

EXECUTION VERSION

BROTHER INDUSTRIES, LTD.

AS THE BORROWER

WITH

CITIBANK JAPAN LTD.
ACTING AS AGENT

AND

OTHERS

£1,073,000,000
TERM FACILITY AGREEMENT

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THIS AGREEMENT is dated 10 March 2015 and made between:

- (1) **BROTHER INDUSTRIES, LTD.**, a *kabushiki kaisha* incorporated in Japan as borrower (the "**Borrower**");
- (2) **THE FINANCIAL INSTITUTION** listed in Schedule 1 (*The Original Lender*) as lender (the "**Original Lender**"); and
- (3) **CITIBANK JAPAN LTD.**, as agent of the other Finance Parties (the "**Agent**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Acceptable Bank**" means a bank or financial institution which has a rating for its long term unsecured and non credit enhanced debt obligations of BBB- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa3- or higher by Moody's Investor Services Limited or a comparable rating from an internationally recognised credit rating agency.

"**Acquisition**" means the acquisition by the Borrower of all the Target Shares pursuant to the Scheme or, if an Offer Conversion is made, the Offer.

"**Acquisition Documents**" means Scheme Documents or, if an Offer Conversion is made, the Offer Documents and any other document designated an "Acquisition Document" by the Borrower and the Agent.

"**Acquisition Purpose**" means the purposes set out in paragraphs (a) and (b) of Clause 3.1 (*Purpose*).

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

"**Agent's Spot Rate of Exchange**" means the Agent's spot rate of exchange for the purchase of the relevant currency with the Base Currency in the Tokyo foreign exchange market at or about 11:00 a.m. on a particular day.

"**Anti-Money Laundering Laws**" means all applicable money laundering laws and regulations in each original Jurisdiction and each of the jurisdictions in which any member of the Group is incorporated or established and each of the jurisdictions in which any member of the Group conducts business and any related or similar regulations issued, administered or enforced by any Governmental Agency in any such jurisdiction from time to time.

"**Anti-Social Conduct**" means:

- (a) a demand with violence;
- (b) an unreasonable demand beyond legal responsibility;
- (c) an action with the use of intimidating words or actions in relation to transactions;
- (d) an action to defame the reputation or interfere with the business of any Finance Party by spreading rumour, using fraudulent means or resorting to force; or
- (e) other actions similar to any of the foregoing.

"Anti-Social Group" means:

- (a) an organised crime group;
- (b) a member of an organised crime group;
- (c) a person who used to be a member of an organized crime group but has only ceased to be a member of an organized crime group for a period of less than 5 years;
- (d) a quasi-member of an organised crime group;
- (e) a related or associated company or association of an organised crime group;
- (f) a corporate racketeer or blackmailer advocating social cause or a special intelligence organized crime group; or
- (g) a member of any other criminal force similar or analogous to any of the foregoing.

"Anti-Social Relationship" means:

- (a) an Anti-Social Group controls its management;
- (b) an Anti-Social Group is substantively involved in its management;
- (c) it has entered into arrangements with an Anti-Social Group for the purpose of, or which have the effect of, unfairly benefiting itself or a third party or prejudicing a third party;
- (d) it is involved in the provision of funds or other benefits to an Anti-Social Group; or
- (e) any of its directors or any other person who is substantively involved in its management has a socially objectionable relationship with an Anti-Social Group.

"Anti-Terrorism Laws and Regulations" means:

- (a) the Executive Order, the U.S. Bank Secrecy Act (31 U.S.C. §§ 5311 et seq.), the U.S. Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956 et seq.), the USA Patriot Act of 2001, all as amended from time to time, and any economic or financial sanctions or trade embargo laws, regulations or executive orders administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Departments of State or Commerce or any other U.S. government authority; and
- (b) the Prevention of Terrorism Act 2005 of the United Kingdom, any economic or financial sanction implemented or effective in the United Kingdom under the United Nations Act 1946 or the Emergency Laws (Re-enactments and Repeals) Act 1964 or the Anti-Terrorism, Crime and Security Act 2001 or under the Treaty establishing the European Community, and any similar law, regulations and/or economic or financial sanctions and/or embargoes or restrictive measures enacted, issued and/or administered by the United Kingdom, the European Union, any member state of the European Union, the United Nations, Japan, Australia, Hong Kong and/or the PRC.

"Authorisation" means:

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

"Availability Period" means:

- (a) where the Facility is to be used for the Acquisition Purpose or a General Purpose, the period from and including the date of this Agreement to and including the earlier of:
 - (i) the date falling six months after the date of this Agreement; and
 - (ii) if the Acquisition proceeds by way of:
 - (A) the Scheme, the date which is 15 days after the date of the Court Order is filed with the Registrar of Companies in accordance with section 899 of the Companies Act 2006; or
 - (B) (following the Offer Conversion) the Offer, the earlier of:
 - (1) the date which is 6 months after the Offer Press Release is sent to any registered shareholder of the Target, if, by that date, the Borrower is not entitled to initiate the Squeeze-Out; and

- (2) the date which falls 6 weeks after the Borrower issues the Squeeze-Out Notice to any shareholder of the Target; and
- (b) where the Facility is to be used for the Refinancing Purpose, the period from and including the date of this Agreement to and including the earlier of:
 - (i) the date falling 6 months after the date of this Agreement; and
 - (ii) the date falling 30 days after the first date on which the Target is a wholly-owned Subsidiary of the Borrower,

provided that, in either case, the above periods may be extended with the consent of the Borrower and all Lenders.

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

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

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

"Base Currency" means sterling.

"Base Currency Amount" means, in relation to a Utilisation, the amount specified in the Utilisation Request delivered by the Borrower for that Utilisation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Agent receives the Utilisation Request) as adjusted to reflect any repayment (other than a repayment arising from a change of currency), prepayment, consolidation or division of a Utilisation.

"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 or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a

leading bank 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 London and Tokyo.

"Certain Funds Period" means the period commencing on the date of this Agreement and ending on the earliest of:

- (a) for the purposes of an Offer:
 - (i) the date on which the Availability Period expires for the Acquisition Purpose;
 - (ii) the date on which the Offer lapses, terminates or is withdrawn and
 - (iii) the date on which the Target becomes a direct or indirect wholly owned subsidiary of the Borrower and the Borrower has paid for all shares in Target beneficially owned by it;
- (b) for the purposes of a Scheme:
 - (i) the date on which the Availability Period expires for the Acquisition Purpose;
 - (ii) the date falling 5 Business Days after the date on which the Scheme lapses, terminates, is withdrawn or is rejected by the Court unless the Borrower has notified the Agent that the Borrower intends to launch an Offer Conversion;
 - (iii) the date falling 15 days after the Borrower notified the Agent pursuant to subparagraph (ii) above, unless the Borrower has, before such date, issued the Offer Press Release; and
 - (iv) the date on which the Target becomes a direct or indirect wholly owned subsidiary of the Borrower and the Borrower has paid for all shares in Target beneficially owned by it; and
- (c) the date on which the European Commission initiates proceedings under Article 6(1)(c) of Council Regulation 139/2004/EC or the Acquisition is the subject of a Phase 2 CMA Reference (where such date occurs before, in respect of an Offer, the first closing date of the Offer or the date on which the Offer becomes or is declared unconditional as to acceptances, whichever is the later or, in respect of a Scheme, the date on which the Shareholder Meeting is held).

"Certain Funds Utilisation" means a Utilisation made or to be made during the Certain Funds Period where such Utilisation is to be made solely for an Acquisition Purpose.

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

"**Closing Date**" means the date on which Target becomes a Subsidiary of the Borrower.

"**Coercive Practice**" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of a person to influence improperly the actions of a person.

"**Code**" means the Takeover Code issued by the Panel from time to time.

"**Collusive Practice**" means an arrangement between two or more persons designed to achieve an improper purpose, including to influence improperly the actions of another person.

"**Commitment**" means:

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

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

"**Confidential Information**" means all information relating to the Borrower, the Group, the Target Group, the Finance Documents or the Facility in respect 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 the Facility from either:

- (a) any member of the Group, the Target 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 the Target 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 the Target Group or any of their 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 or the Target 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 or Reference Bank Quotation.

"Confidentiality Undertaking" means a confidentiality undertaking in a form agreed between the Borrower and the Agent.

"Corrupt Practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another person.

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

"Court Meeting" means the meetings of the classes of Target Shareholders required to be held for the purposes of sanctioning the Scheme under Part 26 of the Companies Act 2006.

"Court Order" means the order of the Court confirming the sanction of 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 Borrower (which has notified the 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)

(i) its failure to pay is caused by:

(A) administrative or technical error; or

(B) a Disruption Event; and,

payment is made within 3 Business Days of its due date;

- (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question; or
- (iii) its failure to pay is caused by an Exemption Event.

"Designated Person" means a person or entity with whom unlicensed or unauthorised dealings are prohibited or restricted under any Anti-Terrorism Laws and Regulations.

"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.

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

"Executive Order" means the US Executive Order No. 13224 on Terrorist Financing: Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, issued 23 September 2001, as amended by Order 13268.

"Exemption Event" means:

- (a) the occurrence of any natural disaster, war or terrorism;
- (b) any suspension or disruption of electrical, communications or various clearing and settlement systems that makes it impossible for banks to provide or borrow loans in yen or sterling (as the case may be);
- (c) any event that occurs within the Relevant Market that makes it impossible for banks to provide or borrow loans in yen or sterling (as the case may be); or
- (d) any other event not attributable to the Lender,

in each case, that results in it being impossible for such Lender to make or fund its participation in a Loan.

"Existing Financing Arrangement" means each of :

- (a) the JPY10billion revolving commitment facility dated 25 September 2012 entered into with Bank of Tokyo-Mitsubishi; and
- (b) the JPY10billion revolving commitment facility dated 26 March 2014 entered into with Sumitomo Mitsui Banking Corporation.

"Existing Target Facilities" means the £50,000,000 multicurrency revolving facility agreement between the Target as borrower, and The Royal Bank of Scotland plc as lender and others which facility agreement is repayable in full on 30 November 2016.

"Facility" means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

"Facility Office" means in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement and, if two offices are so identified:

- (a) for the purposes of Loans denominated in yen and any interest or other amounts accruing in relation to those Loans, the office so identified as the Lender's yen office;
- (b) for the purposes of Loans denominated in sterling and any interest or other amounts accruing in relation to those Loans, the office so identified as the Lender's sterling office; and
- (c) for all other purposes, the office so identified as the Lender's main office.

"FATCA" means:

- (a) sections 1471 to 1474 of the Internal Revenue 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 Internal Revenue Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Internal Revenue Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2017; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Internal Revenue Code not falling within paragraphs (a) or (b) above, 1 January 2017,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

"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 a Finance Party and the Borrower setting out any of the fees referred to in Clause 12 (*Fees*).

"Finance Document" means this Agreement, any Fee Letter and any other document designated as such by the Agent and the Borrower.

"Finance Party" means the 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 GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) required by GAAP to be shown as a borrowing in the consolidated balance sheet of the Borrower;
- (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;
- (i) any amount raised by the issue of redeemable shares which are required to be redeemed on or prior to the Termination Date;
- (j) any amount of any liability under an advance or deferred purchase agreement if one of the primary reasons behind the entry into this agreement is to raise finance; and
- (k) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

"Fraudulent Practice" means any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial or other benefit or to avoid an obligation.

"Funding Rate" means any individual rate notified by a Lender to the Agent pursuant to sub-paragraph (a)(ii) of Clause 11.4 (*Cost of Funds*).

"GAAP" means generally accepted accounting principles in Japan including IFRS.

"General Purpose" means any purposes set out in Clause 3.1 (*Purpose*) other than the Acquisition Purpose and the Refinancing Purpose.

"Governmental Agency" means any government or any governmental agency, semi-governmental or judicial entity or authority (including, without limitation, any stock exchange or any self-regulatory organisation established under statute).

"Group" means the Borrower and its Subsidiaries for the time being (including from the Closing Date, the Target Group).

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

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

"Impaired Agent" means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of "Defaulting Lender"; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent;

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 3 Business Days of its due date; or
- (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question; or
- (iii) its failure to pay is caused by an Exemption Event.

"Insolvency Event" in relation to a Finance Party means that the Finance Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation by it or such regulator, supervisor or similar official;

- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

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

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

"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.

"Legal Opinion" means any legal opinion delivered to the Agent under Clause 4.1 (*Initial Conditions Precedent*).

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

"Lender" means:

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

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

"LIBOR" means, in relation to any Loan:

- (a) the applicable Screen 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; or
- (b) as otherwise determined pursuant to Clause 11.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

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

"Major Default" means, with respect to the Borrower only (and not, for the avoidance of doubt, relating to any member of the Target Group), any circumstance constituting a Default under any of Clause 21.1 (*Non-Payment*); Clause 21.2 (*Other obligations*) insofar as it relates to a breach of Clauses 20.3 (*Negative pledge*) by the

Borrower only and not any other member of the Group; paragraphs (a), (b), (e) and (g) of Clause 20.9 (*Scheme Undertakings*); paragraphs (a), (d) and (e) of Clause 20.10 (*Offer Undertakings*); Clause 21.3 (*Misrepresentation*) insofar as it relates to a breach of a Major Representation; Clause 21.5 (*Insolvency*); Clause 21.6 (*Insolvency proceedings*); Clause 21.7 (*Creditors' process*); Clause 21.9 (*Unlawfulness*) or Clause 21.10 (*Repudiation*).

"Major Representation" means a representation or warranty with respect to the Borrower only (and not, for the avoidance of doubt, relating to any member of the Target Group) under any of Clause 18.1 (*Status*) to Clause 18.5 (*Validity and admissibility in evidence*) inclusive of paragraphs (a) and (b) of Clause 18.19 (*The Acquisition Documents*).

"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 any Loan denominated in yen, 0.425 per cent. per annum; and
- (b) in relation to any Loan denominated in sterling, 0.825 per cent. per annum.

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, operations, property, or condition (financial or otherwise) of the Group taken as a whole;
- (b) the ability of the Borrower to perform its payment obligations under the Finance Documents; or
- (c) the validity or enforceability of the Finance Documents or the rights or remedies of any Finance Party under the Finance Documents.

"Material Company" means:

- (a) the Borrower; and
- (b) each member of the Group whose the total assets or total turnover (in each case as of the date of the most recent consolidated financial statements of the Borrower (or if such member of the Group was acquired after such date, as of the date of such acquisition) account for 10 per cent. or more of the consolidated total assets or total net sales of the Group (all as calculated by reference to the latest consolidated financial statements of the Borrower).

For the purposes of this definition, if a member of the Group becomes a member of the Group after the end of the financial period to which the latest consolidated financial statements of the Borrower relate, those financial statements shall be adjusted as if that member of the Group had been shown in them (by reference to its then latest audited financial statements) until the consolidated financial statements of

the Group for the financial period in which the acquisition is made have been prepared.

"**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 Lenders*).

"**Obstructive Practice**" means

- (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators, in order materially to impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice, and/or threatening, harassing or intimidating any person to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- (b) acts intended to materially impede any Finance Party's access to contractually required information in connection with an investigation into allegations of corrupt, fraudulent, coercive or collusive practice.

"**Offer**" means the offer proposed to be made by the Borrower to acquire all of the Target Shares not already owned by the Borrower substantially on the terms set out in the Offer Press Release as such offer may from time to time be amended, added to, revised, renewed or waived as permitted in accordance with this Agreement.

"**Offer Conversion**" has the meaning given to it in Clause 4.6 (*Offer Conversion*).

"**Offer Documents**" means, if any Offer Conversion is made, the offer document which is sent or to be sent by the Borrower to the Target Shareholders in respect of the Offer and any other document designated as an "Offer Document" by the Agent and the Borrower.

"Offer Press Release" means the press announcement in the form agreed by or on behalf of the Borrower and the Agent to be issued by the Borrower (or on its behalf) announcing the terms of the Offer pursuant to Rule 2.7 of the Code.

"Optional Currency" means yen.

"Original Financial Statements" means the audited consolidated financial statements of the Borrower for the financial year ended 31 March 2014.

"Original Jurisdiction" means the jurisdiction under whose laws the Borrower is incorporated as at the date of this Agreement.

"Panel" means The Panel on Takeovers and Mergers.

"Party" means a party to this Agreement.

"Phase 2 CMA Reference" means a reference to the chair of the Competition and Markets Authority for the constitution of a group under Schedule 4 (*Form of Transfer Certificate*) to the Enterprise and Regulatory Reform Act 2013.

"Quotation Day" means, in relation to any period for which an interest rate is to be determined 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 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 Quotation" means any quotation supplied to the Agent by a Reference Bank.

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

- (a) in relation to TIBOR, as the rate at which the relevant Reference Bank could borrow funds in the Tokyo interbank market; or
- (b) in relation to LIBOR, as the rate at which the relevant Reference Bank could borrow funds in the London interbank market,

in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

"Reference Banks" means, in relation to LIBOR and TIBOR, the leading banks active in the Relevant Market as may be appointed by the Agent in consultation with the Borrower.

"Refinancing Purpose" means the purpose set out in paragraph (c) of Clause 3.1 (*Purpose*).

"Registrar of Companies" means the registrar of companies in England & Wales.

"Related Fund" in relation to a fund (the **"first fund"**) means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

"Relevant Jurisdiction" means, in relation to the Borrower:

- (a) its Original Jurisdiction; and
- (b) any jurisdiction where it conducts its business.

"Relevant Market" means:

- (a) in relation to sterling, the London interbank market; and
- (b) in relation to yen, the Tokyo interbank market.

"Repeating Representations" means each of the representations set out in Clauses 18.1 (*Status*) to 18.6 (*Governing law and enforcement*), Clause 18.9 (*No default*), paragraph (d) of Clause 18.11 (*No misleading information*), Clause 18.13 (*Pari passu ranking*) to Clause 18.21 (*Authorised Signatories*).

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

"Restricted Party" means a person or entity that is:

- (a) listed on, or owned or controlled by a person or entity listed on, or acting on behalf of a person or entity listed on, any Sanctions List;
- (b) located in, or incorporated under the laws of, or owned or (directly or indirectly) controlled by, or acting on behalf of, a person located in or organized under the laws of a country or territory that is the target of country-wide or territory-wide Anti-Terrorism Laws and Regulations; or
- (c) otherwise a target of sanctions ("**target of sanctions**" signifying a person with whom a U.S. person or other national of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities).

"Sanctions" means the economic or financial sanctions laws, regulations and/or executive orders, trade embargoes, prohibitions, restrictive measures, decisions, executive orders or notices from regulators implemented, adapted, imposed, administered, enacted and/or enforced by any Sanctions Authority.

"Sanctions Authorities" means the governmental institutions, agencies or other persons who have enacted, or who administer or enforce, the Anti-Terrorism Laws and Regulations (each a **"Sanctions Authority"**).

"Sanctions List" means the "Specially Designated Nationals and Blocked Persons" list, the "Sectoral Sanctions Identifications" list, the "Foreign Sanctions Evaders" list,

or other list maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control, the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by Her Majesty's Treasury, or any similar list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities.

"**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 Scheme Press Release, 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 to the Target Shareholders, issued or to be issued, by the Target setting out the terms of the Scheme and convening a court approved meeting of the Target Shareholders in order to seek their approval of the Scheme.

"**Scheme Date**" means the date on which the Scheme becomes effective in accordance with its terms.

"**Scheme Documents**" means each of the Scheme Press Release, the Scheme Circular, the Scheme Resolutions and any other document designated as a "Scheme Document" by the Agent and the Borrower.

"**Scheme Press Release**" means the press announcement in the form agreed by or on behalf of the Borrower and the Agent (acting on the instructions of the Majority Lenders) to be issued by or on behalf of the Borrower and/or the Target announcing the terms of the Scheme pursuant to Rule 2.5 of the Code.

"**Scheme Resolutions**" means the resolutions referred to and in the form set out in the Scheme Circular.

"**Screen Rate**" means in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed (before any correction, recalculation or republication by the administrator) on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (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 Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

"**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.

"**Shareholder Meeting**" means the meeting of shareholders in the Target (or meeting of relevant classes of shareholders) convened by the Court to consider a resolution to approve the Scheme and any general meeting of the Target (and related class

meetings) convened to consider any resolutions to approve or give effect to the Scheme.

"Specified Time" means a day or time determined in accordance with Schedule 5 (*Timetables*).

"Squeeze-Out" means the squeeze-out procedures set out in Chapter 3 of Part 28 of the Companies Act 2006 pursuant to which the Borrower may acquire any remaining Target Shares the subject of the Offer.

"Squeeze-Out Notice" means a notice issued to a shareholder of the Target by the Borrower in accordance with section 979 of the Companies Act 2006.

"Standing Payment Instructions" means, in relation to any Lender, the standing payment instructions for that Lender set out in Schedule 6 (*Standing Payment Instructions*) or in the Transfer Certificate pursuant to which such Lender becomes party hereto, in each case as amended from time to time by written instruction to the Facility Agent by a duly authorised officer of such Lender provided that such written instructions are made by letter in original.

"Subsidiary" means, in relation to any company or corporation, a company or corporation:

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

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

"Syndication Date" means the day specified by the Original Lender (or a person designated by the Original Lender) as the day on which primary syndication of the Facility is completed.

"Target" means Domino Printing Sciences plc.

"Target Group" means the Target and its Subsidiaries for the time being.

"Target Shares" means all the issued or unconditionally allotted ordinary share capital in the Target and any further such shares which may be issued or unconditionally allotted pursuant to the exercise of any outstanding subscription or conversion rights or otherwise.

"Target Shareholders" means all the holders of Target Shares.

"**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:

- (a) the date falling 6 months after the first Utilisation Date; or
- (b) if the Closing Date has occurred prior to the end of the Availability Period, the date falling 6 months after the Closing Date,

(or, in either case, if that date is not a Business Day, the immediately preceding Business Day).

"**TIBOR**" means, in relation to any Loan or other sum and in relation to a particular Interest Period therefor:

- (a) in relation to any Interest Period, the percentage rate of interest per annum offered for deposits in the relevant currency for a period comparable to that Interest Period that appears on Reuters screen page 17097 (or such other screen display or service as may replace it for the purposes of displaying Tokyo interbank offered rates of prime banks for deposits in the relevant currency) at or about 11:00 a.m. on the Quotation Day therefor;
 - (i) in relation to an Interest Period of less than one month for which no percentage rate of interest per annum for deposits in the relevant currency and for a comparable period appears on Reuters page 17097, the higher of (A) the percentage rate of interest per annum offered for deposits in the relevant currency for a period of one week that appears on Reuters page 17097 (or such other screen display or service as may replace it for the purposes of displaying Tokyo interbank offered rates of prime banks for deposits in the relevant currency) and (B) the percentage rate of interest per annum offered for deposits in the relevant currency for a period of one month that appears on Reuters screen page 17097 (or such other screen display or service as may replace it for the purposes of displaying Tokyo interbank offered rates of prime banks for deposits in the relevant currency), in each case at or about 11:00 a.m. on the Quotation Day therefor; or
 - (ii) in relation to an Interest Period of more than one month for which no percentage rate of interest per annum for deposits in the relevant currency and for a comparable period appears on Reuters page 17097, the higher of (A) the percentage rate of interest per annum offered for deposits in the relevant currency for the period of the smallest number of whole months which is longer than that Interest Period and which appears on Reuters page 17097 (or such other screen display or service as may replace it for the purposes of displaying Tokyo interbank offered rates of prime banks for deposits in the relevant currency) and (B) the percentage rate of interest per annum offered for deposits in the relevant currency for the period of the largest number of whole months which is shorter than that Interest Period and which appears on Reuters

screen page 17097 (or such other screen display or service as may replace it for the purposes of displaying Tokyo interbank offered rates of prime banks for deposits in the relevant currency), in each case at or about 11:00 a.m. on the Quotation Day therefor; or

- (b) if no such interest rate is available on Reuters screen page 17097 (or such replacement), the arithmetic mean (rounded upwards to 4 decimal places) of the rates per annum (as quoted to the Agent, at its request) at which each Reference Bank was offering deposits in the relevant currency in an amount comparable with that Loan or other sum, as the case may be, to leading banks in the Tokyo interbank market for a period equal to that Interest Period at or about 11:00 a.m. on the Quotation Day therefor.

"Total Commitments" means the aggregate of the Commitments being £1,073,000,000 at the date of this Agreement.

"Transfer Certificate" means an agreement substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower.

"Transfer Date" means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Transfer Certificate; and
(b) the date on which the Agent executes the relevant Transfer Certificate.

"Unconditional Date" means the date on which the Offer (if made) becomes or is declared unconditional in all respects by the Borrower.

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

"US" means the United States of America.

"US Tax Obligor" means:

- (a) the Borrower which is resident for tax purposes in the US; or
(b) any person some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

"Utilisation" means a Loan.

"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 relevant form set out in Schedule 3 (*Utilisation Request*).

1.2 Construction

- (a) Unless a contrary indication appears any reference in this Agreement to:
- (i) the "**Agent**", 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, replaced or restated;
 - (iv) "**equivalent**" of an amount in a given currency (the "**specified currency**") is a reference to the amount of any other currency which, when converted into the specified currency utilising the Agent's Spot Rate of Exchange (or, if no such spot rate of exchange is quoted by the Agent, such other prevailing market rate of exchange selected by the Agent) for the purchase of the specified currency with that other currency at or about 11:00 a.m. on the applicable date of determination, is equal to the applicable amount in the specified currency;
 - (v) "**guarantee**" includes any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness (and "guarantor" shall be construed accordingly);
 - (vi) "**including**" shall be construed as "including without limitation" (and cognate expressions shall be construed similarly);
 - (vii) a "**group of Lenders**" includes all the Lenders;
 - (viii) "**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;
 - (ix) 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);
 - (x) 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;

- (xi) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xii) a time of day is a reference to Tokyo time.
- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
 - (c) Section, Clause and Schedule headings are for ease of reference only.
 - (d) 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.
 - (e) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

1.3 Currency Symbols and Definitions

- (a) "£", "**GBP**" and "**sterling**" denote the lawful currency of the United Kingdom.
- (b) "¥", "**Yen**" and "**yen**" denote the lawful currency of Japan.

1.4 Exclusion of Agreement on Bank Transactions

Any Agreement on Bank Transactions (*Ginko-Torihiki-Yakujosho*) entered into between the Borrower 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 Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a multicurrency term loan facility in an aggregate amount equal to the Total Commitments.

2.2 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 Borrower shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility towards:

- (a) payment to the Target Shareholders of the consideration for the Target Shares either pursuant to the Scheme or pursuant to the Offer and the Squeeze-Out;
- (b) payment to the holders of any options or awards over any Target Shares of any cash payments in connection with the cancellation or surrender of such options or awards (or paying compensation (if any) in relation to any such options or awards) and the payment for the acquisition of any convertible bonds issued by the Target;
- (c) following the Closing Date, refinancing Financial Indebtedness of the Target Group to third parties (including, without limitation, any break funding costs and any other costs, fees and expenses (and any Taxes thereon) payable in connection with such refinancing);
- (d) the acquisition of Target Shares outside of the terms of the Offer or the Scheme; and

- (e) the payment of fees and expenses in respect of the Finance Documents and the payment of stamp duty in respect of the Acquisition and the Finance Documents.

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 **Conditions precedent to signing**

The Borrower confirms that it has, prior to the signing of this Agreement, delivered to the Agent all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions Precedent*) and the Agent confirms that it has received such documents and other evidence in form and substance satisfactory to it.

4.2 **Conditions precedent to initial Utilisation**

- (a) No Borrower may deliver a Utilisation Request unless the Agent has received all of the documents and other evidence listed in:

- (i) for a Utilisation other than a Certain Funds Utilisation, Part II of Schedule 2 (*Conditions Precedent*); and
- (ii) for a Certain Funds Utilisation, Part III of Schedule 2 (*Conditions Precedent*),

in each case, in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.3 **Further conditions precedent**

- (a) 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 4.5 (*Utilisations during the Certain Funds Period*) applies, if on the date of the Utilisation Request and on the proposed Utilisation Date:
 - (i) no Default is continuing or would result from the proposed Utilisation; and
 - (ii) the Repeating Representations to be made by the Borrower are true in all material respects.

- (b) The Lenders will only be obliged to comply with Clause 27.10 (*Change of currency*) if, on the first day of an Interest Period, no Default is continuing or would result from the change of currency and the Repeating Representations to be made by the Borrower are true in all material respects.
- (c) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Utilisation for the purpose set out in paragraph (d) of Clause 3.1 (*Purpose*) if the proposed Utilisation Date falls on a date:
 - (i) after the issue of the Scheme Press Release; and
 - (ii) before the earlier of:
 - (A) the Closing Date; and
 - (B) the later of:
 - (1) the date on which the Scheme lapses, terminates or is withdrawn; or
 - (2) if an Offer Conversion has occurred, the date on which the Offer lapses, terminates or is withdrawn.

4.4 **Maximum number of Utilisations**

- (a) The Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation:
 - (i) two or more Utilisations made for the Refinancing Purpose would be outstanding;
 - (ii) in the case of a Scheme, one or more Utilisations made for the Acquisition Purpose;
 - (iii) following the Offer Conversion, in the case of an Offer, six or more Utilisations made for the Acquisition Purpose would be outstanding;
 - (iv) eleven or more Utilisations made for the purpose set out in paragraph (d) of Clause 3.1 (*Purpose*) would be outstanding; or
 - (v) two or more Utilisations made for the purpose set out in paragraph (e) of Clause 3.1 (*Purpose*) would be outstanding.
- (b) The Borrower may not request that a Loan be divided if, as a result of the proposed division:
 - (i) two or more Loans made for the Refinancing Purpose would be outstanding;
 - (ii) in the case of a Scheme, one or more Loans would be outstanding;
 - (iii) in the case of an Offer, six or more Loans would be outstanding; or

- (iv) eleven or more Loans made for the purpose set out in paragraph (d) of Clause 3.1 (*Purpose*) would be outstanding; or
 - (v) two or more Loans made for the purpose set out in paragraph (e) of Clause 3.1 (*Purpose*) would be outstanding.
- (c) Any Utilisation made by a single Lender under Clause 6.2 (*Unavailability of a currency*) shall not be taken into account in this Clause 4.4 (*Maximum number of Utilisations*).

4.5 Utilisations during the Certain Funds Period

- (a) Subject to Clause 4.2 (*Conditions precedent to initial Utilisation*), the Lenders 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 Default is continuing or would result from the proposed Utilisation; and
 - (ii) all the Major Representations are true in all material respects.
- (b) During the Certain Funds Period (save in circumstances where, pursuant to paragraph (a) above or Clause 4.7 (*Exemption Event*), a Lender is not obliged to comply with Clause 5.4 (*Lenders' participation*) and subject as provided in Clause 8.1 (*Illegality*) and Clause 8.7 (*Mandatory Repayment and Cancellation: Proceeds*)), none of the Finance Parties shall be entitled to:
- (i) cancel any of its Commitments to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
 - (ii) rescind, terminate or cancel this Agreement or exercise any similar right or remedy or make or enforce any claim under the Finance Documents it may have to the extent 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 Certain Funds Utilisation to the extent to do so would prevent or limit the making of a Certain Funds Utilisation; or
 - (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a 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.

4.6 Offer Conversion

- (a) Subject to the Panel's consent, the Borrower may, before the Scheme Date, give written notice (an "**Offer Conversion Notice**") to the Agent that it intends to withdraw (or procure the withdrawal of) the Scheme or allow the Scheme to lapse and to launch an Offer.
- (b) The Borrower shall procure that within 14 days of the date of the Offer Conversion Notice, the Scheme shall be withdrawn and an Offer Press Release shall be issued (such actions together being an "**Offer Conversion**").

4.7 Exemption Event

- (a) If a Lender is unable to comply with its obligations pursuant to Clause 5.4 (*Lenders' participation*) due to the occurrence of an Exemption Event:
 - (i) such Lender shall promptly notify the Borrower; and
 - (ii) the Borrower will promptly notify the Panel.
- (b) If following the notification to the Panel referred to in paragraph (a) above, the Panel approves the suspension of the Scheme or the Offer, as the case may be, no Lender shall be required to comply with its obligations pursuant to Clause 5.4 (*Lenders' participation*) from the date on which the Panel has approved the suspension to the earlier of:
 - (i) the date on which the Borrower receives the notice that the Exemption Event is no longer continuing; and
 - (ii) the date on which the Panel's approval of such suspension is withdrawn.
- (c) If an Exemption Event referred to in (a) above is no longer continuing:
 - (i) the Lender shall promptly notify the Borrower; and
 - (ii) the Borrower will promptly notify the Panel.

SECTION 3 UTILISATION

5. UTILISATION - LOANS

5.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility by delivery to the 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 purpose in Clause 3.1 (*Purpose*) for which the Facility is to be utilised;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to such purpose;
 - (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 10 (*Interest Periods*).
- (b) Multiple Utilisations may be requested in a Utilisation Request where the proposed Utilisation Date is the Closing Date. Only one Loan may be requested in all other Utilisation Requests.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.
- (b) The amount of the proposed Loan must be:
 - (i) if the currency selected is the Base Currency, a minimum of £1,000,000 or, if less, the Available Facility; or
 - (ii) if the currency selected is yen, a minimum of ¥180,000,000 or, if less, the Available Facility, and

in any event such that its Base Currency Amount is less than or equal to 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 Agent shall determine the Base Currency Amount of each Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan and the amount of its participation in that Loan, in each case 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.

6. OPTIONAL CURRENCIES

6.1 Selection of currency

The Borrower shall select the currency of a Utilisation in a Utilisation Request.

6.2 Unavailability of a currency

If before the Specified Time on any Quotation Day:

- (a) a Lender notifies the Agent that the Optional Currency requested is not readily available to it in the amount required; or
- (b) a Lender notifies the Agent that compliance with its obligation to participate in a Loan in the proposed Optional Currency would contravene a law or regulation applicable to it,

the Agent will give notice to the Borrower to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this Clause 6.2 (*Unavailability of a currency*) will be required to participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount and its participation will be treated as a separate Loan denominated in the Base Currency during that Interest Period.

6.3 Same Optional Currency during successive Interest Periods

- (a) If a Loan is denominated in an Optional Currency in relation to two successive Interest Periods, the Agent shall calculate the amount of the Loan in the Optional Currency for the second of those Interest Periods (by calculating the amount of Optional Currency equal to the Base Currency Amount of that Loan at the Agent's Spot Rate of Exchange at the Specified Time) and (subject to paragraph (b) below):
 - (i) if the amount calculated is less than the existing amount of that Loan in the Optional Currency during the first Interest Period, promptly notify the Borrower and the Borrower shall pay, on the last day of the first Interest Period, an amount equal to the difference; or

- (ii) if the amount calculated is more than the existing amount of that Loan in the Optional Currency during the first Interest Period, promptly notify each Lender and, if no Default is continuing, each Lender shall, on the last day of the first Interest Period, pay its participation in an amount equal to the difference.
- (b) If the calculation made by the Agent pursuant to paragraph (a) above shows that the amount of the Loan in the Optional Currency for the second of those Interest Periods converted into the Base Currency at the Agent's Spot Rate of Exchange at the Specified Time has increased or decreased by less than 5 per cent. compared to its Base Currency Amount (taking into account any payments made pursuant to paragraph (a) above), no notification shall be made by the Agent and no payment shall be required under paragraph (a) above.

6.4 **Agent's calculations**

- (a) All calculations made by the Agent pursuant to this Clause 6 (*Optional Currencies*) will take into account any repayment, prepayment, consolidation or division of Loans to be made on the last day of the first Interest Period.
- (b) Each Lender's participation in a Loan will, subject to paragraph (a) above, be determined in accordance with paragraph (b) of Clause 5.4 (*Lenders' participation*).

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

7. REPAYMENT

7.1 Repayment of Loans

- (a) The Borrower shall repay the Loans made to it in full on the Termination Date.
- (b) Any repayment or prepayment of a Loan denominated in an Optional Currency shall reduce the amount of that Loan by the amount of that Optional Currency repaid and shall reduce the Base Currency Amount of that Loan proportionally.
- (c) No Borrower may reborrow any part of the Facility which is repaid.

8. PREPAYMENT AND CANCELLATION

8.1 Illegality

- (a) If, in any applicable jurisdiction at any time, it is or will become unlawful for any a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation or it become unlawful for any Affiliate of a Lender to do so:
 - (i) that Lender shall promptly notify the Agent upon becoming aware of that event;
 - (ii) upon the Agent notifying the Borrower, each Available Commitment of that Lender will be immediately cancelled; and
 - (iii) to the extent that the Lender's participation has not been transferred pursuant to paragraph (d) of Clause 8.5 (*Right of replacement or repayment and cancellation in relation to a single Lender*), the Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

8.2 Voluntary cancellation

The Borrower may, if it gives the Agent not less than 3 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of £10,000,000) of the Available Facility. Any cancellation under this Clause 8.2 (*Voluntary cancellation*) shall reduce the Commitments of the Lenders rateably under that Facility.

8.3 Voluntary prepayment

- (a) The Borrower may, if it gives the Agent not less than 3 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of £10,000,000).
- (b) A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

8.4 Automatic Cancellation

If:

- (a) in the case of a Scheme:
 - (i) 5 Business Days after the Scheme lapses, terminates, is withdrawn or is rejected by the Court, the Borrower has not notified the Agent that it intends to launch an Offer Conversion;
 - (ii) on the date falling 15 days after the Borrower notified the Agent pursuant to subparagraph (i) above, the Offer Press Release has not been issued; or
 - (iii) the consideration has not been posted to all Target Shareholders within 15 days of the Scheme Date;
- (b) in the case of an Offer:
 - (i) the Offer lapses, terminates or is withdrawn; or
 - (ii) the Unconditional Date does not occur within 6 Months after the date of this Agreement; or
- (c) in all cases, the European Commission initiates proceedings under Article 6(1)(c) of Council Regulation 139/2004/EC or the Acquisition is the subject of a Phase 2 CMA References,

the Commitment of each Lender shall be immediately cancelled.

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

- (a) If:
 - (i) any sum payable to any Lender by the Borrower is required to be increased under paragraph (a) of Clause 13.2 (*Tax gross-up*); or
 - (ii) any Lender claims indemnification from the Borrower under Clause 13.3 (*Tax indemnity*) or Clause 14.1 (*Increased costs*),

the Borrower may, whilst (in the case of the sub-paragraphs above) the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations or give the 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 in relation to a Lender, the Commitment(s) of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in that Utilisation.
- (d) If:
 - (i) any of the circumstances set out in paragraph (a) above apply to a Lender; or
 - (ii) the Borrower becomes obliged to pay any amount in accordance with Clause 8.1 (*Illegality*) to any Lender, the Borrower may, on 15 Business Days' prior notice to the 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 a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower and 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 Utilisations 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 Borrower shall have no right to replace the Agent;
 - (ii) neither the 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 sub-paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.
- (g)
 - (i) If any Lender becomes a Defaulting Lender, the Borrower may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent 15 Business Days' notice of cancellation of the Available Commitment of that Lender.
 - (ii) On the notice referred to in sub-paragraph (i) above becoming effective, the Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
 - (iii) The Agent shall as soon as practicable after receipt of a notice referred to in sub-paragraph (i) above, notify all the Lenders.

8.6 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 8 (*Prepayment and cancellation*) 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 Borrower may not reborrow any part of the Facility which is prepaid.
- (d) The Borrower 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 8 (*Prepayment and cancellation*) it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- (g) If all or part of any Lender's participation in a Utilisation under the Facility is repaid or prepaid, an amount of that Lender's Commitment (equal to the Base Currency Amount of 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.

8.7 **Mandatory Prepayment and Cancellation: Proceeds**

- (a) For the purposes of this Clause 8.7 (*Mandatory Prepayment and Cancellation: Proceeds*):

"Excluded New Debt Proceeds" means:

- (i) any New Debt Proceeds applied in repayment or prepayment of amounts outstanding under any Existing Financing Arrangement provided that the aggregate amount of any such New Debt Proceeds so applied does not at any time exceed US\$100,000,000 (or its equivalent in any other currency or currencies); and
- (ii) any New Debt Proceeds where, when aggregated with all other New Debt Proceeds (other than those referred to in (i) above), do not exceed US\$600,000,000 (or its equivalent in any other currency or currencies).

"New Debt Financing" means:

- (i) an issue of bonds, notes, debentures, loan stock or similar instruments by any member of the Group; or
- (ii) any loan or credit agreement evidencing Financial Indebtedness entered into by any member of the Group as borrower or debtor thereunder other than an Existing Financing Arrangement to the extent that the amount available under such Existing Financing Arrangement is no greater than the amount available thereunder on the date of this Agreement.

"New Debt Proceeds" means the proceeds (whether in cash or otherwise) raised from or utilised under any New Debt Financing (excluding, for the avoidance of doubt, any rollover or utilisations under an Existing Financing Arrangement provided that the amounts so utilised by way of rollover or new utilisations were available under such Existing Financing Arrangement on the date of this Agreement) at any time on and from the date of this Agreement (net of Taxes and all costs, expenses, commissions and fees incurred in connection with such New Debt Financing).

- (b) The Borrower shall prepay the outstanding Loans in an amount equal to the amount of any New Debt Proceeds (other than Excluded New Debt Proceeds) on the last day of the Interest Period in which such New Debt Proceeds are received or recovered.
- (c) If any New Debt Proceeds (other than Excluded Debt Proceeds) are received or recovered prior to the first Utilisation Date, the Total Commitments shall be cancelled by an amount equal to such New Debt Proceeds. Any cancellation under this paragraph shall reduce the Commitments of the Lenders rateably under the Facility. Any prepayment under this paragraph shall reduce the Commitments of the Lenders rateably under the Facility.
- (d) Where any amount required to be prepaid by the Borrower pursuant to

paragraph (b) above exceeds the outstanding amount of the Loan at the time of such prepayment, the Total Commitments shall be cancelled by an amount equal to the difference between the amount of the New Debt Proceeds required pursuant to paragraph (b) above to be applied in prepayment of the Loans and the amount actually applied pursuant to paragraph (b) above. Any cancellation under this paragraph shall reduce the Commitments of the Lenders rateably under the Facility.

- (e) The Agent shall notify the Lenders as soon as possible of any mandatory prepayment of any Loans to be made under the terms of this Agreement.

8.8 **Application of prepayments**

Any prepayment of a Utilisation pursuant to Clause 8.3 (*Voluntary prepayment*) or (Clause 8.7 (*Mandatory Repayment and Cancellation: Proceeds*)) shall be applied *pro rata* to each Lender's participation in that Utilisation.

**SECTION 5
COSTS OF UTILISATION**

9. INTEREST

9.1 Calculation of interest

- (a) The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:
 - (i) Margin; and
 - (ii) in relation to any Loan in:
 - (A) sterling, LIBOR; or
 - (B) yen, TIBOR.
- (b) Notwithstanding any other provision of this Agreement if at any time the rate of interest (including any other payment which is deemed to be interest under the Japanese Usury Legislation (as defined below)) payable by the Borrower exceeds the maximum rate of interest permitted by the Interest Rate Restriction Law (Law No. 100 of 1954, as amended) the Law Concerning Regulation of Acceptance of Contribution, Deposit and Interest, Etc. (Law No. 195 of 1954, as amended) or the Temporary Interest Rate Adjustment Law (Law No. 181 of 1947, as amended) (the "Japanese Usury Legislation"), then the rate of interest (including any other payment which is deemed to be interest under the Japanese Usury Legislation) payable by the Borrower shall be capped at the maximum rate permitted under the Japanese Usury Legislation.

9.2 Payment of interest

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period for such Loan.

9.3 Default interest

If the Borrower 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 9.3 (*Default interest*) shall be immediately payable by the Borrower on demand by the Agent.

9.4 Notification of rates of interest

- (a) The Agent shall promptly notify the relevant Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- (b) The Agent shall promptly notify the Borrower of each Funding Rate relating to a Loan.

10. INTEREST PERIODS

10.1 Selection of Interest Periods

- (a) Each Interest Period for a Loan shall be one Month or of any other period agreed between the Borrower and the Agent (acting on the instructions of all the Lenders) in relation to the relevant Loan.
- (b) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (c) 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.

10.2 Non-Business Days

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

10.3 Consolidation and division of Loans

- (a) Subject to paragraph (b) below, if two or more Interest Periods:

- (i) relate to Loans made and in the same currency; and
- (ii) end on the same date,

those Loans will, unless the Borrower specifies to the contrary in writing no less than 5 Business Days prior to the start of the next Interest Period, be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

- (b) Subject to Clause 4.4 (*Maximum number of Utilisations*) and Clause 5.3 (*Currency and amount*), if the Borrower requests in writing no less than 5 Business Days prior to the end of an Interest Period that a Loan be divided into two or more Loans, that Loan will, on the last day of such Interest Period, be so divided with Base Currency Amounts specified in that notice, being an aggregate Base Currency Amount equal to the Base Currency Amount of the Loan immediately before its division.

11. CHANGES TO THE CALCULATION OF INTEREST

11.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate:* If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the applicable LIBOR 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 LIBOR 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 LIBOR 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:

- (i) paragraph (b) above applies in relation to LIBOR; or
- (ii) TIBOR is determined in accordance with paragraph (b) of the definition of the "TIBOR" in Clause 1.1 (*Definitions*),

and, in either case, no Reference Bank Rate is available for the relevant currency or Interest Period there shall be no LIBOR or TIBOR (as the case may be) for that Loan and Clause 11.4 (*Cost of funds*) shall apply to that Loan for that Interest Period.

11.2 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if:

- (i) LIBOR is to be determined on the basis of a Reference Bank Rate; or
- (ii) TIBOR is to be determined in accordance with paragraph (b) of the definition of the "TIBOR" in Clause 1.1 (*Definitions*),

but, in either case, 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 the Specified Time 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.

11.3 Market disruption

If before:

- (a) in the case of a Loan in sterling, close of business in London on the Quotation Day for the relevant Interest Period; or
- (b) in the case of a Loan in yen, the close of business in Tokyo on the Quotation Day for the relevant Interest Period,

the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 35 per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of LIBOR or, if applicable, TIBOR then Clause 11.4 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

11.4 **Cost of funds**

- (a) If this Clause 11.4 (*Cost of funds*) applies, the rate of interest on each Lender's share of 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 rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses 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.
- (b) If this Clause 11.4 (*Cost of funds*) applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

11.5 **Break Costs**

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

12. **FEES**

12.1 **Commitment fee**

- (a) The Borrower shall pay:
 - (i) to the Original Lender if the Original Lender is the only Lender; or
 - (ii) otherwise, to the Agent (for the account of each Lender),a fee in the Base Currency computed at the rate of 0.15 per cent. per annum on that Lender's Available Commitment under the Facility for the Availability Period.
- (b) The accrued commitment fee is payable on the last day of each successive period of one Month which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

- (c) No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.

12.2 **Upfront fee**

The Borrower shall pay to the Original Lender (or a person designated by the Original Lender by notice to the Borrower) an upfront fee in the amount and at the times agreed in a Fee Letter.

12.3 **Agency fee**

The Borrower shall pay to the 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

13. TAX GROSS UP AND INDEMNITIES

13.1 Tax definitions

(a) In this Clause 13 (*Tax gross up and indemnities*):

"**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 Finance Party which is or will be, for or on account of Tax, subject to any liability or required to make any payment 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:

- (i) in relation to a Tax Deduction in respect of Tax imposed by Japan, a Lender which is entitled to interest payable to that Lender in respect of an advance under a Finance Document and is either:
 - (A) a Domestic Entity;
 - (B) a Foreign Entity to whom interest payable in respect of an advance under a Finance Document:
 - (1) does not constitute Income Derived From Japan (*kokunai gensen shotoku*) under Article 161 and Article 162 of the Income Tax Act (*shotoku zei hou*) (Act No. 33 of 1965) and the Treaty; or
 - (2) must be paid outside Japan only by the Borrower and is not deemed to have been paid inside Japan pursuant to paragraph 2 of Article 212 of the Income Tax Act (*shotoku zei hou*); or
 - (C) a Foreign Entity which fulfils any conditions which must be fulfilled under paragraph 1 of Article 180 of the Income Tax Act (*shotoku zei hou*) for that Foreign Entity to obtain exemption from Japanese withholding taxation on interest; or
 - (D) a Treaty Lender; and
- (ii) in relation to a Tax Deduction in respect of Tax imposed by any other jurisdiction from which a payment under a Finance Document is made by the Borrower, any 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. For the avoidance of doubt, a Tax Deduction does not include FATCA Deduction.

"**Tax Payment**" means either the increase in a payment made by the Borrower to a Finance Party under Clause 13.2 (*Tax gross-up*) or a payment under Clause 13.3 (*Tax indemnity*).

"**Treaty Lender**" means a Lender which:

- (iii) is treated as a resident of a Treaty State for the purposes of the Treaty; and
- (iv) fulfils any conditions which must be fulfilled under the double taxation agreement for residents of that Treaty State to obtain exemption from Japanese withholding taxation on interest.

"**Treaty State**" means a jurisdiction having a double taxation agreement (*sozei joutaku*) (a "**Treaty**") with Japan.

- (b) Unless a contrary indication appears, in this Clause 13 (*Tax gross up and indemnities*) a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

13.2 Tax gross-up

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall promptly notify the Borrower.
- (c) Subject to paragraph (d) below, if a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower 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) The Borrower is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of Tax imposed, if on the date on which the payment falls due the payment could have been made to the relevant Lender without a Tax Deduction if it was a Qualifying Lender, but on that date that 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 any published practice or concession of any relevant taxing authority.

- (e) If the Borrower is required to make a Tax Deduction, the Borrower 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 Borrower making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment an original receipt (or a certified copy thereof) reasonably satisfactory to that Transaction Finance Party that such Tax Deduction has been made or (as applicable) any appropriate payment has been paid to the relevant taxing authority.
- (g) The Agent shall not have any duty or obligation to facilitate the making of any Tax Deduction by the Borrower

13.3 Tax indemnity

- (a) The Borrower shall (within three Business Days of demand by the 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 Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party'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 Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 13.2 (*Tax gross-up*); or

- (B) would have been compensated for by an increased payment under Clause 13.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 13.2 (*Tax gross-up*) applied.
- (c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall promptly notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from the Borrower under this Clause 13.3 (*Tax Indemnity*), notify the Agent.

13.4 **Tax credit**

If the Borrower makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or to that Tax Payment; and
- (b) that Finance Party has obtained, utilised and fully retained that Tax Credit on an affiliated group basis,

the Finance Party shall pay an amount to the Borrower which that Finance Party 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 Borrower.

13.5 **Stamp taxes**

The Borrower shall:

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

13.6 **Indirect tax**

- (a) All consideration expressed to be payable under a Finance Document by any Party to a Finance Party shall be deemed to be exclusive of any consumption tax. If consumption tax is chargeable on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the consumption tax.
- (b) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify that Finance Party against all consumption tax incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance

Party reasonably determines that it is not entitled to credit or repayment of the consumption tax.

13.7 FATCA Information

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

- (e) If the Borrower is a US Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
 - (i) where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where the Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
 - (iii) where the Borrower is not a US Tax Obligor, the date of a request from the Agent,

supply to the Agent:

- (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (B) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.
- (h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

13.8 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 Borrower and the Agent and the Agent shall notify the other Finance Parties.

14. INCREASED COSTS

14.1 Increased costs

- (a) Subject to Clause 14.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the 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) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement; or
 - (ii) compliance with any law or regulation made after the date of this Agreement; or
 - (iii) the implementation or application of, or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV to the extent that such Increased Costs could not reasonably been calculated by that Finance Party on the date of this Agreement or, if later, the date on which it became a Finance Party .
- (b) In this Agreement
 - (i) "**Increased Costs**" means:
 - (A) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
 - (B) an additional or increased cost; or
 - (C) 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; and
 - (ii) "**Basel III**" means:
 - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for

national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

- (B) 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
 - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III"; and
- (iii) "CRD IV" means:
- (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
 - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

14.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 14.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

14.3 Exceptions

- (a) Clause 14.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by the Borrower;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 13.3 (*Tax indemnity*) (or would have been compensated for under Clause 13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (a) of Clause 13.3 (*Tax indemnity*) applied); or
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

- (b) In this Clause 14.3 (*Exceptions*), a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 13.1 (*Tax Definitions*).

15. OTHER INDEMNITIES

15.1 Currency indemnity

- (a) If any sum due from the Borrower 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 Borrower;
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall, 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 Borrower 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.

15.2 Other indemnities

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

- (i) the occurrence of any Event of Default;
- (ii) a failure 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*);
- (iii) funding, or making arrangements to fund, its participation in a Utilisation requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (iv) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by the Borrower.

- (b) The Borrower shall within three Business Days of demand indemnify each Finance Party, each Affiliate of a Finance Party and each director, officer or employee of a Finance Party or its Affiliate (each an "**Indemnified Person**"),

against any cost, expense, loss or liability (including without limitation legal fees) incurred by or awarded against that Indemnified Person in each case arising out of or in connection with any action, claim, investigation or proceeding commenced or threatened (including, without limitation, any action, claim, investigation or proceeding to preserve or enforce rights) in relation to:

- (i) the use of the proceeds of the Facility;
- (ii) any Finance Document; and/or
- (iii) the arranging of the Facility,

unless such cost, expense, loss or liability (including without limitation legal fees) incurred by or awarded against an Indemnified Person results from any breach by that Indemnified Person of any Finance Document which is in each case finally judicially determined to have resulted from the gross negligence or wilful misconduct of that Indemnified Person. Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause 15.2 (*Other indemnities*).

15.3 Indemnity to the Agent

The Borrower shall promptly indemnify the 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; or
- (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.

15.4 No Indemnity

No member of the Group shall claim, or be entitled to claim, against the Finance Parties for any damages, loss, cost or liability caused by acceleration, termination or other events occurred as a result of misrepresentation relating to the representation made under Clause 19.15 (Anti-Social Group, Relationship and Conduct) or breach of undertakings under Clause 21.16 (Anti-Social Group, Relationship and Conduct).

16. MITIGATION BY THE LENDERS

16.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 (*Illegality*), Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased costs*)

including (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 Borrower under the Finance Documents.

16.2 **Limitation of liability**

- (a) The Borrower 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 16.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 16.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

17. **COSTS AND EXPENSES**

17.1 **Transaction expenses**

The Borrower shall, within five Business Days of demand, pay the Agent and the Original Lender the amount of all costs and expenses (including legal fees) 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
- (b) any other Finance Documents executed after the date of this Agreement.

17.2 **Amendment costs**

If (a) the Borrower requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 27.10 (*Change of currency*), the Borrower shall, within five Business Days of demand, reimburse the Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with that request or requirement.

17.3 **Enforcement costs**

The Borrower shall, within three Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

SECTION 8
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

18. REPRESENTATIONS

The Borrower makes the representations and warranties set out in this Clause 18 (*Representations*) to each Finance Party.

18.1 Status

- (a) It is a corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.
- (c) As of the date of this Agreement, it is a person which satisfies any item under Paragraph 1 of Article 2 of Act on Specified Commitment Line Contract (Act No. 4 of 1999).

18.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

18.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents 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 Subsidiaries or any of its or any of its Subsidiaries' assets where such conflict has or is reasonably likely to have a Material Adverse Effect.

18.4 Power and authority

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.

18.5 Validity and admissibility in evidence

Subject to the Legal Reservations, all Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and

- (b) to make the Finance Documents to which it is a party admissible in evidence in its Original Jurisdiction,

have been obtained or effected and are in full force and effect.

18.6 Governing law and enforcement

- (a) Subject to the Legal Reservations, the choice of Japanese law as the governing law of the Finance Documents will be recognised and enforced in its Original Jurisdiction.
- (b) Subject to the Legal Reservations, any judgment obtained in Japan in relation to a Finance Document will be recognised and enforced in its Original Jurisdiction.

18.7 Deduction of Tax

It is not required under the law applicable where it is incorporated or resident or at the address specified in this Agreement to make any deduction for or on account of Tax from any payment it may make under any Finance Document to a Qualifying Lender.

18.8 No filing or stamp taxes

Under the law of its Original Jurisdiction is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents other than the payment of stamp duty in a maximum amount of ¥600,000 per Finance Document.

18.9 No default

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which could reasonably be expected to have a Material Adverse Effect.
- (c) No Default is continuing.

18.10 No breach of laws

It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or could reasonably be expected to have a Material Adverse Effect.

18.11 No misleading information

- (a) Any factual written information provided by the Borrower to any Finance Party for the purposes of the Facility and the Acquisition was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.

- (b) Any financial projections provided by the Borrower to any Finance Party have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from the information provided to any Finance Party for the purposes of this Facility and/or the Acquisition and no information has been given or withheld that results in such information being untrue or misleading in any material respect.
- (d) All information supplied by the Borrower was true, complete and accurate in all material respects as at the date it was given and was not misleading in any respect.

18.12 **Financial statements**

- (a) Its financial statements most recently supplied to the Agent (which, as at the date of this Agreement, are the Original Financial Statements) were prepared in accordance with GAAP consistently applied.
- (b) Its financial statements most recently supplied to the Agent (which, as at the date of this Agreement, are the Original Financial Statements) fairly represent its consolidated financial condition and operations during the relevant financial year.
- (c) There has been no material adverse change in its business or financial condition (or the business or consolidated financial condition of the Group) since the date on which its Original Financial Statements are stated to have been prepared.

18.13 **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.

18.14 **No proceedings**

- (a) No litigation, arbitration, investigation or administrative proceedings of, or before, any court, arbitral body or agency which, if adversely determined, could reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened, or are pending, against any member of the Group (or against the directors of any member of the Group).
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against any member of the Group or its assets (or against the directors of any member of the Group).

18.15 Exclusion of Anti-Social Forces

No member of the Group is classified as an Anti-Social Group, has any Anti-Social Relationship or engages in Anti-Social Conduct, whether directly or indirectly through any other person.

18.16 Anti-Terrorism Laws and Regulations

None of it or any other member of the Group or, to the best of its knowledge, any of its or their respective directors, officers, brokers or other agents (who, in the case of brokers or other agents, act or benefit in any capacity in connection with the Facility):

- (a) is in violation of any applicable Anti-Terrorism Laws and Regulations;
- (b) is a Designated Person or is a Restricted Party;
- (c) has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to any Anti-Terrorism Laws and Regulations by any Sanctions Authority; or
- (d) deals in any property or interest in property blocked pursuant to any applicable Anti-Terrorism Laws and Regulations.

18.17 Anti-bribery conduct

None of it or any other member of the Group or, to the best of its knowledge, any director or officer associated with or acting on behalf of it or any other member of the Group in the course of acting for, on behalf of, it or any other member of the Group, (i) has paid, offered, promised or authorised the payment of money or anything of value, directly or indirectly, to any foreign or domestic government official or employee for the purpose of (A) influencing any act or decision of such person in his/her official capacity; (B) inducing such person to act (including through action or omission) in violation of the lawful duty of such person; (C) securing any improper advantage; or (D) inducing such person to use his/her influence to affect or influence any act or decision of a Governmental Agency, in order to assist any member of the Group in obtaining or retaining business for or with, or directing business to, any person or in obtaining or retaining any economic advantage, or (ii) has violated or is in violation of the U.S. Foreign Corrupt Practices Act, the UK Bribery Act or any other applicable anti-corruption or anti-bribery law or regulation in any applicable jurisdiction.

18.18 Anti-Money Laundering Laws

The operations of each of it and other members of the Group are, and have been, conducted at all times in compliance with applicable Anti-Money Laundering Laws and, to the best of its knowledge, no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving it or any other member of the Group with respect to Anti-Money Laundering Laws is pending.

18.19 The Acquisition Documents

- (a) The Acquisition Documents:
 - (i) are or will each be in compliance in all material respects with the Code and all other applicable takeover regulations; and
 - (ii) contain or will contain all the material terms relating to the Acquisition as of the date of publication.
- (b) The Acquisition Documents reflect the terms of the Offer or, as the case may be, Scheme Press Release in all material respects.
- (c) All agreements entered into by the Borrower for the purpose of acquiring Target Shares using the proceeds of a Utilisation drawn under this Facility for the purpose set out in paragraph (d) of Clause 3.1 (*Purpose*) comply in all material respects with the Code and all other applicable takeover regulations.

18.20 No Material Adverse Change

No event or circumstance has occurred which has or is reasonably likely to have a Material Adverse Effect.

18.21 Authorised Signatories

Any person specified as its authorised signatory under Schedule 2 (*Conditions Precedent*) or, if changed, as updated a notice delivered pursuant to Clause 19.3 (*Information: Miscellaneous*) is authorised to sign Utilisation Requests (in the case of the Borrower only) and other notices on its behalf.

18.22 Times when representations made

- (a) All the representations and warranties in this Clause 18 (*Representations*) are made by the Borrower on the date of this Agreement except for the representations and warranties set out in Clause 18.11 (*No misleading information*) which are deemed to be made by the Borrower on the Syndication Date.
- (b) The Repeating Representations are deemed to be made by the Borrower (by reference to the facts and circumstances then existing) on the date of each Utilisation Request and the first day of each Interest Period (provided that the representation at paragraph (c) of Clause 18.9 (*No Default*) will only be repeated on the date of each Utilisation Request).

19. INFORMATION UNDERTAKINGS

The undertakings in this Clause 19 (*Information Undertakings*) 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.

19.1 Financial statements

- (a) The Borrower shall supply to the Agent in sufficient copies for all the Lenders:
 - (i) as soon as the same become available, but in any event within 120 days after the end of each of its financial years, its audited consolidated financial statements for that financial year; and
 - (ii) as soon as the same become available, but in any event within 45 days after the end of each of its financial quarters its consolidated financial statements for that financial quarter.
- (b) If the financial statements delivered pursuant to paragraph (a)(i) or (ii) above are submitted through the Electronic Disclosure for Investors' Network, organised to facilitate the online filing of disclosure documents, such as annual securities reports, under the Financial Instruments Exchange Act (Act No.25 of 1948, as amended), the submission to the Agent shall be deemed to have been completed upon such online filing; provided, however, if requested by the Agent, the Borrower shall supply a copy of such financial statements to the Agent.

19.2 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Borrower pursuant to Clause 19.1 (*Financial statements*) shall be certified by a director of the relevant company as fairly representing its financial condition as at the date at which those financial statements were drawn up.
- (b) The Borrower shall procure that each set of financial statements delivered pursuant to Clause 19.1 (*Financial statements*) is prepared using GAAP.

19.3 Information: miscellaneous

The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) all documents despatched by the Borrower to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group (or against the directors of any member of the Group), and which, if adversely determined, is reasonably likely to have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against any member of the Group or its assets (or against the directors of any member of the Group), and which is reasonably likely to have a Material Adverse Effect;

- (d) promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party (through the Agent) may reasonably request (other than where such information is subject to confidentiality restrictions other than any such confidentiality restrictions that were placed on such information for the purpose of avoiding disclosure pursuant to this paragraph); and
- (e) promptly, notice of any change in the authorised signatories of the Borrower signed by a director of the Borrower accompanied by specimen signatures of any such new authorised signatories.

19.4 Notification of default

- (a) The Borrower shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

19.5 Use of websites

- (a) The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Agent (the "**Designated Website**") if:
 - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the Borrower and the Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall supply the Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.

- (c) The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:
- (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Borrower notifies the Agent under sub-paragraph (c)(i) or sub-paragraph (c)(v) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form.

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten Business Days.

19.6 "Know your customer" checks

- (a) If:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of the Borrower or the composition of its shareholders after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of sub-paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in sub-paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in sub-paragraph (iii) above, any prospective new Lender to carry out and be satisfied

it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

19.7 **Related Parties Information**

Upon reasonable request by the Agent, the Borrower shall provide the Agent with documents or information pertaining to each member of the Group (including, without limitation, registered or principal office, residential address, formal name, birth date) for the purposes of identity verification and screening of Anti-Social Conduct, Anti-Social Groups and any other related matters identified by the Agent.

20. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 20 (*General Undertakings*) 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**

The Borrower shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of,

any Authorisation required under any law or regulation of its Original Jurisdiction to:

- (i) enable it to perform its obligations under the Finance Documents; and
- (ii) to ensure (subject to the Legal Reservations) the legality, validity, enforceability or admissibility in evidence in its Original Jurisdiction of any Finance Document.

20.2 **Compliance with laws**

The Borrower shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

20.3 Negative pledge

In this Clause 20.3 (*Negative pledge*), "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

- (a) The Borrower shall not (and shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not (and shall ensure that no other member of the Group will):
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Security (or as the case may be) Quasi-Security listed below:
 - (i) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
 - (ii) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
 - (A) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
 - (B) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only.excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;
 - (iii) arising under the standard commercial terms and conditions of any bank with which a member of the Group has cash balances in the ordinary course of its banking arrangements;

- (iv) arising in the ordinary course of bills of exchange or letter of credit transactions entered into in the ordinary course of trading;
- (v) any lien arising by operation of law and in the ordinary course of trading;
- (vi) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
 - (A) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (B) the principal amount secured has not been increased in contemplation of, or since the acquisition of that asset by a member of the Group; and
 - (C) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;
- (vii) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, if:
 - (A) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
 - (B) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (C) the Security or Quasi-Security is removed or discharged within three months of that company becoming a member of the Group;
- (viii) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- (ix) any Security or Quasi-Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than any permitted under subparagraphs (i) to (ix) above) does not exceed £50,000,000 (or its equivalent in another currency or currencies).

20.4 Disposals

- (a) The Borrower shall not (and shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:
 - (i) made in the ordinary course of trading of the disposing entity;
 - (ii) of assets which are obsolete or no longer required for the relevant person's business;
 - (iii) of assets from one member of the Group to another member of the Group;
 - (iv) of assets in exchange for other assets comparable or superior as to type, value and quality;
 - (v) where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal by the Group, other than any permitted under sub-paragraphs (i) and (ii) above) does not exceed £100,000,000 (or its equivalent in another currency or currencies) in any financial year.

20.5 Merger

- (a) The Borrower shall not enter into any reorganisation (*soshiki henko*), merger (*gappei*), company split (*kaisha bunkatsu*), share exchange (*kabushiki koukan*) or share transfer (*kabushiki iten*), transfer of its business or assets to a third party, or obtain a third party's business or assets by transfer, or any other steps similar or equivalent thereto.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal permitted pursuant to Clause 20.4 (*Disposals*).

20.6 Change of business

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group from that carried on at the date of this Agreement. For the avoidance of doubt, the Acquisition shall not constitute a substantial change.

20.7 Acquisitions

Other than the Acquisition, the Borrower shall not (and shall ensure that no other member of the Group will) acquire any company, business or undertaking if the amount of the acquisition cost, when aggregated with the aggregate acquisition cost of any other companies, business or undertaking acquired by members of the Group

during that financial year exceeds £500,000,000 (or its equivalent in any other currency or currencies).

20.8 Financial Indebtedness

- (a) Except as permitted under paragraph (b) below, the Borrower shall not (and shall ensure that no member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is Financial Indebtedness:
 - (i) arising under any Existing Financing Arrangement (or any refinancing of an Existing Financing Arrangement) or any of the Finance Documents;
 - (ii) arising under a New Debt Financing the proceeds of which are Excluded New Debt Proceeds;
 - (iii) existing under the Existing Target Facilities which is repaid and cancelled in full within 6 months of the Closing Date;
 - (iv) of any person acquired by a member of the Group after the Closing Date which is incurred under arrangements in existence at the date of acquisition, but not incurred or increased (other than by capitalisation of interest) or having its maturity date extended in contemplation of, or since, that acquisition, and outstanding only for a period of six months following the date of acquisition;
 - (v) incurred under a loan or other credit provided by a Group member to another Group member;
 - (vi) incurred in the ordinary course of trading by such member of the Group; or
 - (vii) where the proceeds and/or utilisations of such Financial Indebtedness are applied pursuant to Clause 8.7 (*Mandatory Prepayment and Cancellation: Proceeds*).

20.9 Scheme Undertakings

In the case of a Scheme:

- (a) The Borrower shall ensure that the terms of the Scheme Circular are consistent in all material respects with the terms of the Scheme Press Release.
- (b) The Borrower shall ensure that the Scheme does not include any capital reduction.
- (c) The Borrower shall keep the Agent informed as to the status and progress of the Scheme, including notifying the Agent as soon as the Borrower becomes aware that the Court Order has been issued, and promptly on request provide

the Agent with details of the current level of proxies received in respect of the Scheme.

- (d) The Borrower shall:
- (i) promptly deliver to the Agent copies of all material documents, certificates or notices received or issued by it (or on its behalf) in relation to the Scheme and of all press and other public announcements made by itself (or on its behalf), or, to the extent that it receives copies thereof, by the Target in connection with or in relation to the Scheme and any material documents or statements issued by the Panel, the Competition and Markets Authority, the European Commission or any other regulatory authority (including the courts) received by it in relation to the Scheme (subject to any applicable regulatory restrictions); and
 - (ii) where any announcement, press release or publicity material refers to the Agent or any other Finance Party or the Facility, not release or permit such announcement, press release or publicity material to be released until the Agent has given its consent to such release (such consent not to be unreasonably withheld) **provided that** no such consent will be required to make an announcement, press release or publicity material required to be made to comply with the Code or any other relevant laws or regulation (in which case the Borrower shall notify the Agent as soon as practicable upon becoming aware of the requirement and the Borrower shall use all reasonable endeavours to consult with the Agent prior to releasing the announcement, press release or publicity material).
- (e) The Borrower shall ensure that the Scheme Press Release, the Scheme Circular and all other documents issued by it or on its behalf in each case in connection with the Scheme and the conduct of the Scheme comply in all material respects with the Code and all applicable laws and regulations and that as and when necessary all consents, approvals and other Authorisations set out in paragraph 1(f) of Part III (*Conditions Precedent to Certain Funds Utilisation*) of Schedule 2 (*Conditions Precedent*) are, other than where the Panel requires otherwise, obtained, maintained and/or renewed (as appropriate).
- (f) The Borrower shall use all reasonable endeavours to ensure that the Scheme Date does not occur after the expiry of the Availability Period.
- (g) The Borrower shall not without the prior consent of the Majority Lenders:
- (i) take any action or omit to take any action which will result in it becoming obliged to make a mandatory offer under Rule 9 of the Code (other than following an Offer Conversion and with the prior approval of the Panel); or
 - (ii) waive or amend or declare or treat as satisfied (in whole or in part) any condition of the Scheme where such waiver, amendment, declaration

or treatment would materially and adversely affect the interests of the Lenders (in their capacity as such) unless such action is required by the Code, the Panel or the Court or other regulatory authority.

- (h) The Borrower shall promptly notify the Agent if it becomes aware of a circumstance or event which, if not waived, would entitle the Borrower (with the Panel's consent, if needed) to lapse or withdraw the Scheme.

20.10 Offer Undertakings

In the case of an Offer:

- (a) The Borrower shall ensure that the terms and conditions of the Offer Document are consistent in all material respects with the terms of the Offer Press Release.
- (b) The Borrower shall keep the Agent informed as to the status and progress of the Offer and the Squeeze-Out and promptly on request provide the Agent with details of the current level of acceptances of the Offer.
- (c) The Borrower shall:
 - (i) promptly deliver to the Agent copies of all material documents, certificates or notices received or issued by it (or on its behalf) in relation to the Offer and of all press and other public announcements made by itself (or on its behalf) in connection with or in relation to the Offer and any material documents or statements issued by the Panel, the Competition and Markets Authority, the European Commission or any other regulatory authority (including the courts) received by it in relation to the Offer (subject to any applicable regulatory restrictions); and
 - (ii) where any announcement, press release or publicity material refers to the Agent or any other Finance Party or the Facility, not release or permit such announcement, press release or publicity material to be released until the Agent has given its consent to such release (such consent not to be unreasonably withheld) **provided that** no such consent will be required to make an announcement, press release or publicity material required to be made to comply with the Code and any other relevant laws or regulation (in which case the Borrower shall notify the Agent as soon as practicable upon becoming aware of the requirement and the Borrower shall use all reasonable endeavours to consult with the Agent prior to releasing such announcement, press release or publicity material).
- (d) The Borrower shall ensure that the Offer Press Release, the Offer Document, all other documents issued by it or on its behalf in connection with the Offer and the conduct of the Offer comply in all material respects with the Code and all applicable laws and regulations and that as and when necessary all consents, approvals and other Authorisations set out in paragraph 2(f) of Part III (*Conditions Precedent to Certain Funds Utilisation*) of Schedule 2

(*Conditions Precedent*) are, other than where the Panel requires otherwise, obtained, maintained and/or renewed (as appropriate).

- (e) The Borrower shall not without the prior consent of the Majority Lenders:
 - (i) extend or agree to any extension of the Offer beyond the expiry of the Availability Period;
 - (ii) take any action or omit to take any action which will result in it becoming obliged to make a mandatory offer under Rule 9 of the Code (other than with the prior approval of the Panel); or
 - (iii) waive or amend or declare or treat as satisfied (in whole or in part) any condition of the Offer where such waiver, amendment, declaration or treatment would materially and adversely affect the interests of the Lenders (in their capacity as such) unless such action is required by the Code, the Panel or other regulatory authority.
- (f) The Borrower shall promptly notify the Agent if it becomes aware of a circumstance or event which, if not waived, would entitle the Borrower (with the Panel's consent, if needed) to lapse or withdraw the Offer.
- (g) The Borrower shall promptly after becoming entitled so to do exercise its rights in respect of Squeeze-Out and ensure Squeeze-Out Notices are delivered to the relevant holders of shares in Target within seven Business Days of becoming entitled so to do.

20.11 **Listing**

The Borrower shall ensure that it is, at all times, a public company listed on the Tokyo Stock Exchange.

20.12 **Sanctions**

The Borrower shall, and shall procure that each member of the Group will, ensure that none of the proceeds of any Loan will be, directly or indirectly, used, lent, contributed or otherwise made available to any person (i) to fund or facilitate any activity with or business of, with or related to, or to otherwise benefit, any Designated Person or Restricted Party, or activity or business in a country or territory that is the subject of country-wide or territory-wide Sanctions, or (ii) in any other manner that would result, or could reasonably be expected to result, in a violation of Anti-Terrorism Laws and Regulations.

20.13 **Anti-bribery conduct**

- (a) The Borrower shall, and shall procure that each member of the Group will, ensure that none of the proceeds of any Loan will be paid, offered, or promised, directly or indirectly, to any foreign or domestic government official or employee for the purpose of:

- (i) influencing any act or decision of such person in his/her official capacity;
 - (ii) inducing such person to act (including through action or omission) in violation of the lawful duty of such person;
 - (iii) securing any improper advantage; or
 - (iv) inducing such person to use his/her influence to affect or influence any act or decision of a Governmental Agency, in order to assist any member of the Group in obtaining or retaining business for or with, or directing business to, any person or obtaining or retaining any economic benefit, or otherwise in violation of the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, or any other applicable anti-corruption or anti-bribery law or regulation in any applicable jurisdictions.
- (b) The Borrower shall (and shall procure that each member of the Group will):
- (i) conduct its businesses in compliance with the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, and any other applicable anti-corruption and anti-bribery laws and regulations in any applicable jurisdictions; and
 - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

20.14 **Anti-Money laundering laws**

The Borrower shall, and shall procure that no member of the Group will, fund all or part of any payment under this Agreement or any other Finance Document out of proceeds derived from any transaction that violates any Anti-Money Laundering Laws.

20.15 **Improper Payment etc.**

The Borrower will, and will ensure that its directors, employees and the agents will not:

- (a) offer, give, insist on, receive or solicit any illegal payment or improper advantage to influence the action of any person with respect to the Acquisition or any transaction to be performed by it as contemplated by the Finance Documents or the Acquisition Documents; or
- (b) engage in any Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices or Obstructive Practices.

20.16 **Syndication**

The Borrower shall provide reasonable assistance to the Original Lender (or a person designated by the Original Lender) in the primary syndication of the Facility (including, without limitation, by making senior management available for the purpose of making presentations to, or meeting, potential lending institutions) and

will comply with all reasonable requests for information from potential syndicate members prior to completion of syndication.

20.17 Group, relationship and Conduct

The Borrower shall not (and shall ensure that no other member of the Group will) be classified as an Anti-Social Group, has any Anti-Social Relationship or engage in any Anti-Social Conduct, whether directly or indirectly through a third party.

20.18 Pari Passu Ranking

The Borrower shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

21. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 21 is an Event of Default (save for Clause 21.14 (*Acceleration*) and Clause 21.15 (*Clean-up period*)).

21.1 Non-payment

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within 3 Business Days of its due date.

21.2 Other obligations

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 20 Business Days.

21.3 Misrepresentation

- (a) Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

- (b) No Event of Default under paragraph (a) above will occur if the circumstances giving rise to the misrepresentation are capable of remedy and are remedied within 20 Business Days of the earlier of (i) the date on which the Borrower became aware of the misrepresentation and (ii) the Agent giving notice to the Borrower of the misrepresentation.

21.4 Cross default

- (a) Any Financial Indebtedness of any Material Company is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Material Company is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Material Company is cancelled or suspended by a creditor of any Material Company as a result of an event of default (however described).
- (d) Any creditor of any Material Company becomes entitled to declare any Financial Indebtedness of any Material Company 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 21.4 (*Cross default*):
 - (i) if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than £25,000,000 (or its equivalent in any other currency or currencies); or
 - (ii) in respect of paragraph (b) above, where:
 - (A) the relevant Financial Indebtedness is incurred under a hedging or other derivative transaction;
 - (B) such Financial which becomes prematurely due and payable by reason of the default of a counterparty to that transaction who is not a member of the Group or an Affiliate of any member of the Group; and
 - (C) the aggregate amount of any Financial Indebtedness relating on this paragraph that become due and payable is less than £100,000,000 (or its equivalent in any other currency or currencies).

21.5 Insolvency

- (a) A Material Company is unable or admits inability to pay its debts as they fall due (*shiharai funou*), suspends making payments on any of its debts (*shiharai teishi*) or, by reason of actual or anticipated financial difficulties, commences

negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.

- (b) The value of the assets of any Material Company is less than its liabilities (*saimu chouka*) (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Material Company.

21.6 **Insolvency proceedings**

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

- (a) commencement of proceedings or procedures (including the adoption of any resolution to commence such proceedings or procedures) relating to any Material Company or any of the assets of any Material Company for civil rehabilitation under the Civil Rehabilitation Law (*Minji Saisei Ho*), reorganisation under the Corporate Reorganisation Law (*Kaisha Kosei Ho*), bankruptcy under the Bankruptcy Law (*Hasan Ho*), special liquidation (*tokubetsu seisan*) under the Corporate Law (*Kaisha Ho*) or special mediation (*tokutei chotei*) under the Special Mediation Law (*Tokutei Saimu to no Chosei no Sokushin no Tame no Tokutei Chotei ni Kansuru Horitsu*);
- (b) the suspension of payments, a moratorium of any indebtedness, winding-up (*seisan* or *kaisan*), dissolution (*seisan* or *kaisan*), administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Material Company (other than a solvent liquidation or reorganisation of any Material Company which is not the Borrower);
- (c) a composition, compromise, assignment or arrangement with any creditor of any Material Company;
- (d) the appointment of a liquidator (other than in respect of a solvent liquidation of any Material Company which is not the Borrower), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Material Company or any of its assets; or
- (e) enforcement of any Security over any assets of any Material Company with an aggregate value of £25,000,000 or more (or its equivalent in any other currency or currencies),

or any analogous procedure or step is taken in any jurisdiction. This Clause 21.6 (*Insolvency proceedings*) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within fourteen days of commencement.

21.7 **Creditors' process**

- (a) Any order or notice of provisional attachment (*kari-sashiosae*), preservative attachment (*hozen-sashiosae*), or attachment (*sashiosae*) (or any analogous

procedure) has been issued, or any adjudication that orders an enforcement of 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 Borrower with any Finance Party or any monetary obligation owed by and Finance Party to the Borrower having an aggregate value of £25,000,000 or more (or its equivalent in another currency or currencies) and is not discharged within 20 Business Days.

- (b) 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 preservative attachment (*hozen-sashiosae*) or attachment (*sashiosae*) has been rendered (or any analogous procedure taken), or foreclosure (*keibai tetsubuki*) has commenced (or any analogous procedure taken) with respect to any asset or assets of any Material Company (other than deposits or monetary obligations described under paragraph (a) above) and having an aggregate value of £25,000,000 or more (or its equivalent in another currency or currencies) and is not discharged within 20 Business Days.

21.8 Ownership of the Borrower

After the Closing Date, the Target is not or ceases to be a Subsidiary of the Borrower.

21.9 Unlawfulness

It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.

21.10 Repudiation

The Borrower repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

21.11 Cessation of business

The Borrower suspends or ceases to carry on all or a material part of its business or of the business of the Group taken as a whole.

21.12 Material adverse change

Any event or circumstance occurs which would reasonably be expected to have a Material Adverse Effect.

21.13 Suspension of banking transactions in Japan

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

21.14 Acceleration

- (a) On the occurrence of an Event of Default under Clause 21.5 (*Insolvency*) (other than paragraph (b)), Clause 21.6 (*Insolvency proceedings*) (other than in respect of special mediation (*tokutei chotei*) under the Special Mediation Act (*Tokutei Saimu to no Chosei no Sokushin no Tame no Tokutei Chotei ni Kansuru Horitsu*)), paragraph (a) of Clause 21.7 (*Creditors' process*), Clause 21.11 (*Cessation of business*) or Clause 21.13 (*Suspension of banking transactions in Japan*) (but, during the Certain Funds Period, only if such Event of Default constitutes a Major Default):
 - (i) the Total Commitments shall immediately be cancelled; and
 - (ii) all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents shall be immediately due and payable.
- (b) Subject to paragraph (b) Clause 4.5 (*Utilisations during the Certain Funds Period*) 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 Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:
 - (i) cancel the Total Commitments, whereupon they shall immediately be cancelled;
 - (ii) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
 - (iii) declare that all or part of the Utilisations be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders.

21.15 Clean-Up Period

Notwithstanding any other provision of any Finance Document, if during the Clean-Up Period any event or circumstance exists which but for this Clause 21.15 (*Clean-up Period*) would constitute an Event of Default such event or circumstance will not constitute an Event of Default during the Clean-Up Period if:

- (a) it relates exclusively to any member of the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group);
- (b) it is capable of remedy and reasonable steps are being taken to remedy it;
- (c) the circumstances giving rise to it have not been procured by or approved by the Borrower; and
- (d) it is not reasonably likely to have a Material Adverse Effect.

If such event or circumstance is continuing on or after the expiry of the Clean-Up Period, there shall be an Event of Default, notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

**SECTION 9
CHANGES TO PARTIES**

22. CHANGES TO THE LENDERS

22.1 Assignments and transfers by the Lenders

- (a) Subject to this Clause 22 (*Changes to the Lenders*) a Lender (the "**Existing Lender**") may assign or transfer all or any of its rights, benefits and obligations under the Finance Documents to one of its Affiliates, 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**").
- (b) Subject to Clause 22.2 (*Conditions of assignment or transfer*), each Party hereby irrevocably and unconditionally grants, and shall to the extent required under applicable law grant, its consent, without objection, to any New Lender becoming a Party in accordance with this Clause 22 (*Changes to the Lenders*).

22.2 Conditions of assignment or transfer

- (a) Subject to paragraph (b), the consent of the Borrower is not required for an assignment or transfer by a Lender of its rights, benefits or obligations under the Finance Documents
- (b) Prior to the end of the Certain Funds Period, a Lender may not assign or transfer its rights, benefits or obligations under the Finance Document without the consent of the Borrower (such consent not to be unreasonably withheld or delayed and which consent will be deemed to be reasonably withheld if as a result of such transfer the Borrower would not be able to comply with the Code in respect of the Acquisition).
- (c) An assignment will only be effective on:
 - (i) receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
 - (ii) performance by the 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 Agent shall promptly notify to the Existing Lender and the New Lender.
- (d) A transfer will only be effective if the procedures set out in Clause 22.5 (*Procedure for transfer*) are complied with and the fees payable under Clause 22.3 (*Assignment or transfer fee*) are paid.
- (e) 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 Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 13.2 (*Tax gross-up*) or Clause 14.1 (*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.

22.3 Assignment or transfer fee

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender, (ii) to a Related Fund or (iii) made in connection with primary syndication of the Facility, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of ¥500,000 (and any applicable Taxes).

22.4 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 Borrower;
 - (iii) the performance and observance by the Borrower or any other member of the Group 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 Borrower and its related entities in connection with its accession to this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Documents; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower 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 from a New Lender of any of the rights and obligations assigned or transferred under this Clause 22 (*Changes to the Lenders*); or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

22.5 Procedure for transfer

- (a) The Existing Lender and the New Lender shall deliver a Transfer Certificate and to the Agent 5 Business Days prior to the proposed Transfer Date.
- (b) Subject to the conditions set out in Clause 22.2 (*Conditions of assignment or transfer*) a transfer is effected as set out below, the Agent shall, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate executed by the Existing Lender and the New Lender and 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 on behalf of each of the Finance Parties.
- (c) Each Finance Party hereby irrevocably authorises the Agent to countersign on its behalf a Transfer Certificate delivered to the Agent for countersignature in accordance with this Clause 22.5 (*Procedure for transfer*).
- (d) The Borrower shall ensure that once the Transfer Certificate has been executed by all relevant parties a fixed date stamp of a notary public (*kakutei hizuke*) is promptly affixed to the original executed copy of the Transfer Certificate and delivered to the Agent.
- (e) On the Transfer Date:
 - (i) to the extent provided in the Transfer Certificate, the Existing Lender's rights, benefits and obligations under the Finance Documents (the "**Transferred Rights and Obligations**"), shall be assigned and transferred to, and assumed by, the New Lender, and the Existing Lender shall have no further rights, benefits and obligations with respect to the Transferred Rights and Obligations;
 - (ii) except that the Transferred Rights and Obligations belong not to the Existing Lender but to the New Lender, the Transferred Rights and Obligations shall be transferred from the Existing Lender to the New Lender without being changed by any means and the rights and obligations of the Borrower under any Finance Documents shall remain unchanged without being prejudiced by the transfer of the

Transferred Rights and Obligations from the Existing Lender to the New Lender;

- (iii) the New Lender shall obtain the same rights and assume the same obligations that the Existing Lender has in relation to the other Finance Parties with respect to the Transferred Rights and Obligations hereunder, and the Existing Lender shall no longer own or owe any further rights and obligations in relation to the other Finance Parties with respect thereto; and
- (iv) the New Lender shall become a Party as a "Lender".

22.6 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 22 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from the Borrower, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any Security to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by the Borrower or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

23. CHANGES TO THE BORROWER

23.1 Assignments and transfers the Borrower

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

SECTION 10
THE FINANCE PARTIES

24. ROLE OF THE AGENT AND THE REFERENCE BANKS

24.1 Appointment of the Agent

- (a) Each of the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Lenders authorises the 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) The 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 sub-paragraph (i) above.
- (b) The 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. The 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 the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties .
- (d) The 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, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not 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 Agent

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The 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) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the 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.
- (e) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The Agent shall provide to the Borrower within 5 Business Days of a request by the Borrower (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.
- (g) The 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 **No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Agent as a trustee or fiduciary of any other person.
- (b) The Agent shall not be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

24.5 **Business with the Group**

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

24.6 **Rights and discretions**

- (a) The Agent may rely on:
 - (i) 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 Lenders 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 subparagraph (iii)(A) above, may assume the truth and accuracy of that certificate.
- (b) The 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*)); and
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised.

- (c) The 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, the 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 desirable.
- (e) The 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) The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person.
- (g) Unless a Finance Document expressly provides otherwise, the Agent may disclose to any other Party any information it reasonably believes it has received as Agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Borrower or the Majority Lender shall as soon as reasonably practicable disclose,

the identity of a Defaulting Lender to the Borrower and the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not 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.
- (j) The Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Agent by any Lender or the identity of any such Lender for the purpose of sub-paragraph (a)(ii) of Clause 11.4 (*Cost of funds*).
- (k) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not 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.

24.7 Responsibility for documentation

The Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Borrower or any other person in or in connection with any Finance Document or 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; 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; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

24.8 No duty to monitor

The Agent shall not 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.

24.9 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 the Agent), the Agent will not 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 sub-paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or any other category of 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 Agent) may take any proceedings against any officer, employee or agent of the 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 Clause.

(c) The Agent will not 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 the Agent 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,

on behalf of any Lender and each Lender confirms to the Agent 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.

(e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been finally judicially determined to have 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 the 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.

24.10 Lenders' indemnity to the Agent

- (a) 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 the Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 27.11 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by the Borrower pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to the Borrower.

24.11 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Borrower.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) 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 Borrower) may appoint a successor Agent (acting through an office in Japan).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 24 (*Role*

of the Agent and the reference banks) and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with the current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.

- (e) 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. The Borrower shall, within three Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) 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 (e) above) but shall remain entitled to the benefit of Clause 15.3 (*Indemnity to the Agent*) and this Clause 24 (*Role of the Agent and the reference banks*) (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.
- (h) The 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 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 13.7 (*FATCA Information*) and the Borrower or 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 13.7 (*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 Borrower 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) the Borrower or 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 the Borrower or that Lender, by notice to the Agent, requires it to resign.

24.12 Replacement of the Agent

- (a) After consultation with the Borrower, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent.
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) 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.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 15.3 (*Indemnity to the Agent*) and this Clause 24 (*Role of the Agent and the reference banks*) (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent 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.

24.13 Confidentiality

- (a) In acting as agent for the Finance Parties, the 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 the 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) The 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 the 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 29.1 (*Addresses*) and subparagraph (a)(ii) of Clause 29.6 (*Electronic Communication*) and the 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 Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent 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 the 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 **Agent's management time**

Any amount payable to the Agent under Clause 15.3 (*Indemnity to the Agent*), Clause 17 (*Costs and Expenses*) and Clause 24.10 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrower and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 12 (*Fees*).

24.17 **Deduction from amounts payable by the Agent**

If any Party owes an amount to the 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.

24.18 **Role of Reference Banks**

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the 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.

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 Borrower 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 Agent;
- (b) the 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 Agent and distributed in accordance with Clause 27 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 27.6 (*Partial payments*).

26.2 **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 27.6 (*Partial payments*) towards the obligations of the Borrower to the Sharing Finance Parties.

26.3 **Recovering Finance Party's rights**

On a distribution by the Agent under Clause 26.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from the Borrower as between the Borrower 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 Borrower.

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 Agent, pay to the 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 Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

26.5 Exceptions

- (a) This Clause 26 (*Sharing among the finance parties*) 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 Borrower.
- (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 11 ADMINISTRATION

27. PAYMENT MECHANICS

27.1 Payments to the Agent

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or Lender shall make the same available to the 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 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 Agent, in each case, specifies.

27.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 24.17 (*Deduction from amounts payable by the Agent*), Clause 27.3 (*Distributions to the Borrower*) and Clause 27.4 (*Clawback and pre-funding*) be made available by the 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 as set out in the Standing Payment Instructions for such Lender), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.

27.3 Distributions to the Borrower

The Agent may (with the consent of the Borrower or in accordance with Clause 28 (*Set-off*)) apply any amount received by it in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower 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 Agent under the Finance Documents for another Party, the 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 Agent pays an amount to another Party and it proves to be the case that the 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 Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to

the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

- (c) If the Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the 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 Borrower:
 - (i) the Agent shall notify the Borrower of that Lender's identity and the Borrower to whom that sum was made available shall on demand refund it to the Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower to whom that sum was made available, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the 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 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, the Borrower or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 27.1 (*Payments to the Agent*) may instead either:
 - (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s),

pay that amount or the relevant part of that amount to an interest bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Borrower or the Lender making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 27.5 (*Impaired Agent*) shall be discharged of the relevant payment obligation under

the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.

- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 24.12 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 27.2 (*Distributions by the Agent*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
 - (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

27.6 Partial payments

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Agent shall apply that payment towards the obligations of the Borrower under those Finance Documents in the following order:
 - (i) **first**, in or towards payment *pro rata* of any unpaid amounts owing to the 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 Agent shall, if so directed by the Majority Lenders, vary the order set out in sub-paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

27.7 **No set-off by the Borrower**

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

27.8 **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.

27.9 **Currency of account**

- (a) Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated 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 the Base Currency shall be paid in that other currency.

27.10 **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 Agent (after consultation with the Borrower); 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 Agent (acting reasonably).

- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) 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.

27.11 **Disruption to Payment Systems etc.**

Other than in the case of an Exemption Event where Clause 4.7 (*Exemption Event*) applies, if either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 33 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 27.11 (*Disruption to Payment Systems etc.*); and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

28. **SET-OFF**

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any obligation owed by that Finance Party to the Borrower, 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

- (a) Subject to paragraph (b) below, 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.
- (b) The Borrower shall send to the Agent facsimile copies or PDF copies of the Utilisation Request by electronic mail or other electronic means only.

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

or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five 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 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 29.1 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the 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 Borrower shall be sent through the Agent.

- (d) 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 Agent shall notify the other Parties.

29.5 **Communication when Agent is Impaired Agent**

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

29.6 **Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (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 transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between the Borrower 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.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective in accordance with paragraph (c) above after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed to become effective on the following day.

- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 29.6 (*Electronic communication*).

29.7 English language

Any notice and all other documents given under or in connection with any Finance Document must be in English or Japanese, provided that if not in English, and if so requested by the 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

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days (or, where in respect of interest in relation to amounts in sterling, 360 days) or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

30.4 Rounding

In computing the amount of any interest or fee under any Finance Document, amounts of less than one yen , one pence or one cent shall be rounded down.

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 Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No

election to affirm any 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 Borrower and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.

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) an increase in any Commitment or an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
- (e) a change to the Borrower;
- (f) any provision which expressly requires the consent of all the Lenders; or
- (g) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 8.8 (*Application of prepayments*), Clause 22 (*Changes to the Lenders*), Clause 26 (*Sharing among the Finance Parties*) this Clause 33 (*Amendments and Waivers*), Clause 37 (*Governing law*) or Clause 38 (*Enforcement*).

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

33.3 Other Exceptions

An amendment or waiver which relates to the rights or obligations of the Agent (in its capacity as such) may not be effected without the consent of the Agent.

33.4 Replacement of Screen Rate

- (a) Subject to Clause 33.3 (*Other Exceptions*) if any Screen Rate is not available for a currency which can be selected for a Loan, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to that currency in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that other benchmark rate) may be made with the consent of the Majority Lenders and the Borrower.
- (b) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within 3 Business Days (unless the Borrower and the Agent agree to a longer time period in relation to any request) of that request being made:
 - (i) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the Facility 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.

33.5 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
 - (i) the Majority Lenders; or
 - (ii) whether:
 - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or
 - (B) the agreement of any specified group of Lenders,has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, that Defaulting Lender's Commitment will be reduced by the amount of its Available Commitments and to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of sub-paragraphs (i) and (ii) above.
- (b) For the purposes of this Clause 33.5 (*Disenfranchisement of Defaulting Lenders*), the Agent may assume that the following Lenders are Defaulting Lenders:
 - (i) any Lender which has notified the Agent that it has become a Defaulting Lender;

- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (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 Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

33.6 Excluded Commitments

If any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within 5 Business Days (unless the Borrower and the Agent agree to a longer time period in relation to any request) of that request being made:

- (a) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
- (b) 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.

33.7 Replacement of a Defaulting Lender

- (a) The Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 15 Business Days' prior written notice to the Agent and such Lender:
 - (i) replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 22 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement; or
 - (ii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 22 (*Changes to the Lenders*) all (and not part only) of the undrawn Commitment of the Lenders.

to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Borrower, and which confirms its willingness to assume and does assume all the obligations or all the relevant 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 transfer which is either:

- (A) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all

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

- (B) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Borrower and which does not exceed the amount described in sub-paragraph (A) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:
- (i) the Borrower shall have no right to replace the Agent;
 - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;
 - (iii) the transfer must take place no later than 30 days after the notice referred to in paragraph (a) above;
 - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
 - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) 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 to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in sub-paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

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 Clause 34.3 (*Disclosure to numbering service providers*), 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 Related Funds 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 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 Borrower 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 sub-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 sub-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) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 22.6 (*Security over Lenders' rights*);
 - (viii) who is a Party; or
 - (ix) with the consent of the Borrower;

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

- (A) in relation to sub-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 sub-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 sub-paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of 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 sub-paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services (or agent or contractor of such person) 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 (or agent or contractor of such person) to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party;
- (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 Borrower 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 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or the Borrower the following information:
- (i) names of the Borrower;
 - (ii) country of domicile of the Borrower;
 - (iii) place of incorporation of the Borrower;
 - (iv) date of this Agreement;
 - (v) Clause 37 (*Governing Law*);
 - (vi) the name of the Agent;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amount of Total Commitments;
 - (ix) amounts of the Facility;
 - (x) currencies of the Facility;
 - (xi) type of Facility;
 - (xii) ranking of Facility;
 - (xiii) the Termination Date for Facility;
 - (xiv) changes to any of the information previously supplied pursuant to subparagraphs (i) to (xiii) above; and
 - (xv) such other information agreed between such Finance Party and the Borrower,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Borrower represents that none of the information set out in subparagraphs (a)(i) to (a)(xiii) above is, nor will at any time be, unpublished price sensitive information.

- (d) The Agent shall notify the Borrower and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or the Borrower; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or the Borrower by such numbering service provider.

34.4 **Entire agreement**

This Clause 34 (*Confidential Information*) 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.

34.5 **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.

34.6 **Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to sub-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 (*Confidential Information*).

34.7 **Continuing obligations**

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

- (a) the date on which all amounts payable by the Borrower 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. **NOTARISED DEED (KOUSEI SHOSHO)**

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

36. **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.

SECTION 12
GOVERNING LAW AND ENFORCEMENT

37. GOVERNING LAW

This Agreement is governed by the laws of Japan.

38. ENFORCEMENT

- (a) The Tokyo District Court have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**").
- (b) The Parties agree that the Tokyo District Court is the most appropriate and convenient court to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 38 (*Enforcement*) is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

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

**SCHEDULE 1
THE ORIGINAL LENDER**

Name	Commitment
Citibank, N.A., London Branch	£1,073,000,000

SCHEDULE 2
CONDITIONS PRECEDENT

PART I
CONDITIONS PRECEDENT TO SIGNING OF THIS AGREEMENT

1. The Borrower

- (a) A copy of the Articles of Incorporation (*teikan*), regulation of board of directors (*torishimariyakukai kisoku*) (or any equivalent thereof) and the commercial registration record (*genzai jiko zenbu shomeisho*).
- (b) A copy of the minutes of a meeting of the board of directors (or certificate of an authorised signatory of the Borrower certifying that a meeting of the board of directors of the Borrower has taken place and the relevant resolutions have been passed together with a (summary) draft of minutes):
 - (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.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (a) above, an original certificate of the Borrower's representative director's seal registration (*inkanshomeisyo*) and the Borrower's notice of seal (*shomei-inkan todoke*).
- (d) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Part I of this Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. Legal opinions

- (a) The agreed form of a legal opinion in relation to Japanese law from Linklaters, legal advisers to the Borrower, substantially in the form distributed to the Original Lender prior to signing this Agreement.
- (b) The agreed form of a legal opinion of Clifford Chance, legal advisers to the Original Lender and the Agent in Japan, substantially in the form distributed to the Original Lender prior to signing this Agreement.

3. **Finance Documents**

- (a) This Agreement executed by the members of the Group party to this Agreement.
- (b) The Fee Letters executed by the Borrower.

4. **Other documents and evidence**

- (a) The Original Financial Statements.
- (b) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 12 (*Fees*) and Clause 17 (*Costs and Expenses*) have been paid or will be paid on or by the date of this Agreement.

PART II
CONDITIONS PRECEDENT TO NON CERTAIN FUNDS UTILISATIONS

- (a) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 12 (*Fees*) and Clause 17 (*Costs and expenses*) have been paid or will be paid on or by the proposed Utilisation Date.
- (b) All other documents and evidence as reasonably requested by any Finance Party which are required to enable it to conduct any "know your customer" or anti-money laundering or other procedures under applicable laws and regulations.
- (c) Unless delivered to the Agent in respect of a previous Utilisation:
 - (i) each legal opinion referred to in paragraph 2 of Part I above issued by the applicable law firm; and
 - (ii) if a certificate of an authorised signatory was provided to satisfy paragraph 1(b) of Part I above, a certified extract copy of the resolution or the minutes of a meeting of the board of directors referred to in that paragraph.

PART III
CONDITIONS PRECEDENT TO CERTAIN FUNDS UTILISATIONS

1. Scheme Documents

In the case of a Scheme, copies of the following documents:

- (a) the Scheme Press Release;
- (b) the Scheme Circular;
- (c) the Court Order;
- (d) the Scheme Resolutions passed at each of the Court Meeting and the extraordinary general meeting;
- (e) evidence that the Court Order has been delivered to the Registrar of Companies;
- (f) evidence that all necessary competition authority approvals or clearance for the Scheme and/or the Acquisition have been obtained (or applicable waiting periods have expired or been terminated):
 - (i) from the Ministry Of Commerce of the People's Republic Of China;
 - (ii) from The European Commission;
 - (iii) from the UK Competition and Markets Authority (if the European Commission makes a referral to it);
 - (iv) in accordance with the United States Hart–Scott–Rodino Antitrust Improvements Act of 1976 (as more fully described in the Scheme Document); and
 - (v) from any other person or entity if such other approval or clearance is specifically referred to in any Scheme Document,

in each case, unless the Panel requires the Acquisition to be completed without such approval, clearance or condition being satisfied or obtained; and

- (g) a certificate of the Borrower (signed by a director) in the agreed form certifying that:
 - (i) the Borrower is in compliance with paragraph (g) of Clause 20.9 (*Scheme Undertakings*); and
 - (ii) except as required by the Code or the Panel, no condition of the Scheme relating to anti-trust statutes has been waived without the consent of the Lenders if such waiver is reasonably likely to have a Material Adverse Effect.

2. Offer Documents

In the case of an Offer, copies of the following documents:

- (a) the Offer Press Release;
- (b) the Offer Documents;
- (c) the announcement that the Offer has been declared unconditional in all respects; and
- (d) a certificate from the Borrower's receiving agent (appointed in respect of the Offer) issued in accordance with Note 7 of Rule 10 of the Code and, if there is more than one, all such certificates;
- (e) (if the Borrower is entitled to implement the Squeeze-Out) a certificate from the Borrower's receiving agent (appointed in respect of the Offer) confirming that by virtue of valid acceptances of the Offer (which have not been withdrawn) the Borrower has acquired or unconditionally contracted to acquire not less than 90 per cent. in value of each class of the shares (including options and equivalent or similar) to which the Offer relates and, where the shares are voting shares, not less than 90 per cent. of the voting rights carried by those shares such that the Borrower can implement the Squeeze-Out;
- (f) evidence that all necessary competition authority approvals or clearance for the Offer and/or the Acquisition have been obtained (or applicable waiting periods have expired or been terminated):
 - (i) from the Ministry Of Commerce of the People's Republic Of China;
 - (ii) from The European Commission;
 - (iii) from the UK Competition and Markets Authority (if the European Commission makes a referral to it);
 - (iv) in accordance with the United States Hart–Scott–Rodino Antitrust Improvements Act of 1976 (as more fully described in the Offer Document); and
 - (v) from any other person or entity if such other approval or clearance is specifically referred to in any Offer Document,

in each case, unless the Panel requires the Acquisition to be completed without such approval, clearance or condition being satisfied or obtained; and

- (g) a certificate of the Borrower (signed by a director) in the agreed form certifying that:
 - (i) the Borrower is in compliance with paragraph (e) of Clause 20.10 (*Offer Undertakings*); and

- (ii) except as required by the Code or the Panel, no condition of the Offer relating to anti-trust statutes has been waived without the consent of the Lenders if such waiver is reasonably likely to have a Material Adverse Effect.

3. **Fees, costs and expenses**

Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 12 (*Fees*) and Clause 17 (*Costs and expenses*) have been paid or will be paid by the proposed Utilisation Date.

4. **Other**

Unless delivered to the Agent in respect of a previous Utilisation:

- (a) each legal opinion referred to in paragraph 2 of Part I above issued by the applicable law firm; and
- (b) if a certificate of an authorised signatory was provided to satisfy paragraph 1(b) of Part I above, a certified copy of the resolution or the minutes of a meeting of the board of directors referred to in that paragraph.

**SCHEDULE 3
UTILISATION REQUEST**

From: [•]

To: [Agent]

Dated:

Dear Sirs

**£1,073,000,000 Facility Agreement
dated [•] between, among others, Citibank Japan Ltd., as agent, and Brother Industries,
Ltd. as borrower (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)
Purpose of Facility to be utilised:	[•]
Currency of Loan:	[•]
Amount:	[•] or, if less, the Available Facility
Interest Period:	One month
3. We confirm that each condition specified in [Clause 4.3 (*Further conditions precedent*) / Clause 4.5 (*Utilisations during the Certain Funds Period*)] 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 and on behalf of
[name of Borrower]

* delete as appropriate

SCHEDULE 4
FORM OF TRANSFER CERTIFICATE

To: [•] as Agent

From: [*The Existing Lender*] (the "**Existing Lender**") and [*The New Lender*] (the "**New Lender**")

Dated:

£1,073,000,000 Facility Agreement
dated [•] between, among others, Citibank Japan Ltd., as agent, and Brother Industries, Ltd. as borrower (the "Facility Agreement")

We refer to the Facility Agreement. This agreement (the "**Agreement**") shall take effect as a Transfer Certificate for the purpose of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.

We refer to Clause 22.5 (*Procedure for transfer*) of the Facility Agreement:

1. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 22.5 (*Procedure for transfer*).
2. The proposed Transfer Date is [•].
3. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 29.1 (*Addressee*) and the Standing Payment Instructions of the New Lender are set out in the Schedule.
4. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 22.4 (*Limitation of responsibility of Existing Lenders*).
5. The New Lender confirms that it is a Qualifying Lender.
6. The undertakings contained in this Agreement have been entered into on the date stated above.
7. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
8. This Agreement is governed by and construed in accordance with Japanese law.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments,]

[Existing Lender]
As Existing Lender

[New Lender]
As New Lender

By:

By:

[Standing Payment Instructions:

[]]

[name of Existing Lender]

[name of New Lender]

By:

By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facility Agreement by the Agent and the Transfer Date is confirmed as [•].

[Agent]

As Agent
for and on behalf of itself
and each of the Finance Parties

By: _____

**SCHEDULE 5
TIMETABLES**

	Loans in sterling	Loans in yen
Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>))	U-1 9.30am	U-3 9.30am
Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause 5.4 (<i>Lenders' participation</i>)	U-1 noon	U-3 noon
Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' participation</i>)	U-1 3.00pm	U-3 3.00pm
Agent receives a notification from a Lender under Clause 6.2 (<i>Unavailability of a currency</i>)	Quotation Day 10.00am	Quotation Day 10.00am
Agent gives notice in accordance with Clause 6.2 (<i>Unavailability of a currency</i>)	Quotation Day 10.30am	Quotation Day 10.30am
Agent determines amount of the Loan in Optional Currency in accordance with paragraph (a) of Clause 6.3 (<i>Same Optional Currency during successive Interest Periods</i>)	Quotation Day 11.00am	Quotation Day 11.00am
Agent determines the amount of the Loan in Optional Currency converted into the Base Currency in accordance with paragraph (b) of Clause 6.3 (<i>Same Optional Currency during successive Interest Periods</i>)	n/a	U-3
TIBOR or LIBOR is fixed	Quotation Day 11:00 a.m. London time	Quotation Day 11:00 a.m. Tokyo time
Reference Bank Rate calculated by reference to available quotations in accordance with Clause 11.2 (<i>Calculation of Reference Bank Rate</i>)	Noon (London time) on the Quotation Day in respect of LIBOR	11:00 a.m. on the Quotation Day in respect of TIBOR

SCHEDULE 6
STANDING PAYMENT INSTRUCTIONS

GBP PAYMENT DETAILS

CITIBANK NA, LONDON, CITIGROUP CENTRE CANADA SQUARE CANARY WHARF

SORT CODE: 18.50.08

SWIFT: CITIGB2L

ACCOUNT NUMBER: 560618

IBAN: GB25 CITI 1850 0800 5606 18

ATTN: UK LOANS DEPT.

REF: BORROWER NAME

JPY PAYMENT DETAILS

CITIBANK JAPAN LTD.

SWIFT: CITIJPJT

FAVOUR CITIBANK NA, LONDON

SWIFT: CITIGB2L

ACCOUNT NUMBER: 0201109418

ATTN: UK LOANS DEPT.

REF: BORROWER NAME

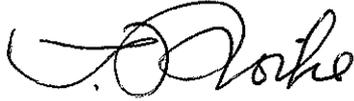
SIGNATURES

THE BORROWER

For and on behalf of

BROTHER INDUSTRIES, LTD.

By:



Address: 15-1, Naeshiro-cho, Mizuho-Ku, Nagoya 467-8561, Japan

Fax: 052-821-8204

Attention: Finance & Accounting Department

THE AGENT

For and on behalf of
CITIBANK JAPAN LTD.



Name: Atsuko Inukai

Title: Vice President

Address: Shin-Marunouchi Building
5-1, Marunouchi 1-Chome
Chiyoda-ku, Tokyo 100-6516

Fax: 81-3-6270-9721

Attention: Middle Office Corporate Finance

THE ORIGINAL LENDER

For and on behalf of
CITIBANK, N.A., LONDON BRANCH



Name: Kenichi Igarashi

Title: Director

Address: 33 Canada Sq London E14 5LB UK

Fax: +44 203 320 2485

Attention: Global Subsidiaries Group