

JPY735,400,000,000 TERM LOAN
FACILITIES AGREEMENT
dated 8 February 2021

for

RENESAS ELECTRONICS CORPORATION

arranged by
MUFG BANK, LTD.
MIZUHO BANK, LTD.

with

MUFG BANK, LTD.
acting as Payment Agent

MIZUHO BANK, LTD.
acting as Facility Agent

MUFG BANK, LTD.
acting as Security Agent

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THIS AGREEMENT is dated 8 February 2021 and made between:

- (1) **Renesas Electronics Corporation** (the "**Company**");
- (2) **MUFG Bank, Ltd.** and **Mizuho Bank, Ltd.** as mandated lead arrangers (whether acting individually or together, the "**Arranger**");
- (3) **The financial institutions** listed in Schedule 1 as lenders (the "**Original Lenders**");
- (4) **MUFG Bank, Ltd.** as payment agent of the other Finance Parties (the "**Payment Agent**");
- (5) **Mizuho Bank, Ltd.** as facility agent of the other Finance Parties (the "**Facility Agent**"); and
- (6) **MUFG Bank, Ltd.** as security agent of the other Finance Parties (the "**Security Agent**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Acceptance Condition**" means, in relation to an Offer, a condition such that the Offer may not be declared unconditional as to acceptances until the Company has received acceptances in respect of a certain percentage or number of Shares.

"**Account Pledge Agreement**" has the meaning given to it in Clause 20.10(b) (*Pledged Bank Accounts*).

"**Acquisition**" means the acquisition by the Company of certain of the Shares pursuant to the Scheme or, as the case may be, the Offer.

"**Acquisition Costs**" means all fees, costs and expenses, stamp, registration and other Taxes incurred by the Company or any member of the Target Group in connection with the Acquisition, the Finance Documents or any Acquisition Document (and including costs incurred in connection with the execution of hedging transactions for the purposes of the Acquisition and/or the utilisation of the Facilities).

"**Acquisition Documents**" means the Scheme Documents or, as the case may be, the Offer Documents.

"**Affiliate**" means the terms as defined in Article 8 of the Terminology Ordinance.

"**Agent**" means each of the Payment Agent, the Facility Agent and the Security Agent.

"Agent's Spot Rate of Exchange" means the TTM rate publicized by the Payment Agent for the purchase of the relevant currency with JPY at or about 10:00 a.m. on a particular day.

"Announcement" means any press announcement made by or on behalf of the Company announcing a firm intention to implement a Scheme or, as the case may be, make an Offer, in each case in accordance with Rule 2.7 of the City Code.

"Anti-Social Conduct" means:

- (a) the making of violent demands;
- (b) unreasonable demands that go beyond the limits of legal liability;
- (c) threatening behaviour or violence with regard to any transaction;
- (d) activities that damage or potentially damage the other Party's or any third party's reputation or interfere with the other Party's or any third party's business by spreading rumours, or using fraudulent means or force; or
- (e) any act similar or equivalent to the foregoing.

"Anti-Social Person" means:

- (a) organised crime syndicates (*bouryoku dan*);
- (b) members of organised crime syndicates (*bouryoku dan'in*);
- (c) an individual who has been a member of an organised crime syndicate at any time within the preceding five (5) years;
- (d) quasi-members of organised crime syndicates (*bouryoku dan jun kousei'in*);
- (e) a company that is related to an organised crime syndicate (*bouryoku dan kankei kigyuu*);
- (f) corporate racketeer groups (*soukaiya tou*);
- (g) groups engaging in criminal activities under the pretext of conducting social campaigns or political activities (*shakai undou tou hyoubou goro*);
- (h) groups specialised in organised crime (*tokushu chinou bouryoku shuudan tou*);
or
- (i) any group or individual similar or equivalent to the foregoing.

"Anti-Social Person Related Party" means:

- (a) any group with respect to which any Anti-Social Person controls its management;
- (b) any group with respect to which any Anti-Social Person is substantially involved in its management;

- (c) any group or individual who uses any Anti-Social Person to obtain illicit profits for itself or anyone else or to cause damage to any third party;
- (d) any group or individual involved in the operations of any Anti-Social Person by providing funds or other benefits thereto; or
- (e) any group of which an officer or any other person substantially involved in the management thereof has a socially reprehensible relationship with any Anti-Social Person.

"Assignment Agreement" means an agreement in the form separately agreed between the relevant assignor, assignee and the Company.

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

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

"Available Commitment" means, in relation to a Facility, a Lender's Commitment under that Facility minus:

- (a) the amount of its participation in any outstanding Loans under that Facility; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made under that Facility on or before the proposed Utilisation Date.

"Available Facility" means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility.

"Bank Levy" means any amount payable by any Lender or any of its Affiliates on the basis of, or in relation to, its balance sheet or capital base or any part of that person or its liabilities or minimum regulatory capital or any combination thereof, or any levy or tax with a similar basis or a similar purpose or any financial activities taxes (or other levies) of a kind imposed by any jurisdiction in the form existing at the date of this Agreement or which has been formally announced as at the date of this Agreement, or (if applicable) as at the date the relevant Lender accedes as a Lender to this Agreement.

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

- (a) the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan to the last day of the current Interest Period in respect of that Loan, had the principal amount received been paid on the last day of that Interest Period;

exceeds:

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

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

"Certain Funds Period" means the period from and including the date of this Agreement to and including the earliest to occur of:

- (a) if the Acquisition is intended to be completed pursuant to a Scheme, 11:59 p.m. in London on the date on which the Scheme lapses (including, subject to exhausting any rights of appeal, if a relevant court refuses to sanction the Scheme) or is withdrawn in writing, in each case, in accordance with its terms in the Announcement or Scheme Document and with the consent of the Takeover Panel (other than (i) where such lapse or withdrawal is as a result of the exercise of the Company's right to effect a switch from the Scheme to an Offer or (ii) it is otherwise to be followed within ten (10) Business Days by an announcement by the Company and/or the Company to implement the Acquisition by a different contractual offer or scheme of arrangement (as applicable) in accordance with the terms of this Agreement);
- (b) if the Acquisition is intended to be completed pursuant to an Offer, 11:59 p.m. in Frankfurt on the date on which the Offer lapses, terminates or is withdrawn, in each case, in accordance with its terms in the Announcement or Offer Document and with the consent of the Takeover Panel (other than (i) where such lapse or withdrawal is as a result of the exercise of the Company's right to effect a switch from the Offer to a Scheme or (ii) it is otherwise to be followed within ten (10) Business Days by an announcement by the Company and/or the Company to implement the Acquisition by a different contractual offer or scheme of arrangement (as applicable) in accordance with this Agreement);
- (c) if the first Announcement has not been released by such time, 11:59 p.m. in London on the date falling five (5) Business Days after the date of this Agreement;
- (d) the date on which each of the Facility A Commitments, the Facility B Commitments, the Facility C Commitments and the Facility D Commitments have been utilised in full or cancelled in full by the Company pursuant to Clause 7.2 (*Voluntary cancellation*); and
- (e) 11:59 p.m. in London on the day falling 14 days after the Long Stop Date (as defined in the first Announcement),

or, in each case, such later time as agreed by the Company and the Arrangers (acting reasonably and in good faith).

"Certain Funds Utilisation" means any Utilisation.

"City Code" means the UK City Code on Takeovers and Mergers, as administered by the Takeover Panel.

"Clean-Up Period" means the period beginning on the date of this Agreement and ending on the date falling 90 days after the Closing Date.

"Closing Date" means the first Utilisation Date for Facility A.

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

"**Commitment**" means a Facility A Commitment, Facility B Commitment, Facility C Commitment or Facility D Commitment.

"**Companies Act of Japan**" means the Companies Act (Act No. 86, 2005, as amended).

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 4 (*Form of Compliance Certificate*).

"**Compliance Certificate for Negative Pledge and No Guarantee**" means a certificate substantially in the form set out in Schedule 5 (*Form of Compliance Certificate for Negative Pledge and No Guarantee*).

"**Confidential Information**" means all information relating to the Company, the Target Group, the Group, the Finance Documents or a Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or a Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 34 (*Confidential Information*); or
 - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate.

"**Confidentiality Undertaking**" means a confidentiality undertaking substantially in a recommended form of the LMA Master Confidentiality Undertaking or in any other form agreed between the Company and the Facility Agent.

"Consumption Tax" means any consumption tax (*shohi zei*) imposed by the government of Japan.

"Court" means the High Court of Justice in England and Wales.

"Court Order" means the order of the Court sanctioning the Scheme, as required by Part 26 of the Companies Act 2006, in connection with the Acquisition.

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

"Defaulting Lender" means any Lender:

- (a) which has failed to make its participation in a Loan available or has notified the Agent or the Company (which has notified the Payment Agent) that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause 5.4 (*Lenders' participation*);
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing,

unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within three (3) Business Days of its due date; or
- (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents;
 - or

- (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Eligible Institution" means any Lender or other bank, financial institution, trust, fund or other entity selected by the Company.

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

"Facility" means Facility A, Facility B, Facility C or Facility D.

"Facility A" means the JPY term loan facility made available under this Agreement as described in Clause 2.1 (*The Facilities*).

"Facility A Commitment" means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Facility A Commitment" in Schedule 1 (*The Original Parties*) and the amount of any other Facility A Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Facility A Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

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

"Facility B" means the JPY term loan facility made available under this Agreement as described in Clause 2.1 (*The Facilities*).

"Facility B Commitment" means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Facility B Commitment" in Schedule 1 (*The Original Parties*) and the amount of any other Facility B Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Facility B Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

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

"Facility C" means the JPY term loan facility made available under this Agreement as described in Clause 2.1 (*The Facilities*).

"Facility C Commitment" means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Facility C Commitment" in Schedule 1 (*The Original Parties*) and the amount of any other Facility C Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Facility C Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced, increased or transferred by it under this Agreement.

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

"Facility D" means the JPY term loan facility made available under this Agreement as described in Clause 2.1 (*The Facilities*).

"Facility D Commitment" means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Facility D Commitment" in Schedule 1 (*The Original Parties*) and the amount of any other Facility D Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Facility D Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

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

"Facility Office" means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than 5 Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

"FATCA" means:

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

"FATCA Application Date" means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

"FATCA Deduction" means a deduction or withholding from a payment under a Finance Document required by FATCA.

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

"Fee Letter" means any letter or letters dated on or about the date of this Agreement between the Arranger and the Company (or any Agent and the Company) setting out any of the fees referred to in Clause 11 (*Fees*).

"FIEA" means the Financial Instruments and Exchange Act (Act No. 25 of 1948, as amended).

"Finance Document" means this Agreement, any Compliance Certificate, any Fee Letter, any Transaction Security Document, any Utilisation Request and any other document designated as a "Finance Document" by the Facility Agent and the Company.

"Finance Party" means each Arranger, each Agent or a Lender.

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition required to be treated as a borrowing in accordance with relevant accounting principles;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of

any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);

- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity of any Financial Indebtedness.

"Financial Statements" means:

- (a) financial statements for each financial year provided for in Article 435, Paragraph 2 of the Companies Act of Japan (i.e. balance sheets and profit and loss statements provided for in the same paragraph, as well as statements of change in net assets and individual explanatory notes provided for in Article 59, Paragraph 1 of the Ordinance on Company Accounting (Ordinance of the Ministry of Justice No.13 of 2006, as amended)) and business reports;
- (b) temporary financial statements provided for in Article 441, Paragraph 1 of the Companies Act;
- (c) consolidated financial statements for each financial year provided for Article 444, Paragraph 1 of the said Act; and
- (d) any other balance sheets, profit and loss statements, statements of change in net assets and explanatory notes prepared on a consolidated or standalone basis.

"Funding Rate" means any individual rate notified by a Lender to the Payment Agent pursuant to paragraph (a)(ii) of Clause 10.4 (*Cost of funds*).

"Group" means the Company and each of its Subsidiaries from time to time.

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

"Interest Payment Date" means, with respect to a Loan, a day on which interest on the Loan is payable in accordance with Clause 8.2 (*Payment of interest*).

"Interest Period" means each period determined in accordance with Clause 9 (*Interest Periods*).

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

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

each as of the Specified Time for the currency of that Loan.

"Lender" means:

- (a) an Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a "Lender" in accordance with Clause 22 (*Changes to the Lender*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"LMA" means the Loan Market Association.

"Loan" means a Facility A Loan, Facility B Loan, Facility C Loan or a Facility D Loan.

"Major Event of Default" means with respect to the Company only (and, for the avoidance of doubt, not with respect to the Target Group or any other member of the Group and excluding any procurement obligation with respect to the Target Group or any other member of the Group) any event or circumstances constituting an Event of Default under any of:

- (a) Clause 21.1 (*Non-payment*) (insofar as it relates to the non-payment of principal, interest or fees payable to the Finance Parties under this Agreement);
- (b) Clause 21.3 (*Other obligations*) insofar as it relates to a breach of Clause 20.1 (*Authorisations*), Clause 20.3 (*Negative pledge*) (provided that the words "to the extent creation of such Security (other than the Transaction Security) is notified in writing to all of the Agents prior to its creation" shall be deemed to have been deleted), Clause 20.5 (*Disposals*), Clause 20.6 (*Merger*), and paragraphs (a), (b), (c), (e) and (f) of Clause 20.8 (*Acquisition undertakings*);
- (c) Clause 21.4 (*Misrepresentation*) insofar as it relates to a breach of any Major Representation;
- (d) Clause 21.6 (*Insolvency*) provided that the words "or threatens to suspend" shall be deemed to be deleted;
- (e) Clause 21.7 (*Insolvency proceedings*) provided that:
 - (i) the words "Any corporate action, legal proceedings or other formal procedure or step is taken in relation to" shall be replaced by the words "A court order is made for"; and
 - (ii) the words "commencement of" shall be replaced with the words "an agreement (or a court order in lieu of agreement) is made in the";
- (f) Clause 21.8 (*Creditors' process*) provided that:
 - (i) in paragraphs (a) and (b) the words "or notice of provisional attachment (*kari-sashiosae*), provisional disposition (*kari-shobun*), preservative attachment (*hozen-sashiosae*), or" shall be replaced with the word "of";

- (ii) in paragraphs (a) and (b) the words "preservative attachment (*hozen-sashiosae*) or" shall be deemed to be deleted; and
 - (iii) in paragraph (b) the words "and, in case of provisional attachment (*kari-sashiosae*) or preservative attachment (*hozen-sashiosae*) only, is not discharged within ten(10) Business Days and no deposit required for release of the provisional attachment or the preservative attachment has been paid" shall be deemed to be deleted; and
- (g) Clause 21.9 (*Unlawfulness and invalidity*) (other than Clause 21.9(b)).

"Major Representation" means a representation or warranty with respect to the Company (in respect of itself only (and, for the avoidance of doubt, not with respect to the Target Group or any other member of the Group and excluding any procurement obligation with respect to the Target Group or any other member of the Group)) under any of Clause 17.1 (*Status*) to Clause 17.5 (*Validity and admissibility in evidence*) (inclusive), provided that:

- (a) the words "save to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect" shall be deemed to have been added to the end of Clause 17.1(b) (*Status*); and
- (b) the words "in the case of paragraphs (a) and (c) above, to an extent which has, or would reasonably be expected to have; a Material Adverse Effect" shall be deemed to have been added to the end of Clause 17.3 (*Non-conflict with other obligations*).

"Majority Lenders" means a Lender or Lenders whose Commitments aggregate more than 66 $\frac{2}{3}$ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 $\frac{2}{3}$ per cent. of the Total Commitments immediately prior to the reduction).

"Margin" means:

- (a) in relation to the first Interest Period of any Facility A Loan, Facility B Loan or Facility D Loan 0.75 per cent. per annum, provided that, with respect to a subsequent Interest Period for Facility A, Facility B or Facility D, if the long-term credit rating of the Company publicized by S&P Global Ratings Japan Inc. or Fitch Ratings Japan Ltd. (whichever is higher) immediately (but at least fifteen (15) Business Days) prior to the commencing date of the subsequent Interest Period is BB+ or lower, then the Margin for each Facility A Loan, Facility B Loan or Facility D Loan for such Interest Period will be 1.00 per cent per annum; and
- (b) in relation to each Interest Period of any Facility C Loan 0.03 per cent. per annum.

"Material Adverse Effect" means an event or circumstances which, taking into account all the circumstances, has a material adverse effect on:

- (a) the business, assets or financial condition of the Company; or

- (b) the ability of the Company to perform its payment obligations under the Finance Documents; or
- (c) subject to the Reservations and the Perfection Requirements, the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents and which in each case, if capable of remedy.

"Minimum Acceptance Condition" means, in relation to an Offer, an Acceptance Condition of not less than seventy five (75) per cent. of the issued ordinary share capital of the Target on a fully diluted basis (assuming exercise in full of all options, warrants and other rights to require allotment or issue of any shares in Target, whether or not such rights are then exercisable).

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

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

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

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

"Non-Consenting Lender" means, a Lender who does not and continues not to give a consent in relation to, or to agree to a waiver or amendment of any provisions of the Finance Documents requiring the approval of all the Lenders, where the Majority Lenders have consented or agreed to such waiver or amendment.

"Offer" means the offer proposed to be made by the Company to acquire all of the Shares not already owned by it or any of its Subsidiaries substantially on the terms set out in the Offer Document as such offer may from time to time be amended, added to, revised, renewed or waived as permitted in accordance with this Agreement.

"Offer Document" means each of the applicable Announcement and the offer documents dispatched to the shareholders of the Target setting out the terms and conditions of an Offer.

"Original Financial Statements" means (i) the audited consolidated financial statements of the Company and its Subsidiaries for the financial year ended 31

December 2019 and (ii) the consolidated financial statements of the Company and its Subsidiaries for the financial quarter ended 30 September 2020.

"**Party**" means a party to this Agreement.

"**Perfection Requirements**" means the making or the procuring of the necessary registrations, filing, endorsements, notarisation, stampings and/or notifications of the Transaction Security created thereunder necessary for the validity and enforceability thereof.

"**Permanent Facility Agreement**" means the permanent facility agreement(s) intended at the date hereof to be entered into between the Lenders and the Company and/or a Subsidiary thereof, as the case may be, as soon as reasonably practicable after the date hereof in form and substance reasonably satisfactory to each party for the purpose of repaying the outstanding amount under the Facilities.

"**Pledged Bank Account**" means each of the following bank accounts:

(a) with respect to MUFG Bank, Ltd. as Lender:

Bank: MUFG Bank, Ltd.
Branch: Head Office
Type of Account: Fixed Deposit
Account Number: 0877785—001
Account Holder: Renesas Electronics Corporation

(b) with respect to Mizuho Bank, Ltd. as Lender:

Bank: Mizuho Bank, Ltd.
Branch: Head Quarter (HONTEN)
Type of Account: Time Deposit
Account Number: 7850513
Account Holder: Renesas Electronics Corporation

"**Public Offering**" has the meaning given to it in Clause 7.8(a) (*Mandatory Prepayment – Public Offering*).

"**Qualifying Lender**" has the meaning given to it in Clause 12 (*Tax gross-up and indemnities*).

"**Quotation Day**" means, in relation to any period for which an interest rate is to be determined two (2) Business Days before the first day of that period (unless market practice differs in the Relevant Market for that currency, in which case the Quotation Day for that currency will be determined by the Payment Agent in accordance with

market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days)).

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Payment Agent at its request by the Reference Banks as either:

- (a) if:
 - (i) the Reference Bank is a contributor to the Screen Rate; and
 - (ii) it consists of a single figure,
the rate (applied to the relevant Reference Bank and yen and the relevant period) which contributors to the Screen Rate are asked to submit to the relevant administrator; or
- (b) in any other case, the rate at which the relevant Reference Bank could fund itself in yen for the relevant period with reference to the unsecured wholesale funding market.

"Reference Banks" means three banks as may be appointed by the Payment Agent in consultation with the Company, provided that no Lender may be appointed as such without its prior written consent.

"Relevant Market" means the Tokyo interbank market.

"Repeating Representations" means each of the representations set out in Clause 17.1 (*Status*) to Clause 17.5 (*Validity and admissibility in evidence*), Clause 17.7 (*No default*) and Clause 17.12 (*No Anti-Social Person, Anti-Social Person Related Party or Anti-Social Conduct*).

"Report" means, any of the annual securities report (*yuka shoken hokoku sho*), semi-annual report (*hanki hokoku sho*), quarterly reports (*shihanki hokoku sho*), extraordinary reports (*rinji hokoku sho*) and revision reports (*teisei hokoku sho*).

"Reservations" means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of a court, the principle of reasonableness and fairness (where imposed by law), the limitation of enforceability by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under applicable limitation laws, the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void, defences of set-off or counterclaim;
- (c) the limitation of enforceability by the public order and good moral doctrine, general principles of good faith and sincerity and the obligation to act in a reasonable manner and the abuse of rights doctrine;

- (d) the limitation that enforceability does not mean that those obligations will be enforced in all circumstances in accordance with the terms of the relevant documents; and
- (e) similar principles, rights and defences under the laws of any relevant jurisdictions.

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

"Scheme" means a scheme of arrangement under Part 26 of the Companies Act 2006 proposed by the Target to its shareholders in connection with the Acquisition substantially on the terms set out in the applicable Announcement, as such scheme may from time to time be amended, added to, revised, renewed or waived, as permitted in accordance with this Agreement.

"Scheme Circular" means the circular (including any supplemental circular) dispatched by the Target to the shareholders of the Target setting out the resolutions and proposals for and the terms and conditions of the Scheme.

"Scheme Documents" means each of (i) the applicable Announcement and, (ii) the Scheme Circular, and (iii) any other document sent by the Company to the shareholders of the Target in relation to the terms and conditions of the Scheme.

"Scheme Effective Date" means the date on which the Court Order is duly delivered on behalf of the Target to the Registrar of Companies in accordance with section 899 of the Companies Act 2006.

"Screen Rate" means the yen interbank offered rate administered by JBA TIBOR Administration (or any other person which takes over the administration of that rate) for the relevant period displayed on Reuters screen page 17097 (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Payment Agent may specify another page or service displaying the relevant rate after consultation with the Company.

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

"Selection Notice" means a notice substantially in the form set out in Part II of Schedule 3 (*Selection Notice*) given in accordance with Clause 9 (*Interest Periods*).

"Shares" means all the issued shares (and any further shares which may be issued pursuant to warrants, options or other rights for the purchase, acquisition or exchange of those shares (including without limitation through convertible securities)) of each class in the capital of the Target (including, in the case of an Offer, any issued while the Offer remains open for acceptance).

"Specified Time" means a time determined in accordance with Schedule 6 (*Timetables*).

"**Squeeze-out**" means an acquisition of the outstanding Shares that the Company has not acquired pursuant to the procedures contained in section 979 to 982 of the Companies Act 2006.

"**Subsidiary**" means the terms as defined in Article 8 of the Terminology Ordinance.

"**Takeover Panel**" means The Panel on Takeovers and Mergers in the United Kingdom.

"**Target**" means Dialog Semiconductor PLC.

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

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

"**Termination Date**" means the Business Day immediately prior to the first anniversary of the first Announcement or such later time as agreed by the Company and the Arrangers (acting reasonably and in good faith and taking into account their agreement on an extension of the Certain Funds Period, if applicable).

"**Terminology Ordinance**" means the Ordinance on the Terminology, Forms, and Preparation Methods of Financial Statements, etc. (Ordinance of the Ministry of Finance No. 59 of 1963).

"**TIBOR**" means, in relation to any Loan in yen:

- (a) the applicable Screen Rate as of the Specified Time for yen and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*).

"**Total Commitments**" means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments, the Total Facility C Commitments and the Total Facility D Commitments.

"**Total Facility A Commitments**" means the aggregate of the Facility A Commitments, being JPY305,900,000,000 at the date of this Agreement, as such may be cancelled or reduced in accordance with this Agreement.

"**Total Facility B Commitments**" means the aggregate of the Facility B Commitments, being JPY250,000,000,000 at the date of this Agreement, as such may be cancelled or reduced in accordance with this Agreement.

"**Total Facility C Commitments**" means the aggregate of the Facility C Commitments, being JPY70,000,000,000 at the date of this Agreement, as such may be cancelled or reduced in accordance with this Agreement.

"**Total Facility D Commitments**" means the aggregate of the Facility D Commitments, being JPY109,500,000,000 at the date of this Agreement, as such may be cancelled or reduced in accordance with this Agreement.

"Transaction Security" means the Security created or expressed to be created in favour of the Finance Parties pursuant to the Transaction Security Documents.

"Transaction Security Document" means each document entered into by the Company creating or expressed to create any Security over all or any part of its assets in respect of the obligations of the Company under any of the Finance Documents.

"Transfer Certificate" means a certificate in the form separately agreed between the Payment Agent and the Company.

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

"US" means the United States of America.

"Utilisation" means a utilisation of a Facility.

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

"Utilisation Request" means a notice substantially in the form set out in Part I of Schedule 3 (*Utilisation Request*).

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
- (i) the "**Agent**", the "**Arranger**", any "**Finance Party**", any "**Lender**", or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
 - (ii) "**assets**" includes present and future properties, revenues and rights of every description;
 - (iii) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (iv) a "**group of Lenders**" includes all the Lenders;
 - (v) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (vi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (vii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any

governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

- (viii) a provision of law is a reference to that provision as amended or re-enacted from time to time; and
 - (ix) a time of day is a reference to Tokyo time unless (x) it relates to procedural aspects of the Acquisition, in which case it will be a reference to Frankfurt time or (y) otherwise specified herein.
- (b) Section, Clause and Schedule headings are for ease of reference only.
 - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (d) A Default, an Event of Default or a Major Event of Default is "continuing" if it has not been remedied or waived.

1.3 **Currency symbols and definitions**

"¥", "JPY" and "yen" denote the lawful currency of the country of Japan.

1.4 **Agreement on Bank Transactions**

Any agreement on bank transactions (*ginko-torihiki-yakujosho*) entered into between the Company and any Finance Party at any time shall not be applicable to any of the transactions contemplated and effected under and by this Agreement or the other Finance Documents.

SECTION 2 THE FACILITY

2. THE FACILITY

2.1 The Facilities

Subject to the terms of this Agreement, the Lenders make available to the Company:

- (a) a JPY term loan facility in an aggregate amount equal to the Total Facility A Commitments;
- (b) a JPY term loan facility in an aggregate amount equal to the Total Facility B Commitments;
- (c) a JPY term loan facility in an aggregate amount equal to the Total Facility C Commitments; and
- (d) a JPY term loan facility in an aggregate amount equal to the Total Facility D Commitments.

2.2 Adjustment of Facilities

- (a) If the Company conducts a Pre-Closing Date Public Offering, or at any time during the Availability Period deemed appropriate by the Company taking into account its cash reserves, the Company may make a request to the Lenders and the Payment Agent that the Available Commitments of the Facilities are adjusted such that the Available Commitments in respect of certain Facilities are reduced and the Available Commitments for one or more other Facilities are increased (only to the extent that there will be no change in the amount of the Total Commitments) and the Company and the Finance Parties shall discuss in good faith the amendments to this Agreement necessary to reflect such adjustments.
- (b) For the purposes of this Clause 2.2, "**Pre-Closing Date Public Offering**" means an issuance by the Company of Equity Interests during the Availability Period by way of public offering for the purpose of funding part of the consideration payable in respect of the Acquisition.

2.3 Increase

- (a) The Company may by giving prior notice to the Payment Agent after the effective date of a cancellation of the Commitments of a Lender in accordance with:
 - (i) Clause 7.1 (*Illegality*); or
 - (ii) Clause 7.4 (*Right of replacement or repayment and cancellation in relation to a single Lender*),

request that the Commitments be increased (and the Commitments shall be so increased) in an aggregate amount in JPY of up to the amount of the Commitment so cancelled as follows:

- (iii) the increased Commitments will be assumed by one or more Eligible Institutions (each an "**Increase Lender**") each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender in respect of those Commitments;
 - (iv) the Company and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Company and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
 - (v) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
 - (vi) the Commitments of the other Lenders shall continue in full force and effect; and
 - (vii) any increase in the Commitments shall take effect on the date specified by the Company in the notice referred to above or any later date on which the Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.
- (b) The Payment Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.
- (c) The Payment Agent shall only be obliged to execute an Increase Confirmation delivered to it by an Increase Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender.
- (d) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Payment Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective in accordance with this

Agreement and that it is bound by that decision to the same extent as it would have been had it been an Original Lender.

- (e) The Company may pay to the Increase Lender a fee in the amount and at the times agreed between the Company and the Increase Lender in a letter between the Company and the Increase Lender setting out that fee. A reference in this Agreement to a Fee Letter shall include any letter referred to in this paragraph (e).
- (f) Neither the Payment Agent nor any Lender shall have any obligation to find an Increase Lender and in no event shall any Lender whose Commitment is replaced by an Increase Lender be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents.
- (g) Clause 22.5 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.3 in relation to an Increase Lender as if references in that Clause to:
 - (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
 - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and
 - (iii) a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".

2.4 **Finance Parties' rights and obligations**

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Company is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Company which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to each Agent on its behalf) is a debt owing to that Finance Party by the Company.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

3. **PURPOSE**

3.1 **Purpose**

The Company shall apply all amounts borrowed by it under the Facilities towards financing (either directly, or indirectly following conversion into EUR):

- (a) in the case of an Offer:
 - (i) the consideration payable by the Company in respect of the Shares to which the Offer relates;
 - (ii) the consideration payable by the Company in respect of the Shares acquired by it as a result of its implementing the Squeeze-out; and
 - (iii) the consideration payable by the Company to holders of awards under the Target share incentive plans pursuant to any proposal by it in respect of those awards pursuant to Rule 15 of the City Code;
- (b) in the case of a Scheme, the consideration payable by the Company in respect of (i) the transfer of the Shares to the Company pursuant to the Scheme, or (ii) the acquisition of Shares by the Company pursuant to provisions in the constitutional documents of the Target, introduced in connection with the Scheme and (iii) the consideration payable by the Company to holders of awards under the Target share incentive plans pursuant to any proposal by it in respect of those awards pursuant to Rule 15 of the City Code; and
- (c) Acquisition Costs.

3.2 **Monitoring**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. **CONDITIONS OF UTILISATION**

4.1 **Initial conditions precedent**

- (a) The Company may not deliver a Utilisation Request unless the Payment Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions precedent*), unless otherwise stated in Schedule 2, in form and substance satisfactory to the Payment Agent. The Payment Agent shall notify the Company and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Payment Agent in writing to the contrary before the Payment Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Payment Agent to give that notification. The Payment Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 Further conditions precedent

Subject to Clause 4.1 (*Initial conditions precedent*) the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Utilisation (other than one to which Clause 4.4 (*Utilisations during the Certain Funds Period*) applies), if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Utilisation; and
- (b) in relation to any Utilisation on the Closing Date, all the representations and warranties in Clause 17 (*Representations*) and, in relation to any other Utilisation, the Repeating Representations are true or, to the extent not qualified by materiality or Material Adverse Effect, are true in all material respects.

4.3 Maximum number of Loans

- (a) Unless otherwise agreed by all of the Lenders, the Company may not deliver a Utilisation Request if as a result of the proposed Utilisation:
 - (i) if the Acquisition is implemented by way of a Scheme:
 - (A) more than two (2) Facility A Loans would be outstanding;
 - (B) more than two (2) Facility B Loans would be outstanding;
 - (C) more than two (2) Facility C Loans would be outstanding; or
 - (D) more than two (2) Facility D Loans would be outstanding; or
 - (ii) if the Acquisition is implemented by way of an Offer, more than ten (10) Loans would be outstanding.
- (b) The Company may not request that any Loan under a Facility be divided if, as a result of the proposed division, (if the Acquisition is implemented by way of a Scheme) more than two (2) Loans of that Facility or (if the Acquisition is implemented by way of an Offer) more than ten (10) Loans would be outstanding.

4.4 Utilisations during the Certain Funds Period

- (a) Subject to Clause 4.1 (*Initial conditions precedent*) and notwithstanding the conditions of Clause 4.2 (*Further conditions precedent*), during the Certain Funds Period, each Lender will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Certain Funds Utilisation if, on the date of the Utilisation Request and on the proposed Utilisation Date:
 - (i) no Major Event of Default is continuing or would result from the proposed Certain Funds Utilisation;
 - (ii) all the Major Representations are true or, to the extent not qualified by materiality or Material Adverse Effect, are true in all material respects; and

- (iii) it is not unlawful in any applicable jurisdiction for that Lender to perform its obligations to lend or participate or maintain its participation in any Certain Funds Utilisation, provided that for the avoidance of doubt in the event it is unlawful for a Lender to perform its obligations to lend or participate in any Certain Funds Utilisation, this shall not release any other Lender from its obligations under this Agreement.
- (b) During the Certain Funds Period (save in circumstances where, pursuant to paragraph (a) above, a Lender is not obliged to comply with Clause 5.4 (*Lenders' participation*)) and subject as provided in Clause 7.1 (*Illegality*) (in respect of that Lender only), none of the Finance Parties shall be entitled to:
 - (i) cancel any of its Commitments to the extent that to do so would prevent or limit the making of a Certain Funds Utilisation;
 - (ii) rescind, terminate or cancel this Agreement or any Facility or exercise any similar right or remedy or make or enforce any claim under the Finance Documents it may have, to the extent that to do so would prevent or limit the making of a Certain Funds Utilisation;
 - (iii) refuse to participate in the making of a Certain Funds Utilisation;
 - (iv) exercise any right of set-off or counterclaim in respect of a Utilisation, to the extent that to do so would prevent or limit the making of a Certain Funds Utilisation;
 - (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document, to the extent that to do so would prevent or limit the making of a Certain Funds Utilisation; or
 - (vi) take any other action or make or enforce any other claim (in its capacity as a Lender) to the extent that such action, claim or enforcement would directly or indirectly prevent or limit the making of that Certain Funds Utilisation,

provided that immediately upon the expiry of the Certain Funds Period all such rights, remedies and entitlements shall be available to the Finance Parties notwithstanding that they may not have been used or been available for use during the Certain Funds Period.

SECTION 3 UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request

The Company may utilise a Facility by delivery to the Payment Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies the Facility to be utilised;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
 - (iii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
 - (iv) the proposed Interest Period complies with Clause 9 (*Interest Periods*).
- (b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be yen.
- (b) The amount of the proposed Loan must be:
 - (i) (for Facility A Loan) a minimum of ¥100,000,000 or if less, the Available Facility;
 - (ii) (for Facility B Loan) a minimum of ¥100,000,000 or if less, the Available Facility;
 - (iii) (for Facility C Loan) a minimum of ¥100,000,000 or if less, the Available Facility; or
 - (iv) (for Facility D Loan) a minimum of ¥100,000,000 or if less, the Available Facility.

5.4 Lenders' participation

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

- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Payment Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

5.5 Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

5.6 Receipt

- (a) On its receipt of a Loan, the Company shall immediately provide the Payment Agent with a written receipt setting out the amount of such Loan.
- (b) The Payment Agent shall, upon receiving such receipt, promptly provide a copy thereof to any Lender who participated in such Loan.
- (c) The Payment Agent shall retain the original receipt on behalf of such Lenders until such Loan is repaid in full.

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

- (a) The Company shall repay in full the aggregate outstanding Loans on the Termination Date.
- (b) The Company may not reborrow any part of any Facility which is repaid.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

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

- (a) that Lender shall promptly notify the Payment Agent upon becoming aware of that event;
- (b) upon the Payment Agent notifying the Company, the Available Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to paragraph (d) of Clause 7.4 (*Right of replacement or repayment and cancellation in relation to a single Lender*), the Company shall repay that Lender's participation in the Loans made to the Company on the last day of the Interest Period for each Loan occurring after the Payment Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Payment Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be immediately cancelled in the amount of the participations repaid.

7.2 Voluntary cancellation

The Company may, if it gives the Payment Agent not less than five (5) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part of an Available Facility. Any cancellation under this Clause 7.2 shall reduce the Commitments of the Lenders rateably under that Facility.

7.3 Voluntary prepayment of Loans

- (a) The Company may, if it gives the Payment Agent not less than five (5) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of any Loan.
- (b) A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the applicable Available Facility is zero).

7.4 **Right of replacement or repayment and cancellation in relation to a single Lender**

- (a) If:
- (i) any Lender is a Defaulting Lender;
 - (ii) any Lender is a Market Disruption Lender;
 - (iii) any Lender is a Non-Consenting Lender;
 - (iv) any sum payable to any Lender by the Company is required to be increased under Clause 12.2(c) (*Tax gross-up*); or
 - (v) any Lender claims indemnification from the Company under Clause 12.3 (*Tax indemnity*) or Clause 13 (*Increased Costs*),

the Company may whilst the Lender continues to be a Defaulting Lender, the circumstance giving rise to the notification under Clause 10.3 (*Market disruption*) continues, the Lender continues to be a Non-Consenting Lender or the requirement for that increase or indemnification continues, give the Payment Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Loans or give the Payment Agent notice of its intention to replace that Lender in accordance with paragraph (d) below.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Available Commitment(s) of that Lender shall be immediately reduced to zero.
- (c) On the last day of each Interest Period which ends after the Company has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Company in that notice), the Company shall repay that Lender's participation in that Loan and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.
- (d) If:
- (i) any of the circumstances set out in paragraph (a) above apply to a Lender; or
 - (ii) the Company becomes obliged to pay any amount in accordance with Clause 7.1 (*Illegality*) to any Lender,

the Company may, on five (5) Business Days' prior notice to the Payment Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 22 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 22 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all

accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
 - (i) the Company shall have no right to replace any Agent;
 - (ii) neither any Agent nor any Lender shall have any obligation to find a replacement Lender;
 - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Payment Agent and the Company when it is satisfied that it has complied with those checks.

7.5 **Mandatory Prepayment – Share Sale**

- (a) In this Clause 7.5:
 - (i) "**Share Sale**" means, following the expiry of the Certain Funds Period, a sale, transfer or disposal of any shares in any company in the Target Group to any person other than a member of the Group (including the Target Group).
 - (ii) "**Net Share Sale Proceeds**" means the cash or cash equivalent proceeds (including, when received, the cash or cash equivalent proceeds of any deferred consideration, whether by way of adjustment to the purchase price or otherwise) received by the disposing entity in connection with a Share Sale after deducting any reasonable costs and expenses in connection with the sale and any Tax paid or reasonably estimated by the Company or the relevant Subsidiary to be payable in connection with the Share Sale.
- (b) The Company shall notify a Share Sale to the Payment Agent at least five (5) Business Days prior to the Share Sale.
- (c) If the amount of the Net Share Sales Proceeds in relation to a specific Share Sale (converted to JPY with the Agent's Spot Rate of Exchange, if it is denominated in a currency other than JPY) is at least JPY100 million, the Company shall ensure that such Net Share Sale Proceeds are applied in full towards prepayment of the Loans on the immediately following Interest Payment Date or, if such Interest Payment Date falls less than ten (10) Business Days, following such

Share Sale on the next Interest Payment Date, in accordance with Clause 7.10 (*Application of mandatory prepayments*).

7.6 **Mandatory Prepayment – Asset Sale**

- (a) In this Clause 7.6:
 - (i) "**Asset Sale**" means, following the expiry of the Certain Funds Period, a sale, transfer or disposal of any shares, business or any other material assets owned by Target Group to any person other than a member of the Group (including the Target Group) (excluding such sale, transfer or disposal in the ordinary course of trading).
 - (ii) "**Net Asset Sale Proceeds**" means the cash or cash equivalent proceeds (including, when received, the cash or cash equivalent proceeds of any deferred consideration, whether by way of adjustment to the purchase price of otherwise) received by the disposing entity in connection with an Asset Sale after deducting any reasonable costs and expenses in connection with the sale and any Tax paid or reasonably estimated by the Target or the relevant Subsidiary of the Target to be payable in connection with the Asset Sale.
- (b) The Company shall notify an Asset Sale to the Payment Agent at least five (5) Business Days prior to the Asset Sale.
- (c) If the amount of the Net Asset Sales Proceeds in relation to a specific Asset Sale (converted to JPY with the Agent's Spot Rate of Exchange, if it is denominated in a currency other than JPY) is at least JPY100 million, the Company shall ensure that such Net Share Sale Proceeds are applied in full towards prepayment of the Loans on the immediately following Interest Payment Date or, if such Interest Payment Date falls less than ten (10) Business Days, following such Asset Sale on the next Interest Payment Date, in accordance with Clause 7.10 (*Application of mandatory prepayments*).

7.7 **Mandatory Prepayment – Permanent Financing**

- (a) In this Clause 7.7:
 - (i) "**Permanent Financing**" means an issuance or borrowing by the Company or a Subsidiary thereof of loans or debt obligations after the Closing Date pursuant to the Permanent Facility Agreement.
 - (ii) "**Borrowed Proceeds**" means the cash proceeds received by the Company or a Subsidiary thereof from a Permanent Financing after deducting any reasonable costs and expenses in connection with the Permanent Financing and any Tax paid or reasonably estimated by the Company or the relevant Subsidiary to be payable in connection with the raising of those Borrowed Proceeds.
- (b) The Company shall notify a Permanent Financing to the Payment Agent at least five (5) Business Days prior to its (or its Subsidiary's) borrowing of the Permanent Financing.

- (c) The Company shall, upon its (or its Subsidiary's) borrowing of the Permanent Financing, ensure that any Borrowed Proceeds (to the extent that they are at least JPY100 million) from such Permanent Financing are applied in full towards prepayment of the Loans on the first drawdown date of the Permanent Financing.

7.8 **Mandatory Prepayment – Public Offering**

- (a) In this Clause 7.8:
 - (i) "**Equity Interests**" means, with respect to any person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such person of any of the foregoing (including without limitation through convertible securities).
 - (ii) "**Net Issuance Proceeds**" means the cash or cash equivalent proceeds received by the Company in connection with a Public Offering after deducting any reasonable costs and expenses in connection with the Public Offering and any Tax paid or reasonably estimated by the Company or the relevant Subsidiary to be payable in connection with the Public Offering.
 - (iii) "**Public Offering**" means an issuance by the Company of Equity Interests after the Closing Date by way of public offering other than, for the avoidance of doubt, any Equity Interests issued for the purpose of funding part of the consideration payable in respect of the Acquisition.
- (b) The Company shall notify a Public Offering to the Payment Agent at least five (5) Business Days prior to the closing of the Public Offering.
- (c) If the amount of the Net Issuance Proceeds (converted to JPY with the Agent's Spot Rate of Exchange, if it is denominated in a currency other than JPY) is at least JPY100 million, the Company shall, upon a Public Offering, ensure that any Net Issuance Proceeds from such Public Offering (in case of partial prepayment, after disregarding any amount less than JPY100 million) are applied in full towards prepayment of the Loans on the immediately following Interest Payment Date or, if such Interest Payment Date falls less than ten (10) Business Days) following the Public Offering on the next Interest Payment Date, in accordance with Clause 7.10 (*Application of mandatory prepayments*).

7.9 **Restrictions**

- (a) Any notice of cancellation, prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) The Company may not reborrow any part of any Facility which is prepaid.
- (d) The Company shall not repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Company or the affected Lender, as appropriate.
- (g) If all or part of any Lender's participation in a Utilisation under a Facility is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment.

7.10 Application of mandatory prepayments

- (a) A prepayment made under Clause 7.5 (*Mandatory Prepayment – Share Sale*), Clause 7.6 (*Mandatory Prepayment – Asset Sale*) or Clause 7.7 (*Mandatory Prepayment – Permanent Financing*) shall be applied (to the relevant Facility required to be prepaid under those provisions) in prepayment of Utilisations in the following order:
 - (i) *first*, in prepayment of Facility A Loans and Facility D on a *pro rata* basis;
 - (ii) *secondly*, in prepayment of Facility B Loans; and
 - (iii) *thirdly*, in prepayment of Facility C Loans.
- (b) A prepayment made under Clause 7.8 (*Mandatory Prepayment – Public Offering*) shall be applied (to the relevant Facility required to be prepaid under those provisions) in prepayment of Utilisations in the following order:
 - (i) *first*, in prepayment of Facility B;
 - (ii) *secondly*, in prepayment of Facility A Loans and Facility D on a *pro rata* basis; and
 - (iii) *thirdly*, in prepayment of Facility C Loans.

7.11 **Application of prepayments among Lenders**

Subject to Clause 7.10 (*Application of mandatory prepayments*), any prepayment of a Utilisation (other than a prepayment pursuant to Clause 7.1 (*Illegality*) or Clause 7.4 (*Right of cancellation and repayment in relation to a single Lender*)) shall be applied *pro rata* to each Lender's participation in that Utilisation.

**SECTION 5
COSTS OF UTILISATION**

8. INTEREST

8.1 Calculation of interest

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

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

provided that, if the result is less than zero for any Interest Period, the rate of interest on each Loan for such Interest Period shall be deemed to be zero.

8.2 Payment of interest

The Company shall pay accrued interest on a Loan (calculated by aggregating the amounts of accrued interest payable to each Lender in respect of such Loan) on the last day of each Interest Period (and, if the Interest Period is longer than six (6) Months, on the dates falling at six (6) monthly intervals after the first day of the Interest Period).

8.3 Default interest

If the Company fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is equal to 14 per cent. per annum. Any interest accruing under this Clause 8.3 shall be immediately payable by the Company on demand by the Payment Agent.

8.4 Notification of rates of interest

The Payment Agent shall promptly notify the Lenders and the Company of the determination of a rate of interest under this Agreement.

9. INTEREST PERIODS

9.1 Selection of Interest Periods

- (a) The Company may select an Interest Period for a Facility A Loan, Facility B Loan or Facility D Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Facility A Loan, Facility B Loan or Facility D Loan is irrevocable and must be delivered to the Payment Agent by the Company not later than the Specified Time.
- (c) If the Company fails to deliver a Selection Notice to the Payment Agent in accordance with paragraph (b) above, the relevant Interest Period will be one (1) Month.

- (d) Subject to this Clause 9, with respect to a Facility A Loan, Facility B Loan or Facility D Loan, the Company may select an Interest Period of one (1) or three (3) Months or of any other period agreed between the Company, the Payment Agent and all the Lenders in relation to the relevant Loan, provided that to the extent that the Utilisation Date of a Loan is less than one (1) Month prior to the Termination Date, the Interest Period for such Loan shall end on the Termination Date without the need for any agreement to such effect between the Company, the Payment Agent and all the Lenders.
- (e) Each Interest Period for a Facility C Loan is one (1) Month or of any other period agreed between the Company, the Payment Agent and all the Lenders in relation to the relevant Loan, provided that to the extent that the Utilisation Date of a Loan is less than one (1) Month prior to the Termination Date, the Interest Period for such Loan shall end on the Termination Date without the need for any agreement to such effect between the Company, the Payment Agent and all the Lenders.
- (f) An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.
- (g) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

9.2 Non-Business Days

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

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for TIBOR for the Interest Period of a Loan, the applicable TIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for TIBOR for:
 - (i) the currency of a Loan; or
 - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

the applicable TIBOR shall be the Reference Bank Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.

- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for the relevant currency or Interest Period there shall be no TIBOR for that Loan and Clause 10.4 (*Cost of funds*) shall apply to that Loan for that Interest Period.

10.2 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if TIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about noon on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

10.3 Market disruption

- (a) If before close of business in Tokyo on the Quotation Day for the relevant Interest Period the Payment Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed forty (40) per cent. of that Loan) that the cost to it of funding its participation in that Loan from the wholesale market for the relevant currency would be in excess of TIBOR, then Clause 10.4 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.
- (b) The Payment Agent shall promptly notify the Company in the event that a Lender provides a notification under this Clause 10.3 (any such Lender being a "**Market Disruption Lender**").

10.4 Cost of funds

- (a) If this Clause 10.4 applies, the rate of interest on the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the weighted average of the rates notified to the Payment Agent by each Lender as soon as practicable and in any event by close of business on the date falling two Business Days after the Quotation Day (or, if earlier, on the date falling two Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expressed as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select, provided that such Lender confirms (for the benefit of the Group) to the Payment Agent that such percentage rate per annum represents the cost to the relevant Lender of funding its participation in that currency under other syndicated credit facilities involving similarly situated borrowers under which that Lender is a lender.
- (b) If this Clause 10.4 applies and the Payment Agent or the Company so requires, the Payment Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest (having regard to the prevailing market convention in the Relevant Market at such time with respect to the benchmark for determining interest (including the making of appropriate adjustments to

such alternate benchmark rate and this Agreement (i) to preserve pricing in effect at the time of selection of such alternate benchmark rate and (ii) for duration, time and periodicity for determination of such alternate benchmark rate in relation to any applicable Interest Period) for syndicated bank loans in the relevant currency).

- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties, provided that:
 - (i) any alternative basis agreed pursuant to paragraph (b) above shall automatically be binding on any Defaulting Lender;
 - (ii) any alternative basis agreed pursuant to paragraph (b) above shall automatically be binding on any Lender which does not accept or reject a request for any such consent before 5.00 p.m. on the date falling five Business Days from the date of that request being made (or such other time and date as the Company may specify, with the consent of the Payment Agent if less than five Business Days from the date of such request being made); and
 - (iii) any Lender which rejects a request for any such consent shall be deemed to be a Non-Consenting Lender for the purposes of this Agreement.
- (d) If this Clause 10.4 applies pursuant to Clause 10.3 (*Market disruption*) and:
 - (i) a Lender's Funding Rate is less than TIBOR; or
 - (ii) a Lender does not supply a quotation by the time specified in paragraph (a)(ii) above,

the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be TIBOR.
- (e) If this Clause 10.4 applies pursuant to Clause 10.1 (*Unavailability of Screen Rate*) but any Lender does not supply a quotation by the time specified in paragraph (a)(ii) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

10.5 **Notification to the Company**

If Clause 10.4 (*Cost of funds*) applies the Payment Agent shall, as soon as is practicable, notify the Company.

10.6 **Break Costs**

- (a) The Company shall, within five Business Days of demand by a Finance Party (having been given reasonable detail of the subject of such demand), pay to that Finance Party its Break Costs attributable to all or any part of a Loan being paid by the Company on a day other than the last day of an Interest Period for that Loan.

- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Payment Agent, provide a certificate in reasonable detail confirming the amount of its Break Costs for any Interest Period in which they accrue.

11. FEES

11.1 Commitment fee

- (a) The Company shall pay to the Payment Agent (for the account of each Lender) a fee computed at the rate of:
 - (i) 0.20 per cent. per annum on that Lender's Available Commitment under Facility A for the Availability Period;
 - (ii) 0.30 per cent. per annum on that Lender's Available Commitment under Facility B for the Availability Period;
 - (iii) 0.03 per cent. per annum on that Lender's Available Commitment under Facility C for the Availability Period; and
 - (iv) 0.20 per cent. per annum on that Lender's Available Commitment under Facility D for the Availability Period.
- (b) If there is any change in a Lender's Available Commitment in respect of a Facility on a date which falls during the Availability Period, such Available Commitment for that date shall be the Available Commitment after such change and calculation of the commitment fee shall be made based on the average Available Commitment in respect of such Facility for the Availability Period.
- (c) The accrued commitment fee is payable on the date designated by the Payment Agent, which shall fall within 5 Business Days from the last day of the Availability Period.
- (d) The calculation method for commitment fee shall be on a per diem basis, inclusive of first day and inclusive of last day, assuming that there are 365 days per year, wherein divisions shall be done at the end of the calculation, and fractions less than one (1) yen shall be rounded down.

11.2 Arrangement fee

The Company shall pay to the Arranger an arrangement fee in the amount and at the times agreed in a Fee Letter.

11.3 Agency fee

The Company shall pay to each Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS-UP AND INDEMNITIES

12.1 Definitions

In this Agreement:

"Domestic Entity" means *naikoku houjin* for Japanese tax purposes, which is a legal entity (*houjin*) having its principal office (*honten* or *shutaru jimusho*) in Japan.

"Foreign Entity" means *gaikoku houjin* for Japanese tax purposes, which is a legal entity (*houjin*) other than a Domestic Entity.

"Protected Party" means a Lender which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

"Qualifying Lender" means a Lender which:

- (a) is a Domestic Entity;
- (b) is a Foreign Entity to whom interest payable in respect of an advance under a Finance Document:
 - (i) does not constitute Income Derived From Japan (*kokunai gensen shotoku*) under Articles 161 and 162 of the Income Tax Act (*shotokuzei hou*) (Act No. 33 of 1965, as amended) and the Treaty; or
 - (ii) must be paid outside Japan only by the Company and is not deemed to have been paid inside Japan pursuant to paragraph 2 of Article 212 of the Income Tax Act (*shotokuzei hou*); or
- (c) is a Foreign Entity which fulfils any conditions which must be fulfilled under paragraph 1 of Article 180 of the Income Tax Act (*shotokuzei hou*) for that Foreign Entity to obtain exemption from Japanese withholding taxation on interest; or
- (d) is a Treaty Lender.

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

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

"Tax Payment" means either the increase in a payment made by the Company to the Lender under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

"Treaty Lender" means a Lender which:

- (a) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (b) does not carry on a business in the Japan through a permanent establishment with which the Lender's participation in the Loan is effectively connected; and
- (c) fulfils any other conditions which must be fulfilled under the Treaty by residents of the Treaty State for such residents to obtain exemption from Tax imposed on interest by Japan, subject to the completion of any necessary procedural formalities.

"Treaty State" means a jurisdiction having a double taxation agreement (a **"Treaty"**) with Japan which makes provision for full exemption from tax imposed by Japan on interest payments.

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

12.2 Tax gross-up

- (a) The Company shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Company shall promptly upon becoming aware that the Company must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Payment Agent accordingly. Similarly, a Lender shall notify the Payment Agent on becoming so aware in respect of a payment payable to the Lender. If the Payment Agent receives such notification from a Lender it shall notify the Company.
- (c) If a Tax Deduction is required by law to be made by the Company, the amount of the payment due from the Company shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by Japan, if on the date on which the payment falls due:
 - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date the Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
 - (ii) the Lender is a Treaty Lender and the Company is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had the Lender complied with its obligations under paragraph (g) below.

- (e) If the Company is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company shall deliver to the Payment Agent for the Lender entitled to the payment evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (g) A Treaty Lender and the Company which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for the Company to obtain authorisation to make that payment without a Tax Deduction.

12.3 Tax indemnity

- (a) The Company shall (within three Business Days of demand by the Payment Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Lender:
 - (A) under the law of the jurisdiction in which a Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Lender is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*);
 - (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 12.2 (*Tax gross-up*) applied; or
 - (C) relates to a FATCA Deduction required to be made by a Party.

- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Payment Agent of the event which will give, or has given, rise to the claim, following which the Payment Agent shall notify the Company.

12.4 **Tax Credit**

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

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

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

12.5 **Lender status confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, and without liability to the Company, which of the following categories it falls in:

- (a) not a Qualifying Lender;
- (b) a Qualifying Lender (other than a Treaty Lender); or
- (c) a Treaty Lender.

If such a Lender fails to indicate its status in accordance with this Clause 12.5 then that Lender shall be treated for the purposes of this Agreement (including by the Company) as if it is not a Qualifying Lender until such time as it notifies the Payment Agent and the Company which category applies.

12.6 **Stamp taxes**

The Company shall pay and, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document, except for any such Tax payable in connection with any Transfer Certificate or any other document relating to the transfer by any Lender of any of its rights and/or obligations under any Finance Document.

12.7 **Consumption tax**

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Lender which (in whole or in part) constitute the consideration for any supply for Consumption Tax purposes are deemed to be exclusive of any Consumption Tax which is chargeable on that supply and if Consumption Tax is or becomes chargeable on any supply made by a Lender to any Party under a

Finance Document and a Lender is required to account to the relevant tax authority for the Consumption Tax, that Party must pay to such Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the Consumption Tax (and such Lender must promptly provide an appropriate Consumption Tax invoice to that Party); and

- (b) Where a Finance Document requires any Party to reimburse or indemnify a Lender for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Lender for the full amount of such cost or expense, including such part thereof as represents Consumption Tax, save to the extent that such Lender reasonably determines that it is entitled to credit or repayment in respect of such Consumption Tax from the relevant tax authority.

12.8 FATCA information

- (a) Subject to paragraph (c) below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with

paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

12.9 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Company and the Payment Agent and the Payment Agent shall notify the other Finance Parties.

13. INCREASED COSTS

13.1 Increased Costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Company shall, within three Business Days of a demand by the Payment Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) subject to paragraph (iii) below, the introduction of or any change in (or in the interpretation, administration or application by any governmental or regulatory authority of) any law or regulation after the date of this Agreement or (ii) subject to paragraph (iii) below, compliance with any law or regulation made after the date of this Agreement (but, in respect of any regulation not having the force of law, only to the extent the Lender or its Affiliate would be expected to comply with such directive as a matter of course) (iii) any introduction, change, clarification or publication relating to Basel III (but not for the avoidance of doubt Basel II) to the extent such Increased Costs were not capable of being calculated with sufficient accuracy on the date of this Agreement due to a lack of clarity or detail in Basel III and/or any related information from a banking regulator available on the date of this Agreement and the relevant Lender is seeking to recover such costs from other similar borrowers.
- (b) In this Agreement:

"Basel III" means:
 - (i) the global regulatory framework on bank capital and liquidity contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer"

published by the Basel Committee in December 2010 each as amended, and any other documents published by the Basel Committee in relation to "Basel III";

- (ii) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III",

or any law, rules or guidance by which Basel III is implemented.

"Increased Costs" means:

- (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

13.2 **Increased Cost claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased Costs*) shall notify the Payment Agent of the event giving rise to the claim, following which the Payment Agent shall promptly notify the Company.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Payment Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 **Exceptions**

- (a) Clause 13.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by the Company;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 12.3(b) (*Tax indemnity*) applied);

- (iv) compensated for by Clause 12.6 (*Stamp Taxes*) or Clause 12.7 (*Consumption Tax*) (or would have been so compensated for under that Clause but was not so compensated solely because any of the exceptions set out in the relevant Clause applied);
 - (v) attributable to a Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy);
 - (vi) attributable to the implementation or application of or compliance with:
 - (A) the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement or, if later, the date it became a party to this Agreement (but excluding any amendment arising out of Basel III) ("**Basel II**");
 - (B) any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Lender or any of its Affiliates); or
 - (C) Basel III or any other law or regulation which implements the Basel III, in each case to the extent the relevant Lender would reasonably be able to quantify the relevant Increased Cost as at the date of this Agreement or, if later, the date it became a party to this Agreement;
 - (vii) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
 - (viii) not notified by the relevant Lender to the Payment Agent in accordance with Clause 13.2 (*Increased Cost claims*).
- (b) In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 12.1 (*Definitions*).

14. OTHER INDEMNITIES

14.1 Currency indemnity

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

the Company shall as an independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that Sum is due against any

cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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

14.2 **Other indemnities**

The Company shall, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by the Company to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 26 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Company in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Company.

14.3 **Indemnity to the Agents**

The Company shall promptly following receipt of demand (which demand must be accompanied by reasonable details and calculations of the amount demanded) indemnify each Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

15. **MITIGATION BY THE LENDERS**

15.1 **Mitigation**

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross-up and indemnities*) or Clause 13

(Increased costs) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

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

15.2 **Limitation of liability**

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

16. **COSTS AND EXPENSES**

16.1 **Transaction expenses**

The Company shall promptly on demand (which demand shall be accompanied by reasonable supporting evidence (including, without limitation, receipts and invoices)) pay the Payment Agent and the Arranger the amount of all third party costs and expenses (including legal fees up to any agreed cap), subject to any caps agreed between the Company and the Arrangers or the Payment Agent, reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and syndication of:

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

16.2 **Amendment costs**

If:

- (a) the Company requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 27.9 (*Change of currency*),

the Company shall, subject to any caps agreed between the Company and the relevant Agent, within three Business Days of demand (which demand shall be accompanied by reasonable supporting evidence (including, without limitation, receipts and invoices)), reimburse each Agent for the amount of all costs and expenses (including legal fees up to any agreed cap) reasonably incurred by such Agent in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 **Enforcement costs**

The Company shall, within ten (10) Business Days of demand (each demand to be accompanied by reasonable supporting evidence (including, without limitation, receipts

and invoices)), pay to the Security Agent the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

SECTION 7
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

The Company makes the representations and warranties set out in this Clause 17 to each Finance Party on the date of this Agreement and on the Closing Date. The Repeating Representations are deemed to be made by the Company by reference to the facts and circumstances then existing on the date of each Utilisation Request and each Utilisation Date.

17.1 Status

- (a) It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

17.2 Binding obligations

Subject to the Reservations and Perfection Requirements, the obligations expressed to be assumed by it in each Finance Document, in each case to which it is a party, are legal, valid, binding and enforceable obligations.

17.3 Non-conflict with other obligations

Subject to the Reservations, the entry into and performance by the Company of, and the transactions contemplated by, the Finance Documents, in each case to which it is a party, do not and will not conflict with:

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

17.4 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing by it as contemplated by the Finance Documents to which it is a party.

17.5 Validity and admissibility in evidence

All Authorisations required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents and the Acquisition Documents to which it is a party; and
- (b) to make the Finance Documents and the Acquisition Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect, save for (x) compliance with any applicable Perfection Requirements which will be carried out promptly and in any event within the prescribed time limit and (y) any Authorisations in connection with transactions contemplated by the Finance Documents and the Acquisition Documents which will be promptly obtained or effected and will be in full force and effect on or before the first Utilisation Date.

17.6 **Acquisition Documents**

The Announcement, the Scheme Circular (if any) and the Offer Document (if any) delivered to the Payment Agent contain all the material terms and conditions of the Scheme or, as the case may be, the Offer as at the date of publication.

17.7 **No default**

No Default is continuing or might reasonably be expected to occur.

17.8 **Not used**

17.9 **Financial statements**

- (a) Its Original Financial Statements were prepared in accordance with IFRS consistently applied.
- (b) Its Original Financial Statements fairly represent in all material respects its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Company).
- (c) There has been no material adverse change in its business or financial condition since the date of the Original Financial Statements delivered pursuant to item 2 of Part I of Schedule 2 (*Conditions precedent*).

17.10 ***Pari passu* ranking**

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

17.11 **No proceedings**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which if adversely determined, would reasonably be expected to have a Material Adverse Effect has or have been started or (to the best of its knowledge and belief) threatened against it.

17.12 **No Anti-Social Person, Anti-Social Person Related Party or Anti-Social Conduct**

It is not an Anti-Social Person or an Anti-Social Person Related Party and it does not engage in Anti-Social Conduct, either by itself or through the use of third parties.

18. **INFORMATION UNDERTAKINGS**

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

18.1 **Financial statements**

- (a) If the Company prepares a Report, the Company shall, promptly upon submitting the same to the head of the competent Financial Bureau, submit a copy of such Report to the Agents and the Lenders through the Facility Agent.
- (b) If the Company makes electronic disclosure of a Report through the Electronic Disclosure for Investors' NETwork (electronic data processing system as prescribed in Article 27-30-2 of the FIEA) (EDINET), such copy shall be deemed to be submitted to the Facility Agent at the time of such electronic disclosure. If any Agent or any Lender requests the Company to submit a copy of the Report, the Company shall submit a copy of the Report to the Agent or the Lender.
- (c) If the Company decides not to prepare any Reports, promptly upon preparation of Financial Statements, the Company shall submit a copy of the Financial Statements to the Agents and the Lenders through the Facility Agent in lieu of the Reports. Financial Statements are required to be accurately and duly prepared in accordance with IFRS, and if the Financial Statements are required to be audited under the applicable laws and regulations, the Financial Statements shall be audited as required.

18.2 **Compliance Certificate**

- (a) The Company shall supply to the Agents and the Lenders through the Facility Agent, with each set of Financial Statements (including financial statements contained in a Report) of a financial year delivered pursuant to paragraph (a) or (b) of Clause 18.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 19 (*Financial covenants*) as at the date as at which those Financial Statements were drawn up.
- (b) The Company shall supply to the Agents and the Lenders through the Facility Agent, with each set of Financial Statements (including financial statements contained in a Report) of a financial year delivered pursuant to paragraph (a) or (b) of Clause 18.1 (*Financial statements*), a Compliance Certificate for Negative Pledge and No Guarantee setting out (in reasonable detail) compliance with Clause 20.3 (*Negative pledge*) and Clause 20.4 (*No guarantee*) as at the date as at which those Financial Statements were drawn up.

18.3 Information: miscellaneous

- (a) Upon a request made in writing by the Facility Agent or a Lender through the Facility Agent, the Company shall immediately notify to the Facility Agent of the condition of the assets, management, or businesses of the Company and its Subsidiaries and Affiliates, and shall provide the necessary assistance to facilitate the investigations thereof, in each case, to the extent practically reasonable.
- (b) If any material change has occurred, or is likely to occur with the passage of time, to the conditions of the assets, management, or businesses of the Company and its Subsidiaries and Affiliates, or if any lawsuit, arbitration, administrative procedure, or any other dispute, which will materially affect, or is likely to materially affect, the performance of the obligations of the Company under this Agreement, has commenced, or is likely to commence, the Company shall immediately notify all Agents and all Lenders thereof.
- (c) If any representation in Clause 17 (*Representations*) is found inaccurate or untrue, the Company shall immediately notify thereof to the Agents and the Lenders through the Facility Agent.
- (d) At the end of the financial year ending December 2021 and each subsequent financial year end falling prior to the Termination Date, the Company shall report the financial results of that financial year by promptly holding a bank meeting for all Lenders to explain the financial results, or by delivering a report on the financial results to the Facility Agent.
- (e) If the Company's Consolidated Operating Income (as defined below) for any financial year ending after the date of this Agreement is negative, the Company shall submit an improvement plan regarding its income and loss in a form and substance reasonably satisfactory to the Facility Agent by delivering such plan to the Facility Agent within four (4) Months from the end of that financial year.
- (f) If the Company's Consolidated Net Income (as defined below) for any financial year ending after the date of this Agreement is negative, the Company shall submit an improvement plan regarding its income and loss in a form and substance reasonably satisfactory to the Facility Agent by delivering such plan to the Facility Agent within four (4) Months from the end of that financial year.
- (g) If the Company prepares any report on the financial statements of the Target or the financial condition and business results of the Target (including any financial statements or reports of any successor of the Target in case the Target merges into any other company in a restructuring), the Company shall submit such financial statements or report to the Facility Agent. For the avoidance of doubt, the Company is not obligated to prepare such financial statements or report.
- (h) If the Company submits any documents to, or receives any documents from, its accounting auditor in connection with the accounting of the consideration for the Acquisition, the Company shall, as soon as practicably possible, submit a copy of such documents to the Facility Agent.

- (i) If the Company conducts any test for impairment of goodwill with respect to the goodwill recorded in its consolidated balance sheet, the Company shall, as soon as practicably possible, submit a copy of any documents submitted to, or received from, its accounting auditor in connection with the test for impairment of goodwill to the Facility Agent.

18.4 **Notification of default**

The Company shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

19. **FINANCIAL COVENANTS**

19.1 **Financial definitions**

In this Agreement:

"Consolidated Net Income" means the consolidated amount of net income (*toki jun rieki*) shown on the profit and loss statement of the most recent annual Financial Statements of the Company.

"Consolidated Net Worth" means shareholders' equity (*junshisan no bu no goukeigaku*) shown on the balance sheet of the most recent annual Financial Statements of the Company.

"Consolidated Operating Income" means the consolidated amount of operating income (*eigyo rieki*) shown on the profit and loss statement of the most recent annual Financial Statements of the Company.

"Relevant Period" means each period of twelve (12) Months ending on or about the last day of the financial year of the Company and each period of twelve (12) Months ending on or about the last day of each second financial quarter of the Company.

19.2 **Financial covenants**

The Company shall ensure that:

- (a) for any financial year of the Company, the Consolidated Net Worth of the Company shall be greater than or equal to seventy five (75) per cent. of the Company's Consolidated Net Worth on the previous financial year's financial year end;
- (b) the Company shall not have negative Consolidated Operating Income for any two consecutive financial years; and
- (c) the Company shall not have negative Consolidated Net Income for any two consecutive financial years.

19.3 **Financial covenant calculations**

The financial covenants set out in this Clause 19 (*Financial covenants*) shall be calculated and interpreted in accordance with IFRS. If the financial statements of the

Company is prepared using any accounting principles other than IFRS, necessary changes and adjustments shall be made to this Clause 19 (*Financial covenants*) in response to such change in the accounting principles.

20. GENERAL UNDERTAKINGS

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

20.1 Authorisations

Subject to the Perfection Requirements (which will be carried out within the prescribed time limit), the Company shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any material Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to carry on its business.

20.2 Compliance with laws

The Company shall (and shall ensure that, after the Closing Date, the Target shall) comply in all respects with all laws to which it may be subject.

20.3 Negative pledge

- (a) The Company shall not (and the Company shall ensure that, after the Closing Date, the Target shall not) create or permit to subsist any Security over any of its assets, without the consent of the Majority Lenders. The Parties hereby confirm that the replacement of the property of each factory foundation (*kojyo zaidan*) in the factory foundation mortgage or the factory foundation revolving mortgage shall not be deemed as creating or permitting to subsist a Security in any sense.
- (b) Paragraph (a) above does not apply to:
 - (i) any lien arising by operation of law;
 - (ii) any Security created in connection with the Loan and Commitment Line Agreement dated 15 January 2019 by and between, among others, the Company, MUFG Bank, Ltd., Mizuho Bank, Ltd. and Sumitomo Mitsui Trust Bank, Limited, as amended from time to time (including any Security which is allowed to be created under the Loan and Commitment Line Agreement);
 - (iii) any Security whose creation is required under the applicable law or regulation;
 - (iv) any Security to secure a borrowing for acquisition of an asset which is created over such assets;
 - (v) any Security to secure obligations to pay purchase price for acquisition of an asset which is created over such assets;

- (vi) any Security which has already been existing over any assets to be acquired (including any Security which has been existing over any assets to be acquired by way of a merger, company split or business transfer);
- (vii) any Security creation of which is required in connection with any finance by way of securitization of assets;
- (viii) any Security created in connection with unsecured bonds issued by the Company whose terms and conditions contain a clause which allows conversion of the unsecured bonds to secured bonds;
- (ix) any Security pursuant to any foreign exchange transaction relating to import or export of goods which is created over such goods or any bill of lading related to it;
- (x) any Transaction Security or any Account Pledge Agreement; or
- (xi) any Security arising pursuant to an agreement which is entered into without any breach of this Agreement,

to the extent creation of such Security (other than the Transaction Security) is notified in writing to all of the Agents prior to its creation.

20.4 **No guarantee or assumption by a third party**

- (a) The Company shall not request or engage any third party to provide any guarantee or any Security (other than any blanket guarantee (*ne hosho*) or blanket security (*ne tanpo*)) or assume the Company's obligations and liabilities under this Agreement.
- (b) Paragraph (b) above does not apply to any guarantee or Security contemplated under any Finance Documents.

20.5 **Disposals**

- (a) The Company shall not, enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary, to sell, lease, transfer or otherwise dispose of any Shares.
- (b) The Company shall not (and the Company shall ensure that, after the Closing Date, the Target shall not), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary, to sell, lease, transfer or otherwise dispose of any asset (including, but not limited to, transfer of all or part of its business or assets to a third party (including any transfer for a sale and lease back transaction)), which, in each case, is reasonably expected to have a Material Adverse Effect.
- (c) Paragraph (b) above does not apply to any sale, lease, transfer or other disposal:
 - (i) made in the ordinary course of trading of the disposing entity; or

- (ii) of assets in exchange for other assets comparable or superior as to type, value and quality.

20.6 Merger

- (a) The Company shall not (and the Company shall ensure that, after the Closing Date, the Target shall not) enter into, without the consent of the Majority Lenders:
 - (i) any reorganization (*soshiki henkou*) defined under Article 2(26) of the Companies Act of Japan;
 - (ii) merger (*gappei*);
 - (iii) company split (*kaisha bunkatsu*);
 - (iv) share exchange (*kabushiki koukan*);
 - (v) share transfer (*kabushiki iten*);
 - (vi) reduction of share capital;
 - (vii) obtaining a third party's business or assets by transfer; or
 - (viii) any other steps similar or equivalent thereto,which is reasonably expected to have a Material Adverse Effect.
- (b) Paragraph (a) above does not apply to:
 - (i) the Acquisition;
 - (ii) any transaction between the Target and any Subsidiary or Affiliate of the Target (only to the extent that such Subsidiary or Affiliate has already been a Subsidiary or Affiliate of the Target prior to the Acquisition); or
 - (iii) any transaction between the Company and any wholly-owned Subsidiary of the Company (including the Target and any of its wholly-owned Subsidiaries, if the Company acquires 100% of the issued share capital of the Target through the Acquisition).

20.7 Change of business

The Company shall procure that no substantial change is made to the general nature of the business of the Company from that carried on at the date of this Agreement.

20.8 Acquisition undertakings

- (a) The Company shall comply in all material respects with the City Code, subject to waivers granted by or requirements of the Takeover Panel or the requirements of the Court, and all relevant laws and regulations relating to the Acquisition, save where non-compliance would not be materially prejudicial to the interests of the Lenders (taken as a whole) under this Agreement.

- (b) The Company will not amend or waive any material term of any Announcement or any Acquisition Document in a manner or to an extent that would be materially prejudicial to the interests of the Lenders (taken as a whole) under this Agreement other than any amendment or waiver:
 - (i) made with the consent of the Majority Lenders (not to be unreasonably withheld or delayed);
 - (ii) required (or consented to) by the Takeover Panel, the City Code, the Court or any other applicable law, regulation, court or regulatory body (or reasonably determined by the Company as being necessary or desirable to comply with any of the foregoing);
 - (iii) increasing the price to be paid for the Shares to the extent permitted under paragraph (c) below;
 - (iv) extending the period in which holders of the Shares may accept the terms of the Offer or, as the case may be, approve the Scheme;
 - (v) to the extent required to allow the Acquisition to switch from being effected by way of a Scheme to an Offer or, as the case may be, from an Offer to a Scheme; or
 - (vi) without prejudice to paragraph (e) below, reducing the Acceptance Conditions to no lower than the Minimum Acceptance Condition.
- (c) The Company shall not increase the price to be paid for any Shares pursuant to a Scheme or, as the case may be, an Offer, unless such increase is made with the consent of the Majority Lenders (not to be unreasonably withheld or delayed).
- (d) The Company shall not prior to the end of the Offer Period (as defined in the City Code) make any press release or other public statement in relation to the Acquisition which refers to any Finance Document, any Finance Party and/or the financing of the Scheme or Offer, as the case may be, which would be materially prejudicial to the interests of the Lenders (taken as a whole) under this Agreement (other than pursuant to any Announcement, any Scheme Document or any Offer Document), without the consent of the Majority Lenders (not to be unreasonably withheld or delayed) unless required to do so by law or regulation or by the City Code, the Takeover Panel, the Court or any other court or regulatory body (or reasonably determined by the Company as being necessary to comply with any of the foregoing). For the avoidance of doubt, this paragraph (d) shall not restrict the Company from making any disclosure that is required, permitted or customary in relation to this Agreement or of the identity of the Finance Parties in any Announcement, any Scheme Document or any Offer Document or making any filings as required by law or its auditors or in its audited financial statements or in accordance with or in order to satisfy or comply with the terms of this Agreement.
- (e) If the Acquisition is effected by way of an Offer, the Company shall not reduce the Acceptance Condition to lower than the Minimum Acceptance Condition,

other than with the consent of the Majority Lenders (not to be unreasonably withheld or delayed).

- (f) The Company shall not take any action which would result in the Company being required to make a mandatory offer for the Shares in accordance with Rule 9 of the City Code.
- (g) In the case of an Offer, where becoming entitled to do so, the Company shall promptly give notice under Section 979 of the Companies Act 2006 and shall promptly (and in any event within the maximum time period prescribed for such actions) complete a Squeeze-out.
- (h) The Company shall, upon reasonable request and to the extent that it is able to do so in compliance with the requirements of the City Code, the Takeover Panel and the requirements of the Court, applicable law, regulation and confidentiality obligations to which it is subject, keep the Facility Agent informed as to the status and progress of the Scheme or, as the case may be, the Offer (and, in the case of an Offer, the current level of acceptances in respect of that Offer, provided that any information on the current level of acceptances may only be provided to the Arrangers).
- (i) The Company shall, to the extent that it is able to do so in compliance with the requirements of the City Code, the Takeover Panel or the requirements of the Court, applicable law, regulation and confidentiality or other obligations to which it is subject, promptly supply to the Facility Agent copies of all documents, certificates, notices or announcements received or issued by any member of the Group (or on their behalf) in relation to a Scheme or an Offer (as the case may be) to the extent material to the interests of the Lenders (taken as a whole) under this Agreement.
- (j) Subject always to the Companies Act 2006 and any applicable listing rules:
 - (i) in the case of a Scheme the Company shall, within 60 days after the Scheme Effective Date; or
 - (ii) in relation to an Offer:
 - (A) if the Company (directly or indirectly) owns shares in the Target (excluding any shares held in treasury), which, when aggregated with all other shares in the Target owned directly or indirectly by the Company, represent one hundred (100) per cent. of all shares in the Target (excluding any shares held in treasury) without the need for a Squeeze-out, within 60 days after the first day on which it achieves such ownership of the shares in the Target; or
 - (B) if the Company (directly or indirectly) owns shares in the Target (excluding any shares held in treasury), which, when aggregated with all other shares in the Target owned directly or indirectly by the Company, represent more than ninety (90) per cent., but less than one hundred (100) per cent. of all shares in the Target

(excluding any shares held in treasury) and the Company is entitled under Section 979 of the Companies Act 2006 to commence a Squeeze-out within 120 days after the date upon which the Company is first entitled to commence such Squeeze-out,

use all reasonable endeavours to procure that such action as is necessary is taken to procure that trading in the shares in the Target on the Frankfurt Stock Exchange is cancelled and that the Target is delisted from the Frankfurt Stock Exchange and as soon as reasonably practicable thereafter, procure that the Target is re-registered as a private limited company.

20.9 **Anti-social activities**

The Company shall ensure (and shall cause, after the Closing Date, the Target to ensure) that none of it or, after the Closing Date, the Target is an Anti-Social Person or Anti-Social Person Related Party or engages in Anti-Social Conduct, either by itself or through the use of third parties.

20.10 **Pledged Bank Accounts**

- (a) As long as, with respect to a Lender, any Facility C Commitment of that Lender is in force or any Facility C Loan of that Lender is outstanding, the Company shall ensure that it shall have an amount in cash equal to the Facility C Commitment of that Lender or (after the expiry of the Availability Period) the amount of that Lenders' participation in any Facility C Loans outstanding, in the Pledged Bank Account opened with that Lender.
- (b) As soon as reasonably practicable following the date of this Agreement, the Company shall enter into an account receivable pledge agreement with each Lender in respect of that Lender's Pledged Bank Account in form and substance reasonably satisfactory to that Lender in order to create, subject to the Reservations and the Perfection Requirements, first-ranking Security over the receivables relating to that Pledged Bank Account in favour of that Lender to secure all present and future liabilities and obligations at any time due, owing or incurred by the Company to that Lender in respect of any Facility C Loan (each an "**Account Pledge Agreement**"). Once the Security is created in accordance with the relevant Account Pledge Agreement, subject to the Reservations and the Perfection Requirements, as long as any Facility C Commitment of that Lender is in force or any amount of that Lender's participation in any Facility C Loan is outstanding, the Company shall ensure that such Lender's Pledged Bank Account is subject to the relevant Account Pledge Agreement at all times.

20.11 **Guarantee by the Target**

The Company shall procure that within five (5) Business Days of the date on which the Target is re-registered as a private limited company in accordance with Clause 20.8(j) (*Acquisition Undertakings*), the Target enters into a guarantee agreement in the form and substance reasonably satisfactory to the Lenders under which the Target will

guarantee all present and future liabilities and obligations at any time due, owing or incurred by the Company to any Finance Party under the Finance Documents.

20.12 **Charge over Shares**

- (a) Within five (5) Business Days of the date on which the Target is re-registered as a private limited company in accordance with Clause 20.8(j) (*Acquisition Undertakings*), the Company shall enter into a share charge agreement with the Security Agent in the form and substance reasonably satisfactory to the Lenders in order to create first-ranking Security over the Shares held by the Company in favour of the Finance Parties to secure all present and future liabilities and obligations at any time due, owing or incurred by the Company to any Finance Party under the Finance Documents.
- (b) Notwithstanding paragraph (a) above, in the case of an Offer, if the Offer closes for acceptances and the Company (directly or indirectly) owns shares in the Target (excluding any shares held in treasury), which, when aggregated with all other shares in the Target owned directly or indirectly by the Company, represent less than ninety (90) per cent. of all shares in the Target (excluding any shares held in treasury), within 60 days from such date, the Company shall enter into a share charge agreement with the Security Agent in form and substance reasonably satisfactory to the Lenders in order to create first-ranking Security over the Shares held by the Company in favour of the Finance Parties to secure all present and future liabilities and obligations at any time due, owing or incurred by the Company to any Finance Party under the Finance Documents.

21. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in Clause 21 is an Event of Default (save for Clause 21.15 (*Acceleration*)).

21.1 **Non-payment**

The Company, or after the Closing Date, the Target does not pay on the due date any amount payable to any Agent or any Lender pursuant to a Finance Document to which it is a party unless, regardless of whether such amount is payable under this Agreement or any other Finance Document.

21.2 **Financial covenants**

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

21.3 **Other obligations**

- (a) The Company, or, after the Closing Date, the Target does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*) and Clause 21.2 (*Financial covenants*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days.

21.4 **Misrepresentation**

- (a) Any representation or statement made or deemed to be made by the Company, or after the Closing Date, the Target in the Finance Documents to which it is a party is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days.

21.5 **Cross default**

- (a) Any Financial Indebtedness of the Company or, after the Closing Date, the Target, is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of the Company or, after the Closing Date, the Target, is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of the Company or, after the Closing Date, the Target, is cancelled or suspended by a creditor of the Company as a result of an event of default (however described).
- (d) Any creditor of the Company or, after the Closing Date, the Target, becomes entitled to declare any Financial Indebtedness of the Company or, after the Closing Date, the Target, due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 21.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) (inclusive) above is less than JPY100 million (or its equivalent in any other currency or currencies).

21.6 **Insolvency**

The Company suspends or threatens to suspend making payments on any of its debts (*shiharai teishi*).

21.7 **Insolvency proceedings**

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

- (a) commencement of proceedings or procedures relating to the Company for civil rehabilitation under the Civil Rehabilitation Act (Act No. 225 of 1999, as amended), reorganisation under the Corporate Reorganisation Act (Act No. 154 of 2002, as amended), bankruptcy under the Bankruptcy Act (Act No. 75 of 2004, as amended), special liquidation (*tokubetsu seisan*) under the Companies Act of Japan;

- (b) commencement of proceedings or procedures relating to the Company for special mediation (*tokutei chotei*) under the Special Mediation Act (Act No. 158 of 1999, as amended);
- (c) winding-up (*seisan* or *kaisan*) or dissolution (*seisan* or *kaisan*) of the Company; or
- (d) any analogous procedure or step is taken in any jurisdiction.

Paragraph (b) above shall not apply to any petition for special mediation is discharged, stayed or dismissed within 10 Business Days of the petition.

21.8 Creditors' process

- (a) If any order or notice of provisional attachment (*kari-sashiosae*), provisional disposition (*kari-shobun*), preservative attachment (*hozen-sashiosae*), or attachment (*sashiosae*) has been issued (or any analogous procedure taken), or any adjudication that orders an enforcement of any preservative attachment (*hozen-sashiosae*) or attachment (*sashiosae*) has been rendered (or any analogous procedure taken), with respect to deposits held in any account of the Company with any Lender or any monetary obligation owed by any Lender to the Company.
- (b) If any order or notice of provisional attachment (*kari-sashiosae*), provisional disposition (*kari-shobun*), preservative attachment (*hozen-sashiosae*), or attachment (*sashiosae*) has been issued (or any analogous procedure taken), or any adjudication that orders an enforcement of any preservative attachment (*hozen-sashiosae*) or attachment (*sashiosae*) has been rendered (or any analogous procedure taken), or foreclosure (*keibai tetsuzuki*) has commenced (or any analogous procedure taken) with respect to any assets over which any Transaction Security is created, and, in case of provisional attachment (*kari-sashiosae*) or preservative attachment (*hozen-sashiosae*) only, is not discharged within 10 Business Days and no deposit required for release of the provisional attachment or the preservative attachment has been paid.
- (c) Any attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any material asset or assets of the Company.

21.9 Unlawfulness and invalidity

- (a) It is or becomes unlawful for the Company to perform any of its obligations under the Finance Documents in a manner which is materially adverse to the interests of the Lender taken as a whole under the Finance Documents.
- (b) Any Acquisition Document becomes unlawful or invalid and such matter materially and adversely affects the interests of the Lender taken as a whole under the Finance Documents.
- (c) Subject to the Reservations and the Perfection Requirements, any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding or enforceable.

21.10 Cessation of business

The Company ceases to carry on all or a material part of its business.

21.11 Suspension of business

The Company suspends or is ordered by the competent authority to suspend to carry on all or a material part of its business.

21.12 Suspension of banking transactions

Any bank, clearinghouse (*tegata koukanjo*), densai.net Co., Ltd. or any equivalent electronic monetary claim recording institution (*denshisaiken kirokukikan*) takes procedures for the suspension of any transactions of the Company with banks or similar financial institutions.

21.13 Material adverse change

Any event or circumstance occurs which has a Material Adverse Effect.

21.14 Target

Any event or circumstance in Clause 21.6 (*Insolvency*), Clause 21.7 (*Insolvency proceedings*), Clause 21.8 (*Creditors' process*), Clause 21.10 (*Cessation of business*), Clause 21.11 (*Suspension of business*) and Clause 21.12 (*Suspension of banking transactions*) occurs, after the Closing Date, in respect of the Target.

21.15 Acceleration

Subject in all cases to Clause 4.4 (*Utilisations during the Certain Funds Period*):

- (a) On the occurrence of an Event of Default or, during the Certain Funds Period, a Major Event of Default under Clause 21.6 (*Insolvency*), Clause 21.7 (*Insolvency proceedings*) (other than in respect of special mediation (*tokutei chotei*) under the Special Mediation Law), paragraph (a) of Clause 21.8 (*Creditors' process*), Clause 21.10 (*Cessation of business*) or Clause 21.12 (*Suspension of banking transactions*):
 - (i) the Commitments shall be immediately cancelled;
 - (ii) the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents shall be immediately and automatically due and payable; and
 - (iii) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.
- (b) On and at any time after the occurrence of an Event of Default (other than the circumstances described in paragraph (a) above) which is continuing the Facility Agent (acting on the instructions of the Majority Lenders) may by notice to the Company:

- (i) cancel the Available Commitments whereupon they shall immediately be cancelled;
- (ii) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (iii) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders; and/or
- (iv) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

21.16 Clean-Up Period

Notwithstanding any other provision of any Finance Document:

- (a) any breach of a representation, warranty, or undertaking; or
- (b) any Event of Default,

(a "**Breach**")

which occurs during the Clean-Up Period will be deemed not to be Breach if:

- (i) it would have been (if it were not for this Clause 21.16) a Breach only by reason of circumstances relating exclusively to any member of the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group), or in respect of any action taken by a member of the Group solely to remedy such circumstances for the purpose of ensuring compliance with the Finance Documents;
- (ii) it is capable of remedy and reasonable steps are being taken to remedy it;
- (iii) the circumstances giving rise to it have not been procured by or approved by the Company; and
- (iv) it is not reasonably likely to have a Material Adverse Effect.

If the relevant circumstances are continuing after the end of the Clean-Up Period, there shall be a Breach notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

**SECTION 8
CHANGES TO PARTIES**

22. CHANGES TO THE LENDERS

22.1 Assignments and transfers by the Lenders

Subject to this Clause 22, a Lender (the "**Existing Lender**") may:

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

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

22.2 Company consent

- (a) The consent of the Company is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:
 - (i) to another Lender or an Affiliate of any Lender; or
 - (ii) made at a time when an Event of Default is continuing.
- (b) The consent of the Company to an assignment or transfer under paragraph (a) above must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent ten (10) Business Days after the Existing Lender has requested it unless consent is expressly refused by the Company within that time.
- (c) Notwithstanding paragraphs (a) and (b) above, the consent of the Company (in its absolute discretion) is required for any assignment, transfer or sub-participation made during the Certain Funds Period.

22.3 Other conditions of assignment or transfer

- (a) An assignment will only be effective on:
 - (i) receipt by the Payment Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance reasonably satisfactory to the Payment Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it had been an Original Lender; and
 - (ii) performance by the Payment Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Payment Agent shall promptly notify to the Existing Lender and the New Lender.

- (b) A transfer will only be effective if the procedure set out in Clause 22.6 (*Procedure for transfer*) is complied with.
- (c) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Company would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

- (d) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Payment Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

22.4 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Payment Agent (for its own account) a fee of JPY500,000.

22.5 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of the Company;
 - (iii) the performance and observance by the Company of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Company and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of the Company and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 22; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Company of its obligations under the Finance Documents or otherwise.

22.6 Procedure for transfer

- (a) Subject to the conditions set out in Clause 22.2 (*Company consent*) and Clause 22.3 (*Other conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Payment Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Payment Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Payment Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) On the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents the Company and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");

- (ii) the Company and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Company and the New Lender have assumed and/or acquired the same in place of the Company and the Existing Lender;
- (iii) the Payment Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Payment Agent, the Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a "Lender".

22.7 Procedure for assignment

- (a) Subject to the conditions set out in Clause 22.2 (*Company consent*) and Clause 22.3 (*Other conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Payment Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Payment Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Payment Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) On the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released by the Company and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement; and
 - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 22.7 to assign their rights under the Finance Documents (but not, without the consent

of the Company or unless in accordance with Clause 22.6 (*Procedure for transfer*), to obtain a release by the Company from the obligations owed to the Company by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 22.2 (*Company consent*) and Clause 22.3 (*Other conditions of assignment or transfer*).

22.8 Copy of Transfer Certificate or Assignment Agreement to Company

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

23. CHANGES TO THE COMPANY

23.1 Assignments and transfer by the Company

The Company shall not transfer any of its rights or obligations under the Finance Documents.

**SECTION 9
THE FINANCE PARTIES**

24. ROLE OF THE AGENTS AND THE ARRANGER AND THE REFERENCE BANKS

24.1 Appointment of the Agents

- (a) Each of the Arranger and the Lenders appoints the Agents to act as its agents under and in connection with the Finance Documents.
- (b) Each of the Arranger and the Lenders authorises each Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

24.2 Instructions

- (a) Each Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) Each Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. Each Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to an Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Each Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in

advance) for any cost, loss or liability which it may incur in complying with those instructions.

- (e) In the absence of instructions, each Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) No Agent is authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

24.3 Duties of the Agents

- (a) Each Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, each Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to Clause 22.8 (*Copy of Transfer Certificate or Assignment Agreement to Company*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Except where a Finance Document specifically provides otherwise, no Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If any Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If any Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than any Agent or the Arranger) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) Each Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

24.4 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

24.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes any Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) Neither any Agent nor the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

24.6 Business with the Group

Each Agent and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

24.7 Rights and discretions

- (a) Each Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lender or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) Each Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 21.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
 - (iii) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of the Company.
- (c) Each Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, each Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any

lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.

- (e) Each Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) Each Agent may act in relation to the Finance Documents through its officers, employees and agents.
- (g) Unless a Finance Document expressly provides otherwise each Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither any Agent nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, no Agent is obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

24.8 Responsibility for documentation

Neither any Agent nor the Arranger is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by any Agent, the Arranger, the Company or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

24.9 No duty to monitor

No Agent shall be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or

- (c) whether any other event specified in any Finance Document has occurred.

24.10 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of any Agent), no Agent will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of its gross negligence or wilful misconduct; or
 - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (but not including any claim based on the fraud of the Agent) arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the relevant Agent) may take any proceedings against any officer, employee or agent of any Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this paragraph (b).
- (c) No Agent will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

- (d) Nothing in this Agreement shall oblige any Agent or the Arranger to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender or for any Affiliate of any Lender,

on behalf of any Lender and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting any Agent's liability, any liability of any Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall any Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

24.11 Lenders' indemnity to the Agents

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify each Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by the Company pursuant to a Finance Document).

24.12 Resignation of an Agent

- (a) An Agent may resign and appoint one of its Affiliates acting through an office in Japan as successor by giving notice to the Lenders and the Company.
- (b) Alternatively an Agent may resign by giving 30 days' notice to the Lenders and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Company) may appoint a successor Agent.
- (d) The retiring Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably

request for the purposes of performing its functions as Agent under the Finance Documents.

- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (d) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*) and this Clause 24 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) After consultation with the Company, the Majority Lenders may, by notice to an Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.
- (h) An Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three (3) Months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under Clause 12.8 (*FATCA information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Agent pursuant to Clause 12.8 (*FATCA information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Agent notifies the Company and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

24.13 Confidentiality

- (a) In acting as agent for the Finance Parties, each Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

- (b) If information is received by another division or department of any Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

24.14 Relationship with the Lenders

- (a) Each Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to each Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 29.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 29.2 (*Addresses*) and paragraph (a)(ii) of Clause 29.5 (*Electronic communication*) and each Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

24.15 Credit appraisal by the Lenders

Without affecting the responsibility of the Company for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to each Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any

Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

- (d) the adequacy, accuracy or completeness of any information provided by any Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

24.16 Deduction from amounts payable by an Agent

If any Party owes an amount to any Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

24.17 Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to any Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 24.17.

25. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

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

26. SHARING AMONG THE FINANCE PARTIES

26.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from the Company other than in accordance with Clause 27 (*Payment mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Payment Agent;
- (b) the Payment Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Payment Agent and distributed in accordance with Clause 27 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Payment Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Payment Agent, pay to the Payment Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Payment Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 27.5 (*Partial payments*).

26.2 Redistribution of payments

The Payment Agent shall treat the Sharing Payment as if it had been paid by the Company and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 27.5 (*Partial payments*) towards the obligations of the Company to the Sharing Finance Parties.

26.3 Recovering Finance Party's rights

On a distribution by the Payment Agent under Clause 26.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from the Company, as between the Company and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Company.

26.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Payment Agent, pay to the Payment Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and

- (b) as between the Company and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Company.

26.5 **Exceptions**

- (a) This Clause 26 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Company.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

SECTION 10 ADMINISTRATION

27. PAYMENT MECHANICS

27.1 Payments to the Payment Agent

- (a) On each date on which the Company or a Lender is required to make a payment under a Finance Document, the Company or Lender shall make the same available to the Payment Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Payment Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Payment Agent, in each case, specifies.
- (c) Payments by the Borrower under this Agreement to the Payment Agent must be made for value on the due date by 10:30 a.m..

27.2 Distributions by the Payment Agent

Each payment received by the Payment Agent under the Finance Documents for another Party shall, subject to Clause 27.3 (*Distributions to the Company*) and Clause 27.4 (*Clawback and pre-funding*) be made available by the Payment Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Payment Agent by notice with a bank specified by that Party in the principal financial centre of the country of that currency.

27.3 Distributions to the Company

The Payment Agent may (with the consent of the Company or in accordance with Clause 28 (*Set-off*)) apply any amount received by it for the Company in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Company under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

27.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Payment Agent under the Finance Documents for another Party, the Payment Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Payment Agent pays an amount to another Party and it proves to be the case that the Payment Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Payment Agent shall on demand refund the same to the Payment Agent together with interest on that

amount from the date of payment to the date of receipt by the Payment Agent, calculated by the Payment Agent to reflect its cost of funds.

- (c) If the Payment Agent is willing to make available amounts for the account of the Company before receiving funds from the Lenders then if and to the extent that the Payment Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Company:
 - (i) the Company shall on demand refund it to the Payment Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Company, shall on demand pay to the Payment Agent the amount (as certified by the Payment Agent) which will indemnify the Payment Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

27.5 **Partial payments**

- (a) If the Payment Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Company under the Finance Documents, the Payment Agent shall apply that payment towards the obligations of the Company under the Finance Documents in the following order:
 - (i) **first**, in or towards payment pro rata of any unpaid amount owing to the Payment Agent under the Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Payment Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (a)(iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by the Company.

27.6 **No set-off by the Company**

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

27.7 **Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

27.8 **Currency of account**

- (a) Subject to paragraphs (b) to (e) below, yen is the currency of account and payment for any sum due from the Company under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than yen or euro shall be paid in that other currency.

27.9 **Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Company); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

28. SET-OFF

Subject to Clause 4.4 (*Utilisations during the Certain Funds Period*), if an Event of Default is continuing, a Finance Party may set off any matured obligation due from the Company under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

29. NOTICES

29.1 Communications in writing

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

29.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Company, that identified with its name below;
- (b) in the case of each Lender or the Company, that notified in writing to each Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of an Agent, that identified with its name below,

or any substitute address or fax number or department or officer as the Party may notify to each Agent (or an Agent may notify to the other Parties, if a change is made by the Agent) by not less than five (5) Business Days' notice.

29.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 29.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to an Agent will be effective only when actually received by the Agent and then only if it is

expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).

- (c) All notices from or to the Company shall be sent through the relevant Agent.
- (d) Any communication or document made or delivered to the Company in accordance with this Clause will be deemed to have been made or delivered to the Company.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

29.4 **Notification of address and fax number**

Promptly upon changing its address or fax number, the relevant Agent shall notify the other Parties.

29.5 **Electronic communication**

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means;
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice; and
 - (iii) in the case of communications to the Payment Agent, if such communication is also provided in accordance with Clause 29.3(a) (*Delivery*).
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between the Company and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
- (c) Any such electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to an Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.

- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 29.5.

29.6 **Language**

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

30. **CALCULATIONS AND CERTIFICATES**

30.1 **Accounts**

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

30.2 **Certificates and determinations**

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

30.3 **Day count convention and calculation**

Unless otherwise expressly provided thereunder, any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed (inclusive of first and exclusive of last day) and a year of 365 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice, and divisions shall be done at the end of the calculation.

30.4 **Rounding down**

Amounts payable by the Company under any Finance Document shall be rounded down to the nearest one (1) Yen.

31. **PARTIAL INVALIDITY**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

32. **REMEDIES AND WAIVERS**

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

33. **AMENDMENTS AND WAIVERS**

33.1 **Required consents**

- (a) Subject to Clause 33.2 (*All Lender matters*) and Clause 33.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Company and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 33.

33.2 **All Lender matters**

Subject to Clause 33.4 (*Replacement of Screen Rate*) an amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;

- (e) an increase in any Commitment (other than in accordance with Clause 2.3 (*Increase*)), an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
- (f) a change to the Company;
- (g) any provision which expressly requires the consent of all the Lenders; or
- (h) Clause 2.4 (*Finance Parties' rights and obligations*), Clause 7.1 (*Illegality*), Clause 22 (*Changes to the Lenders*), this Clause 33, Clause 37 (*Governing law*) or Clause 38.1 (*Jurisdiction*),

shall not be made without the prior consent of all the Lenders and the Company.

33.3 **Other exceptions**

- (a) An amendment or waiver which relates to the rights or obligations of any Agent or the Arranger or a Reference Bank (each in their capacity as such) may not be effected without the consent of the Agent, the Arranger or that Reference Bank, as the case may be.
- (b) If any Lender fails to reject or accept a request for a consent, waiver, amendment of or in relation to any of the terms of any Finance Document (other than a request relating to a decision (i) in respect of (A) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable or (B) an increase in any Commitment (other than in accordance with Clause 2.3 (*Increase*)), an extension of the Availability Period, or (ii) to extend the Termination Date) or other vote of Lenders under the terms of this Agreement within five (5) Business Days (in case of a Defaulting Lender) or 10 Business Days (in case of any other Lender) (in each case, unless the Company and the Facility Agent agree to a longer time period in relation to any request) of that request being received:
 - (i) its Commitment and/or participation shall not be included for the purpose of calculating the Total Commitments or participations under the relevant Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments and/or participations has been obtained to approve that request; and
 - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

33.4 **Replacement of Screen Rate**

- (a) Subject to Clause 33.3 (*Other exceptions*), if a Screen Rate Replacement Event has occurred in relation to the Screen Rate for the currency of a Loan, any amendment or waiver which relates to:

- (i) providing for the use of a Replacement Benchmark in relation to that currency in place of that Screen Rate; and
- (ii)
 - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Benchmark;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Payment Agent (acting on the instructions of the Majority Lenders) and the Company.

- (b) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within five (5) Business Days (or such longer time period in relation to any request which the Company and the Payment Agent may agree) of that request being made:
 - (i) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
 - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.
- (c) In this Clause 33.4:

"Relevant Nominating Body" means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

"Replacement Benchmark" means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for the Screen Rate by:
 - (i) the administrator of the Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by the Screen Rate); or
 - (ii) any Relevant Nominating Body,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Lenders and the Company, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Company, an appropriate successor to the Screen Rate.

"Screen Rate Replacement Event" means:

- (a) the methodology, formula or other means of determining the Screen Rate has, in the opinion of the Majority Lenders and the Company, materially changed;
- (b)
 - (i)
 - (A) the administrator of the Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
 - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the Screen Rate is insolvent,provided that, in each case, at that time, there is no successor administrator to continue to provide the Screen Rate;
 - (ii) the administrator of the Screen Rate publicly announces that it has ceased or will cease to provide the Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the Screen Rate;

- (iii) the supervisor of the administrator of the Screen Rate publicly announces that the Screen Rate has been or will be permanently or indefinitely discontinued; or
- (iv) the administrator of the Screen Rate or its supervisor announces that the Screen Rate may no longer be used; or
- (c) the administrator of the Screen Rate determines that the Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Company) temporary; or
 - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than one week; or
- (d) in the opinion of the Majority Lenders and the Company, the Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

33.5 **Disenfranchisement of Defaulting Lenders**

- (a) In ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, any Defaulting Lender's Commitments and/or participations shall not be included when ascertaining whether a certain percentage of total Commitments and/or participations has been obtained to an amendment or waiver.
- (b) For the purposes of this Clause 33.5, the Facility Agent may assume that the following Lenders are Defaulting Lenders:
 - (i) any Lender which has notified the Facility Agent that it has become a Defaulting Lender; and
 - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraph (a), (b) or (c) of the definition of "**Defaulting Lender**" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Facility Agent) or the Facility Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

34. CONFIDENTIAL INFORMATION

34.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 34.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

34.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Company and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 24.14 (*Relationship with the Lenders*));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation

or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) who is a Party; or
- (viii) with the consent of the Company;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (C) in relation to paragraphs (b)(v) and (b)(vi) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party; and
 - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or

the Company if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

34.3 **Entire agreement**

This Clause 34 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

34.4 **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

34.5 **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Company:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 34.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 34.

34.6 **Continuing obligations**

The obligations in this Clause 34 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve (12) Months from the earlier of:

- (a) the date on which all amounts payable by the Company under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

35. **COUNTERPARTS**

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

36. **NOTARIZED DEED**

The Company shall, at any time upon a reasonable request of the Lender do all things necessary to cause a notary public designated by the Lender to execute a notarised deed (*kousei shosho*) pursuant to which the Company acknowledges its indebtedness under this Agreement, and agrees to be subject to compulsory enforcement proceeds (*kyousei shikkou*) with regard thereto.

SECTION 11
GOVERNING LAW AND ENFORCEMENT

37. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of Japan.

38. ENFORCEMENT

38.1 Jurisdiction

- (a) The Tokyo District Court has exclusive first instance jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the Tokyo District Court is the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

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

COMPANY:

RENESAS ELECTRONICS CORPORATION

By: _____

[Redacted signature area]

[Redacted signature area]

ARRANGER, ORIGINAL LENDER, PAYMENT AGENT and SECURITY AGENT:
MUFG BANK, LTD.

By: _____



ARRANGER, ORIGINAL LENDER and FACILITY AGENT:

MIZUHO BANK, LTD.

By: _____



SCHEDULE 1
THE ORIGINAL LENDERS

| Name of Original Lender | Facility A Commitment (JPY) | Facility B Commitment (JPY) | Facility C Commitment (JPY) | Facility D Commitment (JPY) |
|-------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| MUFG Bank, Ltd. | 152,950,000,000 | 125,000,000,000 | 35,000,000,000 | 54,750,000,000 |
| Mizuho Bank, Ltd. | 152,950,000,000 | 125,000,000,000 | 35,000,000,000 | 54,750,000,000 |
| TOTAL | 305,900,000,000 | 250,000,000,000 | 70,000,000,000 | 109,500,000,000 |

SCHEDULE 2
CONDITIONS PRECEDENT

1. Constitutional documents

- (a) A copy of the constitutional documents (*teikan*) of the Company.
- (b) A certificate of full present registry records of the Company (*genzaijikou zenbu shoumeisho*) (prepared and issued within three (3) Months prior to the date of this Agreement).
- (c) A certificate of seal impression of the Company (prepared and issued within three (3) Months prior to the date of this Agreement).
- (d) A certificate of the Company confirming its completion of all necessary internal processes for:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (e) A certificate of an authorised signatory of the Company certifying that each copy document relating to it specified in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. Financial Information

A copy of the Original Financial Statements, which shall be deemed provided to the Payment Agent to the extent such Original Financial Statements are disclosed electronically through EDINET.

3. Acquisition Information

A copy of the final draft of the Announcement.

4. Finance Documents

A copy of any Fee Letter, duly executed by the Company.

5. Buyside Reports

- (a) a copy of the legal due diligence report dated 2 February 2021 prepared by Covington & Burling LLP.

- (b) a copy of the financial due diligence report dated 3 February 2021 prepared by PwC Advisory LLC.
- (c) a copy of the tax due diligence report dated 3 February 2021 prepared by PwC Advisory LLC.
- (d) a copy of the HR due diligence report dated 3 February 2021 prepared by PwC Consulting LLC.
- (e) a copy of the valuation report dated 4 February 2021 prepared by Nomura International plc.

6. Acquisition Information

- (a) In the case of a Scheme, the Scheme Circular, or, in the case of an Offer, the Offer Document, provided that such documents shall not be required to be in form and substance satisfactory to any of the Finance Parties.
- (b) Evidence (by way of a certificate from an authorised signatory of the Company) that in the case of a Scheme, the Scheme Effective Date has occurred, or, in the case of an Offer, the Offer has become or has been declared unconditional in all respects, provided that such documents shall not be required to be in form and substance satisfactory to any of the Finance Parties.

**SCHEDULE 3
REQUESTS**

**PART I
UTILISATION REQUEST**

From: **Renesas Electronics Corporation**

To: [Payment Agent]

Dated:

Dear Sirs

**Renesas Electronics Corporation – JPY735,400,000,000 Term Loan Facilities
Agreement dated 8 February 2021 (the "Agreement")**

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

| | |
|----------------------------|--|
| Proposed Utilisation Date: | [] (or, if that is not a Business Day, the next Business Day) |
| Facility to be utilised: | [Facility A]/[Facility B]/[Facility C] /[Facility D] |
| Currency of Loan: | [] |
| Amount: | [] or, if less, the Available Facility |
| Interest Period: | [] |
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to [account].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for
Renesas Electronics Corporation

**PART II
SELECTION NOTICE**

From: **Renesas Electronics Corporation**

To: [Payment Agent]

Dated:

Dear Sirs

**Renesas Electronics Corporation - JPY735,400,000,000 Term Loan Facilities
Agreement dated 8 February 2021 (the "Agreement")**

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Facility [A/B/C/D] Loan[s] with an Interest Period ending on [].*
3. [We request that the above Facility [A/B/C/D] Loan[s] be divided into [] Facility [A/B/C/D] Loans with the following amounts and Interest Periods:]**

or

[We request that the next Interest Period for the above Facility [A/B/C/D] Loan[s] is []].***
4. This Selection Notice is irrevocable.

Yours faithfully

.....
authorised signatory for
Renesas Electronics Corporation

* Insert details of all Facility [A/B/C/D] Loans which have an Interest Period ending on the same date.

** Use this option if division of Loans is requested.

*** Use this option if sub-division is not required.

**SCHEDULE 4
FORM OF COMPLIANCE CERTIFICATE**

To: [] as Facility Agent

From: [Company]

Dated:

Dear Sirs

**Renesas Electronics Corporation –JPY735,400,000,000 Term Loan Facilities
Agreement dated 8 February 2021 (the "Agreement")**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that: [Insert details of covenants to be certified]

Signed:
[Company]

SCHEDULE 5
FORM OF COMPLIANCE CERTIFICATE
FOR NEGATIVE PLEDGE AND NO GUARANTEE

To: [] as Facility Agent

From: [Company]

Dated:

Dear Sirs

Renesas Electronics Corporation – JPY735,400,000,000 Term Loan Facilities
Agreement dated 8 February 2021 (the "Agreement")

1. We refer to the Agreement. This is a Compliance Certificate for Negative Pledge and No Guarantee. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate for Negative Pledge and No Guarantee unless given a different meaning in this Compliance Certificate for Negative Pledge and No Guarantee.
2. We confirm that: [Insert details of covenants to be certified]

Signed:
[Company]

SCHEDULE 6 TIMETABLES

| | |
|--|---|
| Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) or a Selection Notice (Clause 9.1 (<i>Selection of Interest Periods</i>)) | U – 3 4pm (Tokyo time) on a Business Day |
|--|---|

| | |
|--|-----------------------|
| Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' participation</i>) | U – 3 (Tokyo time) |
|--|-----------------------|

| | |
|----------------|---------------------------------------|
| TIBOR is fixed | Quotation Day 11:00 a.m. (Tokyo time) |
|----------------|---------------------------------------|

| | |
|--|---------------------------------------|
| Reference Bank Rate calculated by reference to available quotations in accordance with Clause 10.2 (<i>Calculation of Reference Bank Rate</i>) | Quotation Day 11:30 a.m. (Tokyo Time) |
|--|---------------------------------------|

"U" = Utilisation Date

"U – X" = X Business Days prior to the relevant Utilisation Date