

**HONG KONG QUALITY ASSURANCE AGENCY**

**TERMS AND CONDITIONS OF  
GREEN FINANCE CERTIFICATION SCHEME**

**14 December 2017**

## Terms and Conditions of Green Finance Certification Scheme

### 1. Interpretation

1.1. In this T&C, unless the context otherwise required:

“Appeals Panel” means a panel established for the purpose of hearing appeals relating to the Scheme. The panel appointed in respect of each appeal shall consist of the chairman of the Council (or his appointed deputy) and at least two other members drawn from the Council.

“Application” means an application lodged and/or to be lodged by an Applicant for the purpose of certifying its Green Finance with a basket of Green Projects under this Scheme.

“Applicant(s)” means (a) Green Finance issuers who have applied for but the Green Finance with its Green Projects have not yet been certified under this Scheme; and/or (b) Green Finance issuers and its Green Finance with its Green Projects have been certified under this Scheme, as the context so admits. In this Scheme, the Applicant shall be the issuer of the specified Green Finance.

“Assessment” means an in-depth assessment conducted by HKQAA to determine whether an Applicant fulfills the requirements of this certification. There are two types of Assessment: Certification Assessment and Surveillance Assessment.

“Certification Assessments” means the certification assessments carried out by HKQAA pursuant to this T&C, the Handbook and the Guidelines for the purpose of validating and examining the Applicant’s conformance and fulfillment of all the certification requirements under this Scheme pursuant to this T&C, the Handbook and the Guidelines.

“Surveillance Assessments” means the surveillance assessments carried out by HKQAA pursuant to this T&C, the Handbook and the Guidelines for the purpose of verifying and examining the Applicant’s continual conformance and fulfillment of all the certification requirements under this Scheme pursuant to this T&C, the Handbook and the Guidelines. For Pre-Issuance Stage Certificate, Surveillance Assessment is not required.

“Assessor” means an independent assessor that provides confirmation, assessment and/or conclusion to HKQAA in order to prove conformance of certification requirements of the Applicant under this Scheme.

“Certificate” means a certificate issued by HKQAA endorsed by a director (being one of the Council Members of HKQAA) and the Executive Director recognizing that the Green Finance with its Green Projects comply with the certification requirements in this T&C, the Handbook and the Guidelines after being assessed by HKQAA pursuant to this T&C, the Handbook and the Guidelines. There are two types of certificate: Pre-Issuance Stage Certificate and Post-Issuance Stage Certificate.

“Pre-Issuance Stage Certificate” means a Certificate that is applicable for Green Finance Issuer seeking certification ahead of the Green Finance issuance.

“Post-Issuance Stage Certificate” means a Certificate that is applicable for Green Finance Issuer seeking certification after the issuance of Green Finance.

“Certification Mark” means a trade mark designed by HKQAA with unique certificate numbers indicating that a specified Green Finance issued by an Applicant is duly certified under this Scheme.

“Chief Executive Officer” means the member of the permanent staff of HKQAA appointed for the time being by the Council to be in charge of HKQAA.

“Council” means the governing body of HKQAA.

“Environmental Method Statements” means the environmental method statements made and given by an Applicant to HKQAA from time to time during the Application process as required under this Scheme;

“Green Finance” means a financial instrument for “achieving economic growth while reducing pollution and greenhouse gas emissions, minimising waste and improving efficiency in the use of natural resources.”

“Green Projects” means the projects proposed by a Green Finance issuer to be funded by the specified Green Finance that either fulfill the eligibility criteria set by the Green Finance issuer for the specific secondary category of Green Project Classification or have the capability to make a positive impact on the environment.

“Green Project Classification” means the green project classification as listed in Appendix A of the Handbook which is drafted and prepared by HKQAA together with other amendments, supplements and/or additions made by HKQAA at its sole and absolute discretion from time to time.

“Guidelines” means the guidelines for the Use of Certification Mark for the Scheme which is drafted and prepared by HKQAA together with other amendments, supplements and/or additions made by HKQAA at its sole and absolute discretion from time to time.

“Handbook” means the handbook which is drafted and prepared by HKQAA for the Scheme together with other amendments, supplements and/or additions made by HKQAA at its sole and absolute discretion from time to time.

“HKQAA” means the Hong Kong Quality Assurance Agency, a non-profit distributing organisation, the operator of the Scheme.

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

“Scheme” means the Green Finance Certification Scheme to be operated by HKQAA for certifying Green Finance with its projects that duly and fully comply with all the requirements of certification under such Scheme referring to this T&C, the Handbook and the Guidelines.

“T&C” means these terms and conditions of the Scheme together with other amendments, supplements and/or additions made by HKQAA at its sole and absolute discretion from time to time.

## **2. Scheme Setting**

- 2.1. This Scheme includes two types of Certificates: Green Finance of Pre-Issuance Stage Certificate (“Pre-Issuance Stage Certificate”) and Green Finance of Post-Issuance Stage Certificate (“Post-Issuance Stage Certificate”).
- 2.2. A Pre-Issuance Stage Certificate will be an as-at Certificate. A Pre-Issuance Stage Certificate will state its issuance date but it will have no validity and expiry date. The assurance provided is based on the past activities up to the issuance date. No Surveillance Assessment is required.
- 2.3. Further, the grant of a Pre-Issuance Stage Certificate is based on Environmental Method Statements made by the Applicant during the Application process of a Pre-Issuance Stage Certificate lodged by the Applicant. The Environmental Method Statement can be accessed via HKQAA website after Certificate issuance. The Pre-Issuance Stage Certificate will be valid only corresponding to the version of Environmental Method Statement on HKQAA website.
- 2.4. If an Applicant made any change to the Environmental Method Statements after the Pre-Issuance Stage Certificate’s issuance, the corresponding Pre-Issuance Stage Certificate will be regarded as invalid. In this case, the Applicant shall inform HKQAA in writing for any change in Environmental Method Statements within one month after the occurrence of the foreseeable or actual changes. The Applicant should make a new application for the certification of revised Environmental Method Statements.
- 2.5. A Post-Issuance Stage Certificate will be valid until the maturity date of a certified Green Finance. Surveillance Assessments are required to ensure the compliance with the certification requirements during the validity of such certified Green Finance and HKQAA will carry out Surveillance Assessments on a regular basis from time to time at its sole and absolute discretion.
- 2.6. The certification requirements of a Post-Issuance Stage Certificate also include the certification requirements of a Pre-Issuance Stage Certificate. It is not a prerequisite for an Applicant of a Post-Issuance Stage Certificate to possess Pre-Issuance Stage Certificate. An Applicant of a Pre-Issuance Stage Certificate may opt to apply a Post-Issuance Stage Certificate as the Applicant thinks fit.

2.7. If a holder of a Pre-Issuance Stage Certificate wishes to apply for a Post-Issuance Stage Certificate, the Assessment on Environmental Method Statements made by such holder at the application stage of the Pre-Issuance Stage Certificate could be waived at the sole and absolute discretion of HKQAA on the condition that there is no change in the Environmental Method Statements made by such holder after the issue of the Pre-Issuance Stage Certificate.

### **3. Specific Limitations and Exclusions**

3.1. HKQAA is not providing services and will not:

- 3.1.1. provide any financial, legal, tax, advisory, consultative services to the Applicant;
- 3.1.2. provide any advice to the Applicant on structuring the transaction or drafting transaction documents;
- 3.1.3. provide any other consulting, advisory or other advice of any type;
- 3.1.4. determine which, if any, recommendations should be implemented;
- 3.1.5. provide assurance on information outside the defined reporting boundary and period;
- 3.1.6. verify the Applicant's financial statements and economic performance;
- 3.1.7. verify the Applicant's statements that describe expression of opinion, belief, aspiration, expectation, aim or future intention and national or global socio-economic and environmental aspects provided by the Applicant;
- 3.1.8. provide any advice or comment in respect of the repayment ability, profitability, financial stability, operation and/or business model of the Applicant

3.2. The issuance of a Certificate must not be construed or represented as HKQAA rendering advice on any project, or project portfolio (including but not limited to the Green Projects) that is to be funded in whole or in part from the proceeds received from the relevant Green Finance offering.

3.3. The Applicant understands that the issuance of a Certificate by HKQAA does not and is not intended to be a comment on market price, investor preference or investor suitability of any Green Finance and the Applicant agrees and guarantee that it will not use the Certificate in any such way.

3.4. HKQAA shall determine the conformance of certification requirements of an Applicant on Use and Management of proceeds by relying on the confirmation, Assessment and/or conclusion provided by the accountant or assessor engaged by the Applicant on Use and Management of proceeds. HKQAA shall not and has no duty to verify nor provide assurance on the financial records and status of bond proceeds.

- 3.5. HKQAA uses information, documents and evidence provided by an Applicant during the Application process of a Certificate, however, HKQAA does not and has no duty to perform any Assessment of any information, documents and evidence provided by the Applicant; and HKQAA also does not undertake any duty of due diligence or independent verification of any information, documents and evidence provided by the Applicant.

#### **4. Application**

- 4.1. An Applicant who desires to certify its Green Finance with its Green Projects under the Scheme agrees to submit an application form and to lodge an Application in writing to HKQAA and provide all information, documents and evidence (e.g. its legal entity documentation and other information) required by HKQAA at its sole and absolute discretion from time to time and HKQAA agrees to examine and process the Application lodged by the Applicant in accordance with the practice, policies, terms and conditions of this T&C, the Handbook and the Guidelines.
- 4.2. Following the making of an Application, HKQAA shall as soon as practicable review the Application to ensure that all required information, documents and evidence have been provided and the Applicant is prepared and ready to be examined. The required information, documents, evidence and other requirements of the Application shall be referred to this T&C, the Handbook and the Guidelines.
- 4.3. HKQAA is entitled to raise inquiries and/or request the Applicant to provide further information, documents and evidence after the Applicant lodges an Application to HKQAA to determine the qualification of its Green Finance to be certified under this Scheme. The Applicant hereby agrees that HKQAA shall be entitled to retain such information, documents and evidence and copies thereof. All information, documents and evidence submitted to HKQAA will only be used for the purpose of certification and will not be returned in any event.
- 4.4. The Applicant understands and agrees that the time required to review all information, documents and evidence and to raise inquiries in each Application depend on various factors (including but not limited to the completeness of the information and etc.). Thus, HKQAA makes no guarantee as to the time required to complete the Assessment and review of each Application.

#### **5. Assessment**

- 5.1. Following the submission of an Application and as per the requirements in this T&C, the Handbook and the Guidelines, an Applicant will be subject to a Certification Assessment. HKQAA is entitled to take follow-up actions at its sole and absolute discretion from time to time if the information, documents and evidence submitted for review are not sufficient to support the implementation and effectiveness level of the Environmental Method Statements made by the Applicant. Follow-up actions may include document review, on-site Assessment, telephone or email interviews.

- 5.2. If an Applicant refuses or otherwise does not co-operate with HKQAA nor take part in any part of the Certification Assessment and follow-up as mentioned in Clause 5.2 hereof, HKQAA shall be entitled to withdraw relevant Application of the relevant Applicant or disapprove the relevant Application.
- 5.3. The Applicants who are the holders of Post-Issuance Stage Certificate are subject to ongoing monitoring by HKQAA from time to time, and shall acknowledge that Surveillance Assessments shall be carried out on a regular basis from time to time at HKQAA's sole and absolute discretion in order to verify and examine the continual conformance and fulfillment of all the certification requirements under the Scheme pursuant to this T&C, the Handbook and the Guidelines.
- 5.4. All the Assessment activities will be carried out by HKQAA in accordance with the practices, policies, terms and conditions in this T&C, the Handbook and the Guidelines. The Applicant hereby acknowledges and agrees to comply with all the practices, policies, terms and conditions in this T&C, the Handbook and the Guidelines. Although HKQAA will merely carry out an objective Assessment and evaluation and has no duty of due diligence or independent verification of any information, documents and evidence provided by the Applicant, HKQAA hereby reserves all the rights to (a) verify and examine the validity of the self-declaration made by the Applicant pursuant to this T&C, the Handbook and the Guidelines; (b) to request the Applicant to provide all necessary information, documents and evidence to HKQAA in order to verify the confirmation, Assessment and/or conclusion provided by the Assessor; (c) to request the Applicant to provide all necessary information, documents and evidence to HKQAA in order to enable the Applicant to carry out Surveillance Assessments and other Assessment activities from time to time under this Scheme.
- 5.5. Without limitation to Clause 5.4:
- 5.5.1. All Assessments activities will be carried out by qualified and experienced personnel, either employed by HKQAA or contracted by HKQAA. HKQAA shall provide an Applicant with the names of all personnel who will form part of an Assessment team.
- 5.5.2. HKQAA agrees that a decision on whether to approve an Application will be based on objective evidence provided by the Applicant together with other certification requirements in this T&C, the Handbook and the Guidelines.
- 5.5.3. The Applicant acknowledges that it has the responsibility to ensure that the Certification Mark is used in accordance with the Guidelines and HKQAA will provide the Guidelines to an Applicant on or before certification.
- 5.5.4. HKQAA shall notify an Applicant of the dates for any Assessment activities.
- 5.5.5. All Applicants acknowledge, agree and guarantee that (a) all information, documents and evidence provided by them to HKQAA under this Scheme are correct, accurate,

complete and not misleading in all material respects; and (b) the specified Green Finance and its Green Projects and all relevant information, documents and evidence conform to the certification requirements and that HKQAA will merely carry out an objective Assessment and evaluation and has no duty of due diligence or independent verification of any information, documents and evidence provided by the Applicant

5.5.6. HKQAA shall inform an Applicant of all the required arrangements for the conduct of an Assessment and/or the evaluation of specified Green Finance and its Green Projects, including provision for examining documentation, the required access to all processes and areas, records and personnel and testing, all for the purposes of assessing certification, as well as in respect of future ongoing Surveillance Assessment.

5.6. It may be necessary for HKQAA to conduct Assessment or follow-up at short notice to investigate complaints, or in response to changes. In such cases;

5.6.1. An Applicant will allow HKQAA together with its personnel to conduct such Assessment or follow-up actions and will provide full cooperation and assistance to HKQAA and its personnel from time to time; and

5.6.2. HKQAA shall describe and make known in advance to an Applicant regarding the conditions under which these short notice visits are to be conducted.

## **6. Certification**

6.1. Once an Application is approved, the Applicant agrees to fully and duly comply with the following requirements during the period when the specified Green Finance is certified under the Scheme and obtain a Certificate which shall nevertheless remain the property of HKQAA. A separate Certificate will be issued in respect of each certification for which an application is made.

6.1.1. The Applicant accepts and fully complies with this T&C, the Handbook, and the Guidelines at all times;

6.1.2. The Applicant carries on a bona fide business;

6.1.3. The Applicant provides to HKQAA with such undertakings and proof of the Applicant's legal status as HKQAA may require from time to time;

6.1.4. The Applicant pays all necessary fees to HKQAA punctually; and

6.2. HKQAA shall issue a confirmation to an Applicant once its Application is approved.



- 6.2.1. If an Applicant fails and/or refuses to provide all necessary information, documents and evidence as requested by HKQAA for whatever reasons in order to enable HKQAA to assess the Application within three (3) years from the date of Application, then the Application shall be deemed to be rejected and all fees (including but not limited to the application fees) paid by the Applicant to HKQAA will be forfeited by HKQAA and no refund will be made to the Applicant in any event. The Applicant is required to submit a new Application if the Applicant wants to re-apply.

## **7. Information**

- 7.1. With respect to the initial application of a Certificate, initial issuance and continuing use by an Applicant of, any Certificate on specified Green Finance, the Applicant agrees to provide or cause to be provided to HKQAA all information, documents and evidence available to the Applicant set out in the certification requirements in making its determination:
  - 7.1.1. about whether to issue a Certificate to the Applicant; and
  - 7.1.2. about the Applicant's ongoing conformance and fulfillment with the certification requirements as in effect on the initial determination date by HKQAA to issue the Certificate to the Applicant,
- 7.2. The Applicant represents and warrants that all the information, documents and evidence provided to HKQAA by the Applicant are true, accurate, correct and not misleading in all material respects.
- 7.3. A breach of the representations and warranties in Clause 7.2 constitutes a breach of this T&C by an Applicant.
- 7.4. The Applicant understands and agrees that HKQAA is entitled to disclose the following information to the public (e.g. via HKQAA's website) at its sole and absolute discretion:
  - 7.4.1. The type and validity of the Certificate of the specified Green Finance (if applicable);
  - 7.4.2. Other information as required to be disclosed in the Handbook;
  - 7.4.3. Other information as agreed to be disclosed by the Applicants.

## **8. Impartiality**

- 8.1. HKQAA recognizes the importance of impartiality, the active management of conflicts and objectivity in operating the Scheme and HKQAA agrees to use all reasonable efforts to operate the Scheme in a fair and impartial manner.

## **9. Assignment and Subcontracting**

- 9.1. The Applicant cannot and is not permitted to licence, assign or otherwise transfer the right to use the Certificate and/or the Certification Mark in any event without the prior written permission of HKQAA.
- 9.2. If an Applicant breaches Clause 9.1 hereof, HKQAA is entitled to withdraw and cancel the Certificate issued to the Applicant forthwith without any notice to the Applicant.
- 9.3. HKQAA may sub-contract out or outsource the assessing of an Applicant, the evaluation or other certification activities provided under the Scheme to a third party provided always that;
- 9.3.1. The ultimate decision as to whether to grant, renew, suspend or withdraw certification shall remain with HKQAA;
- 9.3.2. HKQAA shall be fully responsible for all activities outsourced and such outsourced activities shall be provided in accordance with this T&C.

## **10. Obligations of the Applicant**

- 10.1. The Applicant hereby represents, warrants and undertakes to HKQAA that it shall:
- 10.1.1. at all times comply with the terms and conditions set forth in this T&C, the Handbook and the Guidelines;
- 10.1.2. claim compliance and rights with the Scheme with respect only to the Green Finance and Green Projects which are subject to certification under the Scheme;
- 10.1.3. prepare, maintain and keep all the required information, documents and evidence as stated in this T&C, the Handbook and the Guidelines and provide the aforesaid information, documents and evidence to HKQAA as requested by HKQAA in a timely manner from time to time;
- 10.1.4. inform HKQAA in writing for foreseeable or actual changes on (i) the legal status of the Applicant (ii) the legal status of the specified Green Finance; (iii) any change in Environmental Method Statements within one (1) month after the occurrence of the foreseeable or actual changes;
- 10.1.5. not use its Certificate in such a manner as to bring HKQAA into disrepute, and the Applicant shall not make and/or cease making any statement regarding its Certificate which HKQAA may consider inappropriate, inaccurate or misleading;
- 10.1.6. ensure that its certification documents including but not limited to the Certificate, or any report, or any part thereof and the Certification Mark and the trademarks and

trade names of HKQAA are used without any amendment and are not used in a misleading manner or in breach of any term and condition of this T&C, the Handbook and the Guidelines;

- 10.1.7. ensure that (1) the prospectus and other documents related to the specified Green Finance issued to the public contain the detailed information in respect of (a) the type of the Certificate; (b) the scope of certification of the Green Finance; and (c) the Assessment method of this Scheme; OR (2) the public is probably notified regarding the way to access the detailed information in respect of (a) the type of the Certificate; (b) the scope of certification of the Green Finance; and (c) the Assessment method of this Scheme;
- 10.1.8. give the representatives of HKQAA access (without prior notice if required by HKQAA) during normal working hours (including shift operating hours) to the premises or sites in which work or services the subject of the certification under the Scheme is being carried out for the purpose of, inter alia, when on-site Assessment is required;
  - (a) examining materials, processes, finished articles, methods of testing, methods of operation, records and systems, management system documents, verifying and examining that the specified Green Finance are in accordance with the certification requirements under the Scheme; and
  - (b) undertaking Assessments or establishing that an Applicant has carried out its obligations on withdrawal of certification under the Scheme as described in Clause 17;
- 10.1.9. nominate an authorized representative and one or more deputies authorized to act in the nominee's absence and replacement nominees as may be necessary (such nominations are subject to HKQAA's approval) who shall be responsible for all matters in connection with the certification requirements under the Scheme;
- 10.1.10. make available to HKQAA, when requested, the records of all complaints and stakeholders' comments (if applicable) as well as the actions, feedbacks and replies taken and/or given by the Applicant in response to the complaints and stakeholders' comments (if applicable);
- 10.1.11. provide all the necessary information, documents and evidence to HKQAA (including but not limited to any English or Chinese or other translation of the Applicant's name or the specified Green Finance's name) during or with a view to the Assessment activities and other inspections and examination conducted by HKQAA and ensure that all such information, documents and evidence are true, correct, complete and not misleading in all material respects and there is no fact not disclosed which would render any such information, document or evidence inaccurate or misleading in any material respects or which, if disclosed, might reasonably affect the decision of HKQAA regarding the Application; and

- 10.1.12. only use its Certificate in relation to the specified Green Finance and not imply that any parent, subsidiary, affiliate, partner or other entity or any other non-certified project or any other non-certified debt instrument is certified under this Scheme (e.g. using any misleading English, Chinese or other translation or version of the name of an entity, or a product).
- 10.2. An Applicant acknowledges that the certification of its specified Green Finance by HKQAA in accordance with the Scheme and any continuing certification has or will in part be based upon information, documents, evidence and records which the Applicant has or will provide to HKQAA, and the Applicant hereby warrants that all such information, documents, evidence and records have in the past and will in the future be entirely accurate, genuine, complete and not misleading in all material respects and that the Applicant's continuing certification under the Scheme is conditional on the Applicant's strict compliance with this warranty.
- 10.3. The Applicant agrees that if the specified Green Finance become non-conformant with the certification requirements in this T&C, the Handbook and/or the Guidelines, then the Applicant must promptly (within one month of the becoming aware of the non-conformance) provide a written notice to HKQAA of the fact of non-conformance.

## **11. Charges**

### 11.1. HKQAA shall charge and the Applicant shall pay:

- 11.1.1. an application fee which is non-refundable in any event and payable upon submission of the prescribed form of Application;
- 11.1.2. Assessment fees for Assessment activities shall be charged according to the actual manday and the prevailing manday unit rate as determined by HKQAA from time to time within fourteen (14) days after HKQAA issues a demand note/invoice to the Applicant;
- 11.1.3. overseas travelling expenses including meals, transportation and accommodation costs as may be incurred by HKQAA in respect of the Application to be reimbursed by the Applicant to HKQAA within fourteen (14) days after HKQAA issues a demand note/invoice to the Applicant; and
- 11.1.4. any additional costs incurred by HKQAA due to non-compliance with this T&C within fourteen (14) days after HKQAA issues a demand note/invoice to the Applicant.

11.2. The amount of all fees (including but not limited to the aforesaid application fee, Assessment fees, overseas travelling expenses, additional costs and annual fee) to be charged to and payable by an Applicant in accordance with Clause 11.1 shall be determined by HKQAA on a fair and reasonable basis and HKQAA is entitled to determine and vary the amount of all fees referred to in Clause 11.1 at its sole and absolute discretion from time to time. HKQAA shall

provide the Applicant full details and information concerning all relevant fees relating to the Scheme on request.

11.3. All fees referred to in Clause 11.1 paid to HKQAA shall be non-refundable in any event and shall not be subject to set-off or deduction. All payments shall not be affected by the final outcome of an Application.

11.4. If an Applicant cannot, refuses and/or fails to pay any fee referred to in Clause 11.1 on the respective due dates, HKQAA shall be entitled to (i) terminate the contract with the Applicant with immediate effect without prior notice and without affecting HKQAA's right to claim against the Applicant for any antecedent breach; (ii) forfeit all the fees paid by the Applicant; and (iii) charge the Applicant interest on the outstanding fee at the rate of four percent (4%) per annum above the Hongkong and Shanghai Banking Corporation Limited's prime rate in force from time to time from the due date of the outstanding fee until actual payment is made.

## **12. Confidentiality**

12.1. In order to increase the transparency of the result, Assessment methods and requirements of this Scheme, the Applicant understands and agrees that the HKQAA will disclose the following information to the public via its website and/or other channels:

- 12.1.1. name of Green Finance;
- 12.1.2. name of Issuer;
- 12.1.3. Green Finance's issue date;
- 12.1.4. Green Finance's size (e.g. bond size in USD);
- 12.1.5. country of issue;
- 12.1.6. type of Certificate (Pre/Post);
- 12.1.7. green category;
- 12.1.8. verification statement;
- 12.1.9. Environmental Method Statement; and
- 12.1.10. other information which can increase the transparency of the result, Assessment methods and requirements of this Scheme as determined by HKQAA from time to time at its sole and absolute discretion.

12.2. Subject to Clause 12.1, all other information of a technical or business nature disclosed by the Applicant to HKQAA in the Application process shall be regarded as confidential and shall only be disclosed by HKQAA to its employees if necessary and HKQAA shall ensure that such personnel treat such information as confidential. Subject to Clause 12.1, such information shall only be used by HKQAA for the purpose of processing the Application and shall not without the prior written consent of the Applicant be disclosed by HKQAA to any third party, provided always that the foregoing obligations of confidence shall not apply to information which is:-

- 12.2.1. in the public domain;

12.2.2. already in the possession of HKQAA or later comes into the possession of HKQAA without any obligations of confidence from an independent third party who has not derived it from the Applicant in question;

12.2.3. disclosed to a third party pursuant to the written consent of the Applicant in question;

12.2.4. disclosed to a third party pursuant to statutory, regulatory or other legal requirements including any Order of court;

12.3. HKQAA shall prior to disclosure of information under Clause 12.2.4 above inform the Applicant of the intended disclosure (unless prohibited by law).

12.3 HKQAA confirms that it shall inform all of its employees (including committee members) acting on its behalf of the confidentiality obligations of HKQAA as specified above, and HKQAA shall be responsible for ensuring that such employees keep all relevant information confidential.

### **13. Exclusion of liability**

13.1. HKQAA shall not be liable to the Applicant for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Application or the certification of the specified Green Finance under this Scheme or the sale of debt instruments (including but not limited to the specified Green Finances issued or to be issued by the Applicant) or the sale of goods or rendering of services to the public by the Applicant (whether or not by reference to the Certification Mark), and notwithstanding the generality of the foregoing, HKQAA expressly excludes liability for consequential loss or damage suffered by the Applicant including any loss or damage resulting from claims brought by any clients or customers of the Applicant, or for loss of profit, business, revenue, goodwill or anticipated savings.

13.2. Subject to Clause 13.1 above, all conditions and warranties on the part of HKQAA implied by statute, common law or otherwise are expressly excluded.

13.3. Without prejudice to Clauses 13.1 and 13.2, and in the event that the courts of Hong Kong consider a complete exclusion of liability hereunder to be unreasonable, HKQAA's liability in contract, tort or otherwise to the Applicant with respect to any claim arising in connection with its acts or omissions or negligence in assessing and/or certifying the specified Green Finance under this Scheme and/or operating this Scheme shall be capped at the lower of (i) the amount of fees received by HKQAA from the Applicant in the year for which the annual fee is paid and in which the alleged liability arises; or (ii) HK\$200,000.

13.4. The Applicant acknowledges that HKQAA relies on its reviews of information, documents and evidence provided by the Applicant as required in this T&C, the Handbook and the Guidelines to process and consider the Application. Under this Scheme, the Applicant who is granted with a Certificate has the right to use the Certification Mark, the labels and/or the stickers (as the case may be) in accordance with the Guidelines. The Applicant is solely responsible for the

truthfulness, accuracy and completeness of the contents of the self-declaration made under this Scheme.

#### **14. Indemnity**

14.1. The Applicant shall be liable for and will irrevocably and unconditionally indemnify HKQAA on a full indemnity basis against any and all liabilities, losses damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by HKQAA whether direct or consequential (including but without limitation any economic loss or other loss of profits, business or goodwill) arising out of or in connection with any dispute or contractual, tortious or other claims or proceedings brought against HKQAA by a third party claiming relief against HKQAA in respect of any event arising from and/or in connection with any breach of this T&C, the Handbook and/or the Guidelines by the Applicant.

#### **15. Ownership and use of the Certification Mark**

15.1. HKQAA is the legal and beneficial owner of the Certification Mark and is not aware that the use of the Certification Mark will infringe the rights of any third party in Hong Kong or elsewhere but gives no warranty as to whether any such third party rights will be infringed in Hong Kong or elsewhere.

15.2. The Applicant will not make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of the Certification Mark except under the terms of its certification under the Scheme. The Applicant further acknowledges that nothing contained in this T&C shall give the Applicant any right, title or interest in or to the Certification Mark save as granted hereby.

15.3. Upon the issue of a Certificate, the Applicant is entitled to use the Certification Mark in accordance with the Guidelines. The Applicant will on request give to HKQAA all information, documents and evidence as to its use of the Certification Mark.

15.4. The Applicant agrees and acknowledges that the layout and design of the Certification Mark may be amended, revised or otherwise modified by HKQAA at its sole and absolute discretion from time to time.

#### **16. Suspension of a Certificate**

16.1. If an Applicant is temporarily unable to comply with the certification requirements and/or fails to comply with this T&C, the Handbook and/or the Guidelines including but not limited to any failure to permit Surveillance Assessments, then HKQAA is entitled to:

- (a) require the Applicant in question to discontinue the use of the Certification Mark and/or any claim to related to the Certificate under the Scheme with immediate effect until it is satisfied that the certification requirements are again achieved and the Applicant in

question has remedied any breach of this T&C, the Handbook and/or the Guidelines (as the case may be); and/or

- (b) temporarily amend the scope of the Certificate in question if the Applicant is unable to comply with this T&C, the Handbook and/or the Guidelines (as the case may be) in respect of the full scope of its original Certificate.

16.2. HKQAA will on the request of an Applicant suspend the Certificate issued to the Applicant.

## **17. Withdrawal and Cancellation of a Certificate**

17.1. HKQAA is entitled, at its sole and absolute discretion, to (i) withdraw and cancel a Certificate issued to an Applicant; and/or (ii) refuse and/or reject the Application lodged by an Applicant by issuing a written notice to the Applicant if:

- 17.1.1. the Applicant is unable to comply with the certification requirements and/or commits a breach of this T&C, the Handbook and/or the Guidelines including but not limited to any failure to permit Surveillance Assessments, provided that if the breach can be remedied, the notice shall only be given if the Applicant refuses and/or fails to remedy the same within one (1) month after HKQAA issues a written notice to the Applicant specifying the breach and requiring the Applicant to remedy the same;
- 17.1.2. the Applicant is subject to a suspension order or an amendment order under Clause 16 for more than six (6) months; or
- 17.1.3. the Applicant becomes subject to any winding up petition or winding up order or makes any arrangements or composition with its creditors, or enters into liquidation, whether compulsory or voluntary (but not including liquidation for the purpose of reconstruction), or has a receiver of its business appointed, or an officer of the Applicant is convicted of an offence tending to discredit the reputation and good faith of the Applicant.

17.2. In the event of withdrawal, all the outstanding fees incurred by HKQAA prior to the withdrawal shall become immediately due and payable notwithstanding anything provided for in Clause 11.1. All fees paid to HKQAA before the withdrawal will be forfeited by HKQAA and no refund will be made to the Applicant in any event.

## **18. Consequence of Withdrawal and Cancellation**

18.1. Upon withdrawal and cancellation of a Certificate, the Applicant agrees, undertakes and warrants that it shall forthwith:

- 18.1.1. cease using the Certificate and/or the Certification Mark in any manner whatsoever and shall cease using any advertising or other material that may imply that the specified Green Finance is certified under the Scheme;



- 18.1.2. cease carrying on business or operating in a manner which may imply that the specified Green Finance is certified under this Scheme and cease holding out any present connection or association with HKQAA;
- 18.1.3. at HKQAA's sole and absolute option, either deliver up to HKQAA or destroy, in the presence of a representative of HKQAA if so required by HKQAA, the Certificate, all materials and items bearing the Certification Mark and other material contemplated by sub-clause 18.1.1; and
- 18.1.4. notify all customers of the Applicant regarding the termination of Certificate under this Scheme.

## **19. Duration**

- 19.1. This T&C, the Handbook and the Guidelines (as amended from time to time) shall remain in force for so long as the Certificate is valid under this Scheme.

## **20. Complaints**

- 20.1. HKQAA agrees to investigate in its reasonable discretion all complaints received in respect of the operation of this Scheme (including but not limited to the Application process, the Assessment activities and certification process of any specified Green Finance under this Scheme).
- 20.2. Upon receipt of a complaint, HKQAA shall confirm whether the complaint relates to this Scheme and, if so, HKQAA shall use reasonable efforts to handle the same. Such complaints shall be addressed and investigated in accordance with HKQAA's documented complaint handling procedure.

## **21. Appeal**

- 21.1. In the event that the Applicant wishes to appeal against any decision of HKQAA under this T&C, it shall, within twenty-one (21) days after being officially informed by HKQAA of such decision, give a notice in writing to the secretary of HKQAA of its desire to appeal against such decision.
- 21.2. A meeting of the Appeals Panel shall be held within thirty (30) days of receipt of such notice and the appellant shall be given at least seven (7) days' notice of the time and place of such a meeting. The original decision of HKQAA shall stand (and its effect take place) pending any meeting of the Appeals Panel. In the meeting of the Appeals Panel, both the appellant and HKQAA executives shall be entitled to be heard in confidence. The decision of the majority of the Appeals Panel as declared by its chairman shall be final. The chairman may exercise a casting vote. The chairman shall provide the appellant a written statement of the appeal findings; including the reason for the decision reached, within twenty-one (21) days after the decision of the Appeals Panel is made.

21.3. No member of an Appeals Panel may have any direct interest in the subject of the appeal. Nevertheless, an appellant shall have the right to state objections to the constitution of the Appeals Panel. Following receipt of any objection the Council of HKQAA shall consider the objection and decide whether to change or retain the constitution of the Appeals Panel. The decision made by the Council of HKQAA in relation to the objection and constitution of the Appeals Panels shall be final.

## **22. Alterations**

22.1. This T&C, the Handbooks and the Guidelines may from time to time be amended, supplemented and edited by HKQAA at its sole and absolute discretion. No such alterations shall affect the right to use the Certification Mark or claim to be certified under this Scheme unless or until it shall have been given notices in writing of such alterations by HKQAA who will notify an Applicant of the effective date by which it must comply with the altered T&C, the altered Handbooks and the altered Guidelines (as the case may be). Following the effective date of the altered T&C, the altered Handbooks and the altered Guidelines (as the case may be), HKQAA shall use its best efforts to verify that each Applicant carries out any necessary adjustments to the specified Green Projects within such time as HKQAA considers reasonable.

## **23. Invalid Material**

23.1. If any term of this Agreement is held to be invalid, void or unenforceable, then the remainder of this T&C is not affected, impaired or invalidated; and each remaining term is valid and enforceable to the fullest extent permitted by law.

## **24. Notice**

24.1. Any notice given under this T&C shall be in writing and signed by or on behalf of the party giving it and may be served by leaving it or sending it by post, in the case of HKQAA or the Applicant, at or to its address for the time being (registered office where applicable). Any notice so served by post shall (unless the contrary is proved) be deemed to have been served forty eight (48) hours from the time of posting; and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted in accordance with this clause.

## **25. Waiver**

25.1. No failure or delay on the part of HKQAA to exercise any right or remedy under this T&C shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided under this T&C are cumulative and are not exclusive of any rights or remedies provided by law.

## **26. Compliance with Laws**

26.1. Nothing in this T&C prevents HKQAA or the Applicant from acting in accordance with applicable laws and regulations.

## **27. Governing Law**

27.1. This T&C shall be construed in accordance with the laws of Hong Kong and shall be subject to the exclusive jurisdiction of the courts of Hong Kong.

## **28. Force Majeure**

28.1. If either party is prevented from fulfilling its obligations under this T&C by reason of any supervening event beyond its reasonable control including but not by way of limitation war, government intervention, national emergency, flood, earthquake, strike or lockout (other than a strike or lockout induced by the party so incapacitated) the party unable to fulfill its obligations shall immediately give notice of this to the other party and shall do everything in its power to resume full performance.

28.2. Subject to Clause 28.1 above, neither party shall be deemed to be in breach of its obligations under this T&C.

28.3. If and when the period of the incapacity as mentioned in Clause 28.1 exceeds three (3) months then this T&C shall automatically be terminated and all fees paid to HKQAA before the expiry of the aforesaid three (3) months' period will be forfeited by HKQAA and no refund will be made to the Applicant in any event. Then, either party has no claim of whatsoever nature against the other party thereafter.

- End -