

Asia Securities Industry & Financial Markets Association

Block Trade Agreement for Taiwan

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Block Trade Agreement for Taiwan

[Note: This Form assumes that (1) the Company is a "foreign private issuer" (as defined in Rule 405 under the Securities Act); (2) there is no substantial U.S. market interest (as defined in Regulation S) in the equity securities of the Company; and (3) the Seller is an affiliate of the Company. If any of these assumptions do not apply to the trade at hand, appropriate modifications should be made in preparing the draft Block Trade Agreement. This Form also provides alternative provisions for instances in which the Seller is both an affiliate and a controlling shareholder; however, appropriate consideration should be given to the extent of due diligence and Company-related representations and/or requiring that the Company be a party to the agreement where the Seller has a controlling position and/or a board seat. In addition, this Form is tailored for shares of issuers listed on the Taiwan Stock Exchange or Gre-Tai Securities Market; appropriate modifications will need to be made to the Form for issuers listed in other jurisdictions.]

SECONDARY BLOCK TRADE AGREEMENT, made on [●]

BETWEEN

- (1) [Full legal name] (the "**Seller**"), a [company] registered in [jurisdiction] and having its registered address at [●]; and
- (2) [Full legal name] (the "**Manager**"), a [company] registered in [jurisdiction]¹ and having its registered address at [●].

WHEREAS

Subject to the terms and conditions set out in this secondary block trade agreement (the "**Agreement**"), the Seller agrees to sell, and the Manager agrees, as agent of the Seller, to procure [on a best effort basis] purchasers to purchase[, or failing which, to purchase itself] certain [common shares]² (the "**Shares**") in the issued share capital of [description of issuer]³ (the "**Company**") (the "**Sale**").

THE PARTIES AGREE AS FOLLOWS

1. Purchase and Sale
 - (a) The Seller hereby appoints the Manager to act as its agent for the purpose of effecting the Sale on the terms and subject to the conditions set out in this Agreement and the Manager accepts such appointment.⁴

¹ The entities acting as the Manager in Taiwan block trades are usually not incorporated in Taiwan.

² To be changed as appropriate.

³ The issuer can be either listed on the Taiwan Stock Exchange or Gre-Tai Securities Market.

⁴ If more than one Manager is appointed, this Agreement should be modified as appropriate, including the specification that the Seller is appointing the Managers to act severally and not jointly and severally. In particular, the following clause should be added: "The obligations of the Managers under this Agreement (and, in particular, each of their obligations in relation to procuring purchasers for [, and purchasing themselves,] the Sale Shares) shall be several only (and not jointly nor on a joint and several basis). For the avoidance of doubt, each of the Managers will be responsible under this Agreement on a several (and not joint nor joint and several) basis only for its own actions and omissions and will not be responsible in any manner for any actions or omissions of the other Manager[s]. [Neither/None] of the Managers will be liable for any failure on the part of the other Manager[s] to perform its obligations in this Agreement. Notwithstanding the foregoing, each of the Managers shall be entitled to

- (b) Subject to the terms and conditions of this Agreement, the Seller agrees to sell, and the Manager agrees, as agent of the Seller, to procure [on a best effort basis] purchasers to purchase [●]⁵ Shares (the "**Sale Shares**") [or, failing which, to purchase the Sale Shares,] at a price of NT\$[●] per Share (the "**Purchase Price**").

[Alternative: use the following alternative language if this Agreement is to be signed before completion of bookbuild]

[Subject to the terms and conditions of this Agreement, the Seller agrees to sell, and the Manager agrees, as agent of the Seller, to procure [on a best effort basis] purchasers to purchase the Shares [or, failing which, to purchase the Shares,] at a price per Share (the "**Purchase Price**") to be determined pursuant to an accelerated bookbuilding process. The number of Shares to be sold (the "**Sale Shares**") and the Purchase Price will be subject to agreement by the parties following completion of the bookbuilding process and shall be set forth in an executed version of the Terms of Sale (the "**Terms of Sale**"), which shall be substantially in the form set forth in Annex A hereto. The date of execution of the Terms of Sale shall be the "**Pricing Date**". [It is agreed that if the Manager fails to procure purchasers for [minimum number of backstop Shares] Sale Shares (the "**Backstop Shares**") at or above the price of NT\$[●] per Share (the "**Backstop Price**"), the Manager will purchase the Backstop Shares at the Backstop Price.]⁶]

- (c) In discharging its obligations in the preceding paragraph, the Manager or its nominees may elect to purchase some or all of the Sale Shares as principal from the Seller at the Purchase Price and, in that event, these Sale Shares may be onsold to purchasers at any prices as the Manager may determine, without any obligation to notify the Seller of such election or of the number of Sale Shares so purchased or of the prices at which those Sale Shares are sold to purchasers.

2. Closing

- (a) On [●]⁷ ("Trade Date"), the Sellers will instruct [●] ("Sellers Broker"), the broker to the Sellers, to place sell-side orders for the Shares over [the Taiwan Stock Exchange ("TSE")] [Gre-Tai Securities Market ("Gre-Tai"), and the purchasers designated by the Manager will place buy-side orders for the Shares over the [TSE][Gre-Tai] through [●] ("Buyside Broker"). These orders will be made during a designated block trade session as agreed between Sellers Broker and the Buyside Broker. Closing will take place at [10.00am] (Hong Kong time) on the second TSE trading day following the Trade Date (the "Closing Time") by the Sellers' delivery of the Sale Shares to the Manager as agent for the purchasers or as principal, as the case may be, against payment of the Purchase Price multiplied by the Sale Shares less securities transaction tax⁸ payable by the Seller. At the Closing Time, the Sale Shares shall be delivered to the purchasers through the Taiwan Depository & Clearing Corporation.

enforce any or all of its rights under this Agreement either alone or jointly with the other Manager[s]."

⁵ Insert the number of Sale Shares.

⁶ To be included if the trade will include a backstop arrangement.

⁷ If the Seller is an Insider as defined under the Taiwan Securities Exchange Act (being a shareholder holding more than 10% of the shares, a director, or a supervisor of the Company), the Seller is required to report the proposed sale and in that case the Trade Date must be the three calendar days after the date that the relevant reporting is made.

⁸ The securities exchange tax is 0.03% of the Purchase Price x Sale Shares.

- (b) The Purchase Price does not include, and the Seller is responsible for and shall pay, all transfer taxes, stamp taxes and other duties incidental to the Sale.

3. Conditions Precedent to Closing

The obligations of the Manager hereunder shall be subject to the following conditions:

- (a) before the Closing, there shall not have occurred:⁹
- (i) any material adverse change, or any development reasonably likely to involve a material adverse change, in the condition, financial or otherwise, or in the earnings, assets, business, operations or prospects of the Company, or the Company and its subsidiaries taken as a whole; or
 - (ii) any suspension or limitation of trading (a) in any of the Company's securities by the [TSE]/[Gre-Tai Securities Market] [or any other exchange or over the counter market on which the Company's securities are admitted or listed for trading], or (b) generally on the [TSE][Gre-Tai], [the Hong Kong Stock Exchange, the Shanghai Stock Exchange, the Shenzhen Stock Exchange, the Tokyo Stock Exchange, the London Stock Exchange, the New York Stock Exchange, the Nasdaq National Market] [or] [other relevant exchanges]; or
 - (iii) any outbreak or escalation of hostilities, act of terrorism, the declaration by Taiwan, [Hong Kong, the PRC, Japan, Singapore, the United States, the United Kingdom [or] any other member of the EEA [or other applicable jurisdiction(s)]] of a national emergency or war or other calamity or crisis; or
 - (iv) any material disruption in commercial banking or securities settlement or clearance services in Taiwan, [Hong Kong, the PRC, Japan, Singapore, the United States, the United Kingdom [or] any other member of the EEA [or other applicable jurisdiction(s)]] and/or a general moratorium on commercial banking activities having been declared by the relevant authorities in Taiwan, [Hong Kong, the PRC, Japan, Singapore, the United States, the United Kingdom [or] any other member of the EEA [or other applicable jurisdiction(s)]]; or
 - (v) any material adverse change or development involving a prospective material adverse change in or affecting the financial markets in Taiwan, [Hong Kong, the PRC, Japan, Singapore, the United States, the United Kingdom [or] any other member of the EEA [or other applicable jurisdiction(s)]] or in international financial, political or economic conditions, currency exchange rates, exchange controls or taxation,

that, in the sole judgment of the Manager, would make the placement of the Sale Shares or the enforcement of contracts to purchase the Sale Shares impracticable or inadvisable, or would materially prejudice trading of the Sale Shares in the secondary market;

⁹ The following additional condition may be required in certain circumstances: "any downgrading in the rating accorded the debt securities of the Company or any of its subsidiaries by any internationally recognised rating agency, and no such agency has publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the debt securities of the Company or any of its subsidiaries."

- (b) the Seller's representations and warranties made pursuant to this Agreement being true and accurate and not misleading as of the date of this Agreement[, the Pricing Date]¹⁰ and the Closing Date;
- (c) the Seller having complied with all of the agreements and undertakings and satisfied all of the conditions on its part to be performed or satisfied under this Agreement on or before the Closing Date;
- (d) the Manager having received on the Closing Date an opinion of [●], U.S. counsel to the [Manager], to the effect that the offer and sale of the Sale Shares by the Manager as set forth in this Agreement are not required to be registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), and such other matters as the Manager shall reasonably request, such opinion to be in form and substance reasonably satisfactory to the Manager; and
- (e) the Manager having received from the Seller on or before the Closing Date a legally binding undertaking from an authorised signatory of the Company to the following effect:

"For so long as any Sale Shares are "restricted securities" within the meaning of Rule 144(a)(3) under the U.S. Securities Act of 1933, as amended (the "Securities Act"), the Company shall, during any period in which it is neither subject to Section 13 or 15(d) of the US Securities Exchange Act of 1934 nor exempt from reporting pursuant to Rule 12g3-2(b) thereunder, provide to any holder or beneficial owner of such restricted securities or to any prospective purchaser of such restricted securities designated by such holder or beneficial owner, upon the request of such holder, beneficial owner or prospective purchaser, the information required to be provided by Rule 144A(d)(4) under the Securities Act. This undertaking is intended to be for the benefit of the holders, beneficial owners and the prospective purchasers designated by such persons, from time to time of such restricted securities."]¹¹

The Seller shall use its reasonable endeavours to procure the fulfilment of the foregoing conditions on or before the Closing Date. The Manager in its sole discretion may waive any of the foregoing conditions by notice to the Seller. In the event that (i) any of the events set out in paragraphs [(i) to (v)] of condition (a) above occurs at any time between the date of this Agreement and the Closing Date, or (ii) the Seller does not deliver the Sale Shares on the Closing Date, or (iii) any of conditions [(b) through (e)] above has not been satisfied or waived in writing on the dates specified therein, the Manager may elect, in its sole discretion, to terminate this Agreement forthwith, provided that Clauses [5, 9, 10, 11 and 12] shall survive such termination and remain in full force and effect, and provided further that if the Seller shall have delivered some but not all of the Sale Shares on the Closing Date, the Manager shall have the option to effect the Sale with respect to such Sale Shares as have been delivered, but such partial Sale shall not relieve the Seller from liability for its default with respect to the Sale Shares not delivered.

¹⁰ Delete as appropriate depending on whether the parties will execute the Terms of Sale.

¹¹ This undertaking may be appropriate if the Seller is a controlling shareholder and/or holds a board seat and the trade is being executed under Rule 144A. Please also see representation (dd) in Annex B for alternatives.

4. Commissions and fees¹²

In consideration of the services provided by the Manager under this Agreement, the Seller and the Manager agree that the Seller shall pay the Manager on the Closing Date (i) a commission equal to [●]% of the aggregate value of the Sale Shares at the Purchase Price; and (ii) [brokerage], as may be payable by sellers in respect of the sale of the Sale Shares.¹³

5. Expenses

- (a) The Seller shall be responsible for its own expenses, including legal fees and fees of other advisers, in connection with this Agreement and the Sale.
- (b) [The Seller shall, promptly upon request and irrespective of whether the Sale is completed, reimburse the Manager for all travel and other out-of-pocket expenses properly incurred by it in connection with the execution of its obligations under this Agreement (including, without limitation, printing, postage and telecommunications costs, and fees and expenses of the Manager's lawyers and other advisers).]¹⁴
- (c) The Seller shall bear and pay, or indemnify the Manager or any Relevant Person (as defined in Clause 9) in respect of, any stamp, withholding, documentary, transfer or other duties or taxes payable or incurred (together with any interest and penalties) by the Seller or the Manager (or purchasers procured by the Manager) or otherwise imposed on any person on or in connection with the Sale and the execution and delivery of this Agreement and any other tax payable in connection with the consummation of the transactions contemplated and the services rendered or duties performed by any Relevant Person (as defined in Clause 9) pursuant to this Agreement.
- (d) The Manager shall be entitled to deduct the relevant amounts mentioned in this Clause 5 from the amounts payable to the Seller pursuant to Clause 2. The Manager shall also be entitled to retain for its own account any brokerage fees and commissions that it may receive from the purchasers.

6. Representations, Warranties and Undertakings of the Seller

- (a) The Seller hereby makes the representations, warranties and undertakings set out in Annex B to the Manager on and as of the date of this Agreement[, the Pricing Date], and the Closing Date.
- (b) The Seller acknowledges that the Manager is entering into this Agreement in reliance upon each of the representations, warranties and undertakings set out in Annex B. The Seller shall promptly notify the Manager if at any time on or before the Closing Date any of the representations or warranties set out in Annex B ceases to be true and accurate or has become misleading in any respect or in the event that the Seller breaches any undertaking or fails to comply with any obligation under this Agreement in any respect.
- (c) To the extent not delivered together with the Sale Shares on the Closing Date, the Seller shall promptly pay or transfer to the Manager, for the benefit of the purchasers

¹² To be modified as necessary if the trade will include a backstop arrangement.

¹³ In a Taiwan block trade, the TDCC system does not permit the deduction to be made from the sale proceeds.

¹⁴ To be modified or removed as necessary to reflect the commercial terms of the trade.

of the Sale Shares, all dividends, distributions and other rights declared, distributed or received in respect of the Sale Shares for which a record date occurs on or after [the date of this Agreement] [the Pricing Date].

- (d) The Seller undertakes, at its own expense, to execute or procure to be executed all such documents and do all such acts and things as is necessary in order to give effect to the terms of this Agreement and to enable the sale and purchase of the Sale Shares to be carried out and given full force and effect.
- (e) The Seller undertakes, except to the extent required by applicable law and save as permitted by this Agreement, not to disclose to any third party or publicly refer to the contents of this Agreement or the transactions contemplated by it before the Closing Date without the prior written consent of the Manager, except that the Seller may disclose such information to its advisers as necessary in connection with the Sale.
- (f) All payments to be made by the Seller to any Relevant Person (as defined in Clause 9) shall be made without withholding or deduction for or on account of any present or future tax unless the Seller is compelled by law to deduct or withhold such tax. In that event, the Seller shall pay such additional amounts as may be necessary in order that the net amounts received after such withholding or deduction shall equal the amounts that would have been received if no withholding or deduction had been made.
- (g) The Seller shall comply with all applicable filing, announcement and notice requirements in connection with the transactions contemplated by this Agreement.

7. Representations, Warranties and Undertakings of the Manager

The Manager hereby makes the representations, warranties and undertakings set out in Annex C to the Seller on and as of the date of this Agreement[, the Pricing Date] and the Closing Date.

8. Lock-Up¹⁵

The Seller shall not, and shall procure that none of its nominees, any person controlled by it, any trust associated with it or any person acting on its or their behalf shall, without the prior written consent of the Manager, (i) offer, sell, [lend,] contract to sell, pledge, grant any option over or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Seller or any Affiliate (as defined below) of the Seller or any person in privity with the Seller or any Affiliate of the Seller), directly or indirectly, any equity securities of the Company or any securities convertible into, or exercisable, or exchangeable for, equity securities of the Company, (ii) enter into any swap or similar agreement that transfers, in whole or in part, the economic risk of ownership of such Shares, whether any such transaction described in (i) or (ii) above is to be settled by delivery of Shares or such other securities, in cash or otherwise, or (iii) publicly announce an intention to effect any such transaction, for a period beginning on the date of this Agreement and ending on the date which is [●] days after the Closing Date. The foregoing shall not apply to the sale of the Shares under this Agreement. As used in this Agreement, "Affiliate" shall have the meaning specified in Rule 501(b) of Regulation D under the Securities Act ("**Regulation D**").

¹⁵ An alternative to the lock-up would be a representation by the Seller that it will not hold any equity securities of the Company following the trade.

9. Indemnity

The Seller agrees to indemnify and hold harmless the Manager (for itself and on trust for each Relevant Person (as defined below)) and its Affiliates, and their respective directors, officers, agents and employees and each other person, if any, controlling the Manager or any of its Affiliates (each a "**Relevant Person**") from and against any and all losses, claims, damages, liabilities or expenses which any Relevant Person may suffer or incur or, in each case, actions in respect thereof, related to or arising out of (i) any breach or alleged breach of the representations and warranties of the Seller contained in this Agreement, (ii) any failure or alleged failure of the Seller to perform its obligations under this Agreement or its subject matter or (iii) any Relevant Person's role in connection herewith (including, in each case, actions arising out of the Sale contemplated by this Agreement but excluding, in the case of (iii) only, any losses, claims, damages, liabilities or expenses finally judicially determined by a court of competent jurisdiction to have resulted from (and then only to the extent of) such Relevant Person's gross negligence, wilful default or fraud)¹⁶, and the Seller shall reimburse any Relevant Person for all properly incurred expenses (including legal fees and any applicable taxes) as they are incurred by such Relevant Person in connection with investigating, preparing or defending any such action or claim, whether or not in connection with a pending or threatened litigation in which such Relevant Person is a party. If a Relevant Person is subject to tax in respect of any indemnity payable under this Clause 9, the sum payable shall be increased to such amount as will ensure that after payment of such tax such Relevant Person shall be left with a sum equal to the amount that it would have received in the absence of such charge to tax (after giving credit for any tax relief available in respect of the matter giving rise to the indemnity). The obligations of the Seller under this Clause 9 shall be in addition to any liability that the Seller may otherwise have.

The Seller agrees that none of the Relevant Persons shall have any liability (save for the obligations imposed on the Manager under this Agreement and to the extent any liability resulted directly from any matter finally judicially determined to be caused by the gross negligence, wilful default or fraud on the part of the Relevant Person) to the Seller or any other person, directly or indirectly, arising out of or in connection with the Sale or any transactions contemplated hereby.

10. Successors and Assigns

This Agreement shall be binding upon, and inure solely to the benefit of, the Manager and the Seller and, to the extent provided herein, any other Relevant Person and their respective heirs, executors, administrators, successors and assigns.

11. Law, Jurisdiction[and Process Agent]¹⁴

(a) This Agreement (and any dispute, controversy or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) shall be governed by and construed in accordance with the laws of [England] / [New York]¹⁷. [It is agreed by the Seller for the benefit of the Manager that the courts of England / New York will have exclusive jurisdiction in relation to this Agreement and the Seller irrevocably

¹⁶ There is some debate as to whether the English courts will recognise "gross negligence" as imposing a different standard of liability than "negligence", however it is not uncommon for parties to include gross negligence wording in English law governed documents so this point can be further discussed. New York courts would generally recognize different negligence standards.

¹⁷ The common governing law for block trade agreements in Taiwan is New York and England. Hong Kong law has been accepted before, but is less common. As formulated, New York conflicts of law rules will not apply. However, there has been recent case law that clarifies that New York courts will assume NY conflicts of law are not included in the governing law provision unless the parties specifically state in an agreement that NY conflicts of law rules will apply

submits to the jurisdiction of such courts provided that this submission shall not limit the right of the Manager to take proceedings in any other court of competent jurisdiction.]¹⁸

- (b) If a third party, not being a party to this Agreement, commences proceedings against any Relevant Person in any court of competent jurisdiction, arising out of or in connection with this Agreement or the transactions contemplated hereby (the "Third Party Proceedings"), nothing in this Clause 11 shall limit the rights of such Relevant Person to join the Seller as a party to such Third Party Proceedings or to otherwise bring proceedings against the Seller in connection with the Third Party Proceedings under this Agreement or otherwise in such courts in the jurisdiction in question, regardless of whether proceedings have been initiated or are ongoing in another jurisdiction. The Seller irrevocably waives any objection to any such court as is referred to in the foregoing sentence on grounds of inconvenient forum or otherwise with respect to the relevant proceedings and irrevocably agrees that a judgment or order of any such court in connection with such proceedings shall be conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.
- (c) [The Seller, on one hand, and the Manager (on its own behalf and, to the extent permitted by law, on behalf of any Relevant Person), on the other hand, waive any right to trial by jury in any action, dispute, suit or proceeding with respect to this Agreement or the transactions contemplated thereby.]¹⁹
- (d) [The Seller irrevocably appoints [●] to receive on its behalf service of any action, suit or other proceedings in connection with this Agreement. If any person appointed as process agent ceases to act for any reason, the Seller shall notify the Manager, shall promptly appoint another entity incorporated in [England] / [New York] to act as its process agent and shall notify the Manager as soon as reasonably practicable of the name and address of such replacement process agent. This will not affect the Manager's rights to serve process in any other manner.]²⁰
- (e) To the extent that the Seller may in any proceedings in any jurisdiction arising out of or in connection with this Agreement or in any proceedings in any jurisdiction taken for the enforcement of any determination, decision, order or award made in such proceedings claim for itself or its assets, properties or revenues any immunity, sovereign or otherwise, from suit or other legal process including, without limitation, arbitration proceedings and all forms of execution, attachment or enforcement or to the extent that in any such proceedings there may be attributed to itself or its assets, properties or revenues any such immunity (whether or not claimed), the Seller

¹⁸ In certain trades and/or jurisdictions, an arbitration clause may be appropriate, such as when the counterparty is a sovereign or is from the PRC, Indonesia or other jurisdiction where arbitration may be the preferred method of dispute resolution: [All disputes, controversies or claims arising out of or in connection with this Agreement shall be **[Note: include if the counterparty is from the PRC:** submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be] finally settled under the Rules of Arbitration of the International Chamber of Commerce, which rules are deemed to be incorporated by reference into this Clause. The seat of the arbitration shall be Hong Kong **[Note: if the counterparty is a sovereign, consider choosing an alternative seat, e.g. Singapore or London]**. The arbitral tribunal shall consist of three arbitrators. The language of the arbitration shall be English. The award shall be final and binding on the parties, and the parties waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, insofar as such waiver may validly be made. The award may be enforced in any court of competent jurisdiction.]

¹⁹ In New York law-governed agreements, a waiver of jury trial provision is typically included.

²⁰ This paragraph may be deleted if the Seller is incorporated in England / New York, as the case may be. Corresponding change should also be made to the paragraph heading.

hereby irrevocably waives and agrees not to plead or claim any such immunity in relation to any such proceedings.

12. Miscellaneous

- (a) Time shall be of the essence of this Agreement.
- (b) The heading to each Clause is included for convenience only and shall not affect the construction of this Agreement.
- (c) In the event any provision of this Agreement is found to be or becomes invalid or unenforceable, no other provision of this Agreement shall thereby be affected and this Agreement shall remain valid and enforceable in respect of all remaining provisions, and any invalid or unenforceable provision will be deemed to be replaced by a provision which as nearly as possible accomplishes the commercial purpose of the original.
- (d) This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings (whether written or oral) between the Seller and the Manager with respect to the subject matter of this Agreement.
- (e) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.
- (f) No variation or waiver to this Agreement shall be effective unless it is in writing and signed by or on behalf of the Seller and the Manager.
- (g) [This Agreement shall automatically terminate if the Terms of Sale are not executed by the parties hereto by [●], provided however that notwithstanding any such termination Clauses [5, 9, 10, 11 and 12] shall continue in full force and effect.]²¹
- (h) The indemnities, agreements, representations, warranties and other statements of the Seller, as set forth in this Agreement or made by or on behalf of it, shall remain in full force and effect and shall survive delivery of and payment for the Sale Shares.
- (i) [The terms of this Agreement do not constitute, and shall not be construed as, an agreement or commitment between the Seller and the Manager relative to underwriting or the Manager making any principal commitment [, before the Pricing Date,] to purchase the Sale Shares.]²²
- (j) The Seller acknowledges and agrees that the Manager is acting solely pursuant to a contractual relationship with the Seller on an arm's length basis with respect to the Sale (including in connection with determining the terms of the Sale) and that in connection with the Sale and the process leading to such transaction, the Manager has not acted as and is not a financial adviser or a fiduciary of the Seller or the Seller's stockholders, creditors, employees, Affiliates or any other party. The Manager has not assumed and will not assume an advisory or fiduciary responsibility in favour of the Seller with respect to the Sale or the process leading to the Sale

²¹ To be removed if there are no Terms of Sale.

²² This paragraph should be deleted if the trade is on an underwritten basis or will include a backstop arrangement.

(irrespective of whether the Manager has advised or is currently advising the Seller on other matters) and the Manager has no obligation to the Seller with respect to the Sale except the obligations expressly set out in this Agreement. The Seller further acknowledges and agrees that the Manager and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Seller and that the Manager has not provided any legal, accounting, regulatory or tax advice with respect to the Sale. The Seller confirms that it has consulted its own legal, accounting, regulatory and tax advisers to the extent it deemed appropriate. The Seller waives to the fullest extent permitted by applicable law any claims it may have against the Manager and its Affiliates arising from any alleged breach of fiduciary duty in connection with the Sale.

IN WITNESS WHEREOF this Agreement has been duly executed as of the day and year first before written.

For and on behalf of

[Full legal name of Manager]

By: _____

Name:

Title:

By: _____

Name:

Title:

For and on behalf of

[Full legal name of Seller]

By: _____

Name:

Title:

ANNEX A

Terms of Sale

Further to the provisions of the SECONDARY BLOCK TRADE AGREEMENT DATED [●] between [●] and [●] (the "**Agreement**"), the following terms of sale are agreed:

Number of Sale Shares: [●]

Purchase Price per Sale Share: [●]

Commission: [●]%

Closing Date: [●]

The Seller confirms the accuracy of the representations and warranties set out in Annex B of the Agreement, and the Seller and the Manager confirm the provisions of the Agreement and acknowledge and agree that these Terms of Sale form part of and shall be read in conjunction with the Agreement.

Terms defined in the Agreement shall have the same meanings herein.

IN WITNESS WHEREOF these Terms of Sale have been duly executed as of [●]

For and on behalf of

[Full legal name of Manager]

By: _____

Name:

Title:

By: _____

Name:

Title:

For and on behalf of

[Full legal name of Seller]

By: _____

Name:

Title:

ANNEX B

Representations, Warranties and Undertakings of the Seller

- (a) The Seller has taken all necessary corporate and other actions to authorise the execution, delivery and performance of this Agreement; this Agreement has been duly executed and delivered by the duly authorised representatives of the Seller, and constitutes a legal, valid, binding agreement, enforceable against the Seller in accordance with its terms.
- (b) The Seller has been duly incorporated and is validly existing as a [corporation] under the laws of [*jurisdiction of incorporation of the Seller*].
- (c) The Seller is a "foreign institutional investor" as defined under the Regulations Governing Investment in Securities by Overseas Chinese and Foreign Nationals of Taiwan.
- (d) The execution, delivery and performance of this Agreement by the Seller does not contravene:
 - (i) the constitutional documents of the Seller;
 - (ii) any agreement or contract to which the Seller is a party or by which it or any of its assets is bound; or
 - (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Seller or the Sale Shares.
- (e) All consents and approvals, if any, of any regulatory or governmental authority or agency having jurisdiction over the Seller or the transactions contemplated by this Agreement required to be obtained for the execution, delivery and performance of this Agreement by the Seller have been obtained and are in full force and effect.
- (f) The Seller has good and valid title to, and the necessary right and power to sell and transfer the Sale Shares, free and clear of all pledges, liens and encumbrances, equities, security interests or other claims binding upon the Seller; and upon the delivery of the Sale Shares to the Manager (or purchasers procured by the Manager), good and valid title to the Sale Shares, free and clear of all pledges, liens and encumbrances, equities, security interests or other claims, will pass to the Manager (or purchasers procured by the Manager). The Sale Shares are validly allotted and issued (and have been allotted and issued more than six months before the date of this Agreement), are fully paid and non-assessable and when delivered to the Manager (or purchasers procured by the Manager or its Affiliates) in accordance with this Agreement will have the same rights as, and rank *pari passu* with, all of the other Shares of the Company of the same class.
- (g) Other than Taiwan stamp duty, no stamp duty, withholding tax, transfer tax, registration, VAT or any other similar taxes or duties are payable in any Relevant Jurisdictions (defined below) by or on behalf of the Manager or any purchasers of the Sale Shares procured by the Manager in connection with (i) the Sale to the Manager or such purchasers of the Sale Shares, in the manner contemplated in this Agreement or (ii) the execution and delivery of this Agreement. For the purposes of this paragraph (f), "Relevant Jurisdictions" shall mean Taiwan, [*jurisdiction of incorporation of the Company and the Seller*] and [*jurisdiction of any listing of Sale Shares and of any clearance system through which Sale Shares are held*].
- (h) The Sale Shares are listed/quoted on [the TSE] [Gre-Tai].
- (i) [[To the best of the Seller's knowledge,]²³ since [*date of the latest published financials of the Company*], there has not occurred any material adverse change, or any development

²³ The knowledge qualifier may not be appropriate for a seller that is a controlling shareholder.

reasonably likely to involve a material adverse change, in the condition, financial or otherwise, or in the earnings, assets, business, operations or prospects of the Company, or the Company and its subsidiaries (the "**Group**") taken as a whole.]²⁴

- (j) [[To the best of the Seller's knowledge,]¹⁷ (i) the Company has made public all information required to be made public by applicable law and regulation including the regulations and rulings promulgated by [the TSE][Gre-Tai], (ii) the information released publicly in Taiwan [country of incorporation of the Seller], [country of incorporation of the Company] or elsewhere by any member of the Group, [including without limitation the [prospectus/annual report] filed with [the TSE][Gre-Tai] , in each case as amended or supplemented (together, the "**Company Disclosure**")], does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and does not otherwise omit any information which is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the Group, (iii) the Seller is not aware of any announcement or disclosure by the Company that is anticipated to be made within [●] days after the date of this Agreement, (iv) the financial statements included in the Company Disclosure (a) present fairly the financial position of the Company and its consolidated subsidiaries as of the dates shown and the results of operations for the periods shown, (b) have been prepared on a recognised and consistent basis and in conformity with generally accepted accounting principles, standards and practice in [relevant jurisdiction] applied on a consistent basis, (c) comply with the all other applicable ordinances, statutes rulings and regulations and show a true and fair view of the state of affairs of the Group and of its results for the period in question, and (v) the Company is not in breach of any rules, regulations or requirements of [the TSE] [Gre-Tai].]²⁵
- (k) [All information (whether oral, written, electronic or in any other form) supplied by or on behalf of the Seller for the purpose of or in connection with the Sale is and was, when supplied, true and accurate and not misleading.]²⁵
- (l) [[To the best of the Seller's knowledge,]²⁴ there is no claim, litigation, arbitration, prosecution or other legal proceedings or investigation or enquiry in progress or pending or threatened against any member of the Group or any of their respective directors and officers nor is there any claim or any facts or circumstances of a material nature which would give rise to a claim against any member of the Group or any of their respective directors and officers, which in any such case would have or have had a material adverse effect on the condition, financial or otherwise, or in the earnings, net assets, business, operations or prospects (whether or not arising in the ordinary course of business) of any member of the Group or which is material for disclosure in the context of the Sale.]²⁵
- (m) [[To the best of the Seller's knowledge,]²⁴ each member of the Group has obtained all authorisations and licences under any applicable law and regulation that are material in connection with the operation of its business and there is no reason why any such authorisation or licence should be withdrawn or cancelled nor is there any breach by any member of the Group of the provisions of any law or regulation governing such authorisations or licences or otherwise (save for any breach that would not have any material adverse effect on the condition, financial or otherwise, or in the earnings, net assets, business, operations or prospects of the Company or the Group taken as a whole).]²⁵
- (n) [[To the best of the Seller's knowledge,]²⁴ there is no order, decree or judgement of any court or governmental agency or regulatory body outstanding or anticipated against any member of the Group which may have or has had a material adverse effect on the condition,

²⁴ It may be appropriate to delete this representation if the Seller is not a controlling shareholder and/or does not hold a board seat.

²⁵ It may be appropriate to include this when the Seller has facilitated a due diligence process with respect to the Company.

financial or otherwise, or in the earnings, net assets, business, operations or prospects of the Company or the Group taken as a whole.]²⁵

- (o) There has been no petition filed, order made or effective resolution passed for the liquidation or winding up of the Seller [or, [to the best of the Seller's knowledge,]²⁴ (i) the Company or (ii) any other member of the Group which is material to the earnings, net assets, business, operations or prospects of the Group taken as a whole.]²⁵
- (p) [[To the best of the Seller's knowledge,]²⁴ no material outstanding indebtedness of any member of the Group has become payable or repayable by reason of any default of any member of the Group and no event has occurred or is impending which may result in such indebtedness becoming payable or repayable prior to its maturity date, in a demand being made for such indebtedness to be paid or repaid or in any step being taken to enforce any security for any such indebtedness of any member of the Group.]²⁵
- (q) [[To the best of the Seller's knowledge,]²⁴ no member of the Group is a party to or under any obligation which is material and which is of an unusual or unduly onerous nature; no member of the Group is in breach of or in default of its constitutional documents or any contract or agreement which may have or has had a material adverse effect upon the condition, financial or otherwise, or in the earnings, net assets, business, operations or prospects (whether or not arising in the ordinary course of business) of any member of the Group or which is material for disclosure in the context of the Sale; neither this Agreement nor the transactions contemplated herein will constitute or give rise to a breach of or default under the constitutional documents or any agreement or other arrangement to which any member of the Group is a party or will give rise to any rights of any third party in respect of any assets of the Group.]²⁵
- (r) [[To the best of the Seller's knowledge,]²⁴ there are no material outstanding guarantees or contingent payment obligations of any member of the Group in respect of indebtedness of third parties except as disclosed in the financial statements referred to in [the preceding paragraph] which are material in the context of the Sale; and each member of the Group is in compliance with all of its obligations under any outstanding guarantees or contingent payment obligations as described in such financial statements.]²⁵
- (s) Neither the Seller nor any director, officer or other person acting for or on behalf of the Seller, nor [to the best of the Seller's knowledge,]²⁴ any member of the Group or any director, officer or other person acting for or on behalf of any member of the Group has, in connection with all or any part of the business of the Seller or any member of the Group, as appropriate, engaged in any activity or conduct that would constitute an offence under any Anti-Corruption Law (as defined below), and the Seller and all members of the Group have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with all Anti-Corruption Laws. "**Anti-Corruption Law**" means (i) the OECD Convention of Combating Bribery of Foreign Public Officials in International Business Transactions, 1997, (ii) the Foreign Corrupt Practice Act of 1977 of the United States of America, as amended, and the rules and regulations thereunder, (iii) the Bribery Act 2010 of the United Kingdom, and (iv) any similar applicable laws or regulations in any jurisdiction.
- (t) The [operations]²⁶ of the Seller and [to the best of the Seller's knowledge,]²⁴ the operations of each member of the Group are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the anti-money laundering statutes of all jurisdictions (including but not limited to the Money Laundering Control Act of Taiwan), the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental entity (collectively, the "**Anti-Money Laundering Laws**"); and no action, suit or proceeding by or before any court or

²⁶ If the Seller is a natural person, substitute "affairs" for "operations".

government agency, authority or body or any arbitrator involving the Seller or any member of the Group with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Seller, threatened.

- (u) Neither the Seller nor any director, officer or other person acting for or on behalf of the Seller, nor [to the best of the Seller's knowledge,]²⁴ any member of the Group or any director, officer or other person acting for or on behalf of any member of the Group is an individual or entity ("**Person**") that is, or is owned or controlled by a Person that is: (i) the subject of any sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority (collectively, "**Sanctions**"), or (ii) located, organised or resident in a country or territory that is, or whose government is, the subject of comprehensive Sanctions.
- (v) The Seller will not, directly or indirectly, use the proceeds of the sale of the Sale Shares, or lend, contribute or otherwise make available such proceeds to any subsidiaries, joint venture partner or other Person (i) to fund or facilitate any activities or business of or with any Person or in any country or territory, that, at the time of such funding or facilitation, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Sale, whether as underwriter, placing agent, adviser, investor or otherwise).
- (w) The Sale will not constitute a violation by the Seller of any applicable "insider dealing", "insider trading" or similar legislation including the provisions under the Securities Exchange Act of Taiwan; the Seller is not aware of any non-public fact or circumstance that could reasonably be deemed to be material or, if made public, would or might reasonably be expected to have a significant effect upon the market price or trading volume, or both, of the Shares or other securities of the Company.
- (x) The Company is a "foreign issuer" (as defined in Regulation S ("**Regulation S**") under the Securities Act).
- (y) The Seller reasonably believes that there is no substantial U.S. market interest (as defined in Regulation S) in the [common shares]²⁷ of the Company.
- (z) [None of the Seller, any of its Affiliates or any person acting on its or their behalf (except for the Manager, as to which no representation is made), directly or indirectly, has made or will make any offers or sales of any security, or has solicited or will solicit offers to buy, or otherwise has negotiated or will negotiate in respect of, any security, under circumstances that would require the registration of the Sale Shares under the Securities Act.]²⁸
- (aa) None of the Seller, any of its Affiliates or any person acting on its or their behalf (except for the Manager, as to which no representation is made) has engaged or will engage in any "directed selling efforts" (within the meaning of Regulation S) [or any form of "general solicitation" or "general advertising" (within the meaning of Regulation D), with respect to the Sale Shares]²⁹.
- (bb) None of the Seller, any of its Affiliates or any person acting on its or their behalf (except for the Manager, as to which no representation is made) has taken or will take, directly or indirectly, any action designed to cause or to result in, or that has constituted or which might reasonably be expected to cause or result in, the stabilisation or manipulation of the price of any securities of the Company, or which otherwise constitutes or might reasonably be expected to constitute "market abuse" under the Securities Exchange Act of Taiwan or

²⁷ To be changed as appropriate.

²⁸ This representation can be deleted if there will be no U.S. sales.

²⁹ The bracketed portion can be deleted if there will be no U.S. sales.

similar laws and regulations; and by entering into this Agreement the Seller is not seeking to create, or expecting there to be created, a false or misleading market in, or the price or trading volume of, the Shares or any other securities of the Company.

- (cc) None of the Seller, any of its Affiliates or any person acting on its or their behalf (except for the Manager, as to which no representation is made) has distributed and, prior to the later to occur of (i) the Closing Date and (ii) completion of the distribution of the Sale Shares, none of the Seller, any of its Affiliates or any person acting on its or their behalf (except for the Manager, as to which no representation is made) shall distribute, any offering or sales materials in connection with the offering and sale of the Sale Shares.
- (dd) [The Sale Shares satisfy the eligibility requirements of Rule 144A(d)(3) under the Securities Act ("**Rule 144A**").]³⁰
- (ee) [The Company is exempt from the reporting requirements of the U.S. Securities Exchange Act of 1934, as amended, pursuant to the exception afforded by Rule 12g3-2(b) thereunder.]^{31 32}
- (ff) [The Company is not required to be registered as an "investment company" under, and as such term is defined in, the United States Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.]³³
- (gg) [The Company is not and does not expect to become a "passive foreign investment company" as defined in Section 1297 of the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.]³⁴

³⁰ This representation can be deleted if there will be no U.S. sales. While the form is drafted to allow the Shares to be sold in the United States either in reliance on Rule 144A or under the so-called "Section 4(1½)" exemption, certain additional procedures may need to be included depending on the characteristics of the Company in the case of reliance on the latter exemption.

³¹ Alternatives to this representation are (1) that the Company is a reporting company in the United States or (2) that the Company undertakes to fulfil the Rule 144A information furnishing requirements (which may be unlikely in the context of a block trade deal to which the Company is not a party). Alternative (2) is included as a condition in Clause 3(f) of this Agreement.

³² This representation is required if the trade is being executed in reliance on Rule 144A. If the representation cannot be made by the Seller, the form is otherwise drafted to allow the Shares to be sold under the so-called "Section 4(1½)" exemption. It can be deleted if there will be no U.S. sales.

³³ The necessity of this representation will depend on the nature of the business of the Company.

³⁴ The necessity of this representation will depend on the nature of the business or tile Company.

ANNEX C

Representations, Warranties and Undertakings of the Manager

- (a) It has not offered or sold, and will not offer or sell, any Sale Shares within the United States as part of their distribution at any time except:
 - (i) to those persons it reasonably believes to be "qualified institutional buyers" (as defined in Rule 144A under the Securities Act); or
 - (ii)]³⁵ in accordance with Rule 903 of Regulation S.
- (b) [Neither it nor any person acting on its behalf has made or will make offers or sales of the Sale Shares in the United States by means of any form of general solicitation or general advertising (within the meaning of Regulation D) in the United States.]³⁶
- (c) Neither it, nor any of its Affiliates nor any person acting on its or their behalf has engaged or will engage in any directed selling efforts (within the meaning of Regulation S) with respect to the Sale Shares.

³⁵ The bracketed portion can be deleted if there will be no U.S. sales.

³⁶ This representation can be deleted if there will be no U.S. sales.