on this Note shall be, or shall be deemed to have been, irrevocably waived in full by the Holder, if at any time prior to the Initial Maturity Date, the total amount of cash returns realized by the Investors from the ATA Online Shares (including all dividends they receive on the ATA Online Shares and the proceeds they receive from the sale of the ATA Online Shares, including any PRC withholding tax paid by the buyer(s) of such sale) and all interest the Holder receives on this Note and any other note issued to the Holder pursuant to the Note Purchase Agreement is no less than US\$130,000,000. In addition, repayment of the Principal Amount of this Note shall be, or shall be deemed to have been, irrevocably waived in full by the Holder on the first date following the Final Maturity Date if the Holder fails to exercise the Put Right pursuant to the terms of the Securities Holders’ Agreement.

**SECTION 3  
COVENANTS**

- 3.1 Covenants. The Issuer covenants to the Holder that, while any part of this Note is outstanding, the Issuer shall:
- (a) apply the Principal Amount towards the payment of all or any portion of the purchase price payable by the Founder or the Issuer under the SPA;
  - (b) pay any amount due and payable under the Basic Documents pursuant to the terms therein and otherwise comply with the Basic Documents;
  - (c) give written notice to the Holder of any Event of Default (as defined below) promptly upon, and in any event within three (3) Business Days, after the occurrence thereof;



- (d) execute and deliver, or cause to be executed and delivered, upon the request of the Holder and at the Issuer's expense, such additional documents, instruments and agreements as the Holder may determine to be necessary to carry out the provisions of this Note and the other Basic Documents and the transactions and actions contemplated hereunder and thereunder; and
- (e) not issue, assume, incur, become subject to, guarantee, amend the terms of, or suffer to exist, any indebtedness or Encumbrance on its assets without the prior written consent of the Holder, other than the incurrence of the Debt Financing and Encumbrances created by the Founder and the Issuer pursuant to the terms of the Debt Financing.

3.2 **Other Corporate Actions.** The Issuer shall not, and shall cause ATA Learning and any other Person through which the Founder holds Equity Securities in ATA Online (a "**Founder Entity**") not to, without the prior written consent of the Holder, take any of the following actions, or take or omit to take any action that would have the effect of any of the following actions:

- (a) any capital expenditure;
- (b) any investment in, or acquisition or disposal of, assets or business or entities, in each case for an amount in excess of RMB5,000,000 individually or in the aggregate over any 12 consecutive months;
- (c) any issuance, recapitalization, repurchase or sale or transfer of Equity Securities;
- (d) any consolidation, reorganization, amalgamation or merger, with or into any Person, or any other corporate reorganization or scheme of arrangement with similar effect;
- (e) any incurrence of indebtedness or provision of guarantee in an amount exceeding RMB5,000,000 individually or in the aggregate over any 12 consecutive months, or any material amendment to the terms of indebtedness or guarantee, other than the incurrence of the Debt Financing, this Note or any other note issued pursuant to the Note Purchase Agreement;
- (f) commencement or approval of or consent to any liquidation, dissolution or winding up or filing of bankruptcy administration, preliminary administration or similar proceeding;
- (g) entry into any business other than the business currently conducted by them;
- (h) direct or indirect entry into or amendment to any transaction with a Related Person;
- (i) any declaration and/or payment of dividends or other distributions; and
- (j) any agreement or commitment to do any of the foregoing.

#### **SECTION 4 EVENTS OF DEFAULT**

4.1 **Events of Default.** The occurrence of any of the following events shall constitute an "**Event of Default**":

- (a) the Issuer fails to pay any amount which is payable hereunder or under any other Basic Document, when due in accordance with the terms hereof or thereof;
- (b) the Founder or the Issuer, ATA Learning or any other Founder Entity breaches any material provision of any Basic Document;

- (c) the Second Closing or the Third Closing fails to complete pursuant to the SPA or the SPA is terminated;
- (d) a Change of Control of, or an Insolvency Event with respect to, ATA Online or a Founder Entity occurs without the prior written consent of the Holder;
- (e) the Founder, a Founder Entity or ATA Online defaults in making, or become unable to make, any payment of indebtedness (including any other note issued pursuant to the Note Purchase Agreement) on the scheduled or original due date thereof, or has commenced negotiation with one or more creditors so as to enter into any arrangement or to make any distribution to such creditors;
- (f) any event or condition occurs that results in the acceleration of the maturity of any indebtedness of ATA Online, the Founder or a Founder Entity, in a principal amount aggregating US\$1,000,000 or more or enables the holder or holders of such aggregate indebtedness or any Person or Persons acting on such holder's or holders' behalf, with notice or lapse of time or both, to accelerate the maturity thereof;

- (g) any material obligation of the Founder or a Founder Entity under any Basic Document has become illegal, invalid, non-binding or unenforceable, or the Founder or a Founder Entity has taken any action to challenge the legality, validity and enforceability of any such obligation; or
- (h) there is a Material Adverse Change since the Note Issuance Date.

4.2 Notice by the Issuer. Upon the occurrence of an Event of Default, the Issuer shall give the Holder prompt notice of the occurrence of such Event of Default.

## SECTION 5 REGISTRATION, TRANSFER AND TERMINATION OF NOTE

- 5.1 Register. The Issuer shall keep at its principal office a register in which the Issuer shall provide for the registration and transfer of this Note, in which the Issuer shall record the name and address of the Holder and the name and address of each permitted transferee and prior owner of this Note. The Holder shall notify the Issuer of any change of name or address and promptly after receiving such notification the Issuer shall record such information in such register.
- 5.2 Transfer. This Note and all rights hereunder (or a portion thereof) may be transferred by the Holder in its sole discretion. The Issuer shall complete any transfer of this Note with two (2) Business Days at the request of the Holder. A transfer of this Note may be effected by a surrender hereof to the Issuer and the issuance by the Issuer of a new note or notes in replacement thereof, which shall be registered by the Issuer in accordance with Section 5.1 hereof once an executed copy of the replacement note has been executed by the transferee.

4

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- 5.3 Termination of Rights. All rights under this Note shall terminate when the Notes have been repaid and purchased or waived in accordance with the terms of this Note and the Securities Holders' Agreement.

## SECTION 6 DEFINITIONS

- 6.1 Definitions. Unless otherwise defined below, capitalized terms used in this Note shall have the same meaning ascribed to them in the Note Purchase Agreement or the Securities Holders' Agreement, as applicable:

"ATA Online Shares" means a total of 17.5% of the Equity Securities in ATA Online purchased directly and indirectly by the Investors pursuant to the terms of the SPA.

"Business Day" has the meaning ascribed to it in the Note Purchase Agreement.

"Basic Document" has the meaning ascribed to it in the Note Purchase Agreement.

"Change of Control" of any Person (the "Subject Person") means the occurrence of a change in the Control of the Subject Person, pursuant to which a Person which does not have Control over the Subject Person immediately prior to such change acquires direct or indirect Control of the Subject Person.

"Control" has the meaning ascribed to it in the Note Purchase Agreement.

"Debt Financing" has the meaning ascribed to it in the SPA.

"Encumbrance" means (a) any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, deed of trust, title retention, security interest or other encumbrance of any kind securing, or conferring any priority of payment in respect of, any obligation of any Person, including without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under applicable law, (b) any lease, sub-lease, occupancy agreement, easement or covenant granting a right of use or occupancy to any Person, (c) any proxy, power of attorney, voting trust agreement, interest, option, right of first offer, negotiation or refusal or transfer restriction in favor of any Person and (d) any adverse claim as to title, possession or use.

"Equity Securities" has the meaning ascribed to it in the Note Purchase Agreement.

"Event of Default" has the meaning set forth in Section 4.1.

"Final Maturity Date" means the second (2<sup>nd</sup>) anniversary of the Initial Maturity Date.

5

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"First Closing" has the meaning ascribed to it in the SPA.

“Zhongxiao” means Zhongxiao Zhixing Education Technology (Beijing) Co., Ltd. (中教控股(北京)有限公司), a company incorporated under the laws of the PRC.

- 6.2 Headings. Section headings in this Note are included herein for convenience of reference only and shall not constitute a part of this Note for any other purpose.

## SECTION 7 GOVERNING LAW; JURISDICTION

- 7.1 Governing Law. This Note shall be governed by, and construed in accordance with, the laws of the PRC, without regard to the principles of conflicts of law of any jurisdiction.
- 7.2 Arbitration.
- (a) Any dispute or claim arising out of or in connection with or relating to this Note, or the breach, termination or invalidity hereof (including the validity, scope and enforceability of this arbitration provision), shall be submitted to, and finally resolved by arbitration by, CIETAC in Beijing, the PRC in accordance with the arbitration rules of CIETAC as are in force at the time of such dispute or claim being submitted to CIETAC and as may be amended by the rest of this Section 7.2. For the purpose of such arbitration, there shall be three arbitrators (the "Arbitration Board"). Each Party shall select one arbitrator. Both selections shall be made within 30 days after the selecting Party gives or receives the demand for arbitration. Such arbitrators shall be freely selected, and the Parties shall not be limited in their selection to any prescribed list. The Chairman of CIETAC shall select the third arbitrator. If any arbitrator to be appointed by a Party has not been appointed and consented to participate within 30 days after the selection of the first arbitrator, the relevant appointment shall be made by the Chairman of CIETAC.
  - (b) All arbitration proceedings shall be conducted in English. The arbitrators shall decide any such dispute or claim strictly in accordance with the governing law specified in Section 7.1. Judgment upon any arbitral award rendered hereunder may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
  - (c) In order to preserve its rights and remedies, any Party shall be entitled to seek any order for the preservation of property, including any interim injunctive relief, in accordance with applicable law from any court of competent jurisdiction or from the arbitration tribunal pending the final decision or award of the Arbitration Board.
  - (d) Without prejudice to Section 10 of the Note Purchase Agreement, each Party irrevocably consents to the service of process, notices or other paper in connection with or in any way arising from the arbitration or the enforcement of any arbitral award, by use of any of the methods and to the addresses set forth for the giving of notices in Section 10 of the Note Purchase Agreement. Nothing contained herein shall affect

the right of any Party to serve such processes, notices or other papers in any other manner permitted by applicable law.

- (e) The Parties agree to facilitate the arbitration by (i) cooperating in good faith to expedite (to the maximum extent practicable) the conduct of the arbitration, (ii) making available documents, books, records and personnel under their control in accordance with the arbitration rules of CIETAC, (iii) conducting arbitration hearings to the greatest extent possible on successive business days and (iv) using their best efforts to observe the time periods established by the arbitration rules of CIETAC or by the Arbitration Board for the submission of evidence and briefs.
- (f) The costs and expenses of the arbitration, including the fees of the Arbitration Board, shall be allocated between each Party as the Arbitration Board deems equitable.
- (g) Any award made by the Arbitration Board shall be final and binding on each of the Parties that were parties to the dispute. The Parties expressly agree to waive the applicability of any laws and regulations that would otherwise give the right to appeal the decisions of the Arbitration Board so that there shall be no appeal to any court of law for the award of the Arbitration Board, and a Party shall not challenge or resist the enforcement action taken by any other Party in whose favor an award of the Arbitration Board was given.

## SECTION 8 MISCELLANEOUS

- 8.1 Notices. Any notice or communication provided for by this Note shall be in writing and shall be delivered in accordance with Section 10 in the Note Purchase Agreement.
- 8.2 Payment. Unless otherwise notified by the Holder, all payments required to be paid by the Issuer under this Note to the Holder shall be paid by wire transfer in United States Dollars in immediately available funds to a bank account notified by the Holder to the Issuer.

- 8.3 Waiver. The Issuer waives presentment, notice of dishonor, protest and any other notice or formality with respect to this Note. The Issuer agrees that no omission or delay by the Holder in exercising any right under this Note shall operate as a waiver, and the single or partial exercise of any such right or rights shall not preclude any other further exercise of such right or rights.
- 8.4 Amendment. This Note may not be amended or modified except by a written agreement executed by the Issuer and the Holder.
- 8.5 Language. This Note is drawn up in the English language. If this Note is translated into any language other than English, the English language text shall prevail.

9

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10

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IN WITNESS WHEREOF, the undersigned has caused this Note to be executed by its officer or director thereunto duly authorized, on the date first above written.

New Beauty Holdings Limited  
(□□□□□□□□)

By: \_\_\_\_\_  
Name: Mr. Xiaofeng Ma  
Title: Director

[Signature Page to Second Note]

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AGREED AND ACCEPTED:

Crystal Magic Brands Limited

By: \_\_\_\_\_  
Name:  
Title: Authorized Representative

[Signature Page to Second Note]

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