

リーガルフロンティア21

プロジェクトベース

実務・英文契約書講座

第 16 回 ジョイントベンチャー契約

2013 年 9 月 4 日(水) 午後7:00~9:00

会 場

〒101-0051 東京都千代田区神田神保町 3-10 神田第3 アメレックスビル 7F
株式会社リーガルフロンティア21
セミナールーム

テーマ	トピック	学習目標
<p>⑮ ジョイントベンチャー契約</p> <p>2013 年 9 月 4 日（水）</p>	<p>ジョイントベンチャーとは何か、ジョイントベンチャーでのビーイクルの選択、「会社」形態を利用する場合は「応用会社法」、わが国でのジョイントベンチャー法務の留意点、海外におけるジョイントベンチャー（米国、フランス、タイ等）、ジョイントベンチャーの留意点、出資比率、取締役・役員の構成、親会社の承認を要する事項、ジョイントベンチャー解消の事由、ジョイントベンチャーの解消手続（いわゆる「出口」）、プロジェクトの中でのジョイントベンチャー契約の位置づけ（株主間契約等）</p>	<p>ジョイントベンチャー契約徒というタイトルの契約書を取り扱う場面は、①わが国で、とくに株式会社形態を利用するジョイントベンチャー会社を設立する場面と、②わが国の企業が海外に進出してジョイントベンチャーを立ち上げる場面、あるいは海外でのジョイントベンチャーに参加する誘いを受ける場合が考えられる。ジョイントベンチャー法務は、ジョイントベンチャーを立ち上げる国の会社法を念頭においた「応用会社法」であると言えるが、検討すべき点は、①出資比率（経営権の掌握）、②経営陣の構成、③重要な事項について親会社の承認権を確保しておきたいという希望、④ジョイントベンチャー解消（離脱を含む）場合にそなえた規定の設け方が主な論点になる。本講では、海外のジョイントベンチャー契約書の英文書式を概観するとともに（これで、ジョイントベンチャー契約書に「どのような規定があるか、どのような規定がなくてはいけないうかの勘ができる）、日本で株式会社をビーイクルとするジョイントベンチャー契約書（合弁契約書）を（日本語・英語で）作成する実習をおこなってみたい。</p>

ジョイントベンチャー契約

学習目標

ジョイントベンチャーは、「一緒に事業（「冒険」）を行うこと

- ビーイクル
- ビーイクルは「株式会社」形態だけではない
- 「株式会社」をビーイクルとして利用するジョイントベンチャー

海外でのジョイントベンチャー契約

- 米国でのジョイントベンチャー
- フランスでのジョイントベンチャー
- その他

わが国での、株式会社をビーイクルとして利用するジョイントベンチャー

- 契約書の必須要素
- 出資比率
- 経営陣の構成
- ジョイントベンチャーの解消事由
- いわゆる「出口」を確保するための規定

プロジェクト全体の中でのジョイントベンチャー契約の位置づけ

- 「株主間契約」
- ジョイントベンチャー会社へのライセンスの許諾

JOINT VENTURE AGREEMENT (this “**Agreement**”), is made and entered into this ____ day of _____, 2005, among ***** Co., Ltd., a *Kabushiki Kaisha* organized under the Laws of Japan (“*****”), BIGI Co., Ltd., a *Kabushiki Kaisha* organized under the Laws of Japan (“**BIGI**”), P/X Co., Ltd., a *Kabushiki Kaisha* organized under the Laws of Japan (“**P/X**”), Yuji Okusu, an individual resident in Japan (“**Okusu**”),¹ American \$\$\$\$\$\$ Outfitters, Inc., a Delaware corporation (“#####”; each of Okusu and ##### may herein be individually referred to as a “**Parent**” and collectively referred to as the “**Parents**”), ##### International Corp., a Delaware corporation and an indirect wholly-owned Subsidiary of ##### (“##### **Sub**”) and American \$\$\$\$\$\$ Outfitters Japan KK, a *Kabushiki Kaisha* organized under the Laws of Japan (the “**Company**”).

WHEREAS, the Parents and the Shareholders desire to participate in the Company for the purpose of engaging in the Business (as hereinafter defined);

WHEREAS, the Parents desire to participate in the Company through the ##### Sub, *****, BIGI and P/X;

WHEREAS, the parties desire to set forth in this Agreement certain matters relating to, among other things, the governance of the Company and the ownership of its capital, as well as certain other undertakings;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

1.1. *Definitions.* (a) The following terms, as used herein, have the following meanings:

“**Accountants**” shall mean the independent certified public accountants of the Company.

“##### **Guarantee**” shall mean the guarantee dated as of the date hereof by ##### of the obligations of its Affiliates under this Agreement and the Ancillary Agreements to which its Affiliates are parties, attached hereto as Exhibit B.

“##### **Services Agreement**” shall mean the ##### Services Agreement dated as of the date hereof by and between ##### Management Services Co. and the Company, attached hereto as Exhibit C, as it may be amended from time to time.

“##### **Shareholder**” shall mean each of (i) ##### Sub and (ii) any other Affiliate of ##### that owns Shares.

^{1.} The intent is to obligate Okusu to abide by and cause ***** shareholders to abide by governance and similar obligations but not to require Okusu to undertake financial obligations.

“**Affiliate**” shall mean, with respect to any specified Person, any other Person who or which, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified Person. Notwithstanding the foregoing, (i) neither the Company nor any Person Controlled by the Company (either of the foregoing, a “**Company Person**”) shall be deemed to be an “**Affiliate**” of any Parent or Shareholder or of any Affiliate of a Parent or Shareholder (such Affiliates being determined so excluding Company Persons), and (ii) no Shareholder or any Affiliate thereof (such Affiliates being determined so excluding Company Persons) shall be deemed to be an “**Affiliate**” of any other Shareholder or any Affiliate thereof (such Affiliates being determined so excluding Company Persons) by virtue of its equity ownership in the Company.

“**Ancillary Agreements**” shall mean the ##### Services Agreement, the ##### Services Agreement, the ##### Start Up Assistance Agreement, the ##### Guarantee, the ##### Guarantee, and the Trademark License Agreement.

“**Annual Plan**” for any Fiscal Year shall mean the business plan, budget and projected cash flow statement for the Company and its Subsidiaries for such Fiscal Year, as approved by the Board of Directors, conforming in form to the Initial Plan and containing information in all categories included in the Initial Plan. Unless the context otherwise requires, references to the Annual Plan shall be deemed to be references to the Annual Plan then in effect.

“**Applicable Contribution Cap**” shall mean \$30 million in the case of ##### and \$20 million in the case of the ##### Shareholders.

“**Articles of Incorporation**” shall mean the Articles of Incorporation of the Company in the form attached hereto as Exhibit A as they may be amended from time to time.

“**Bankruptcy Proceeding**” shall mean, with respect to any specified Person, any case, proceeding or other action under any existing or future law of any jurisdiction relating to bankruptcy, suspension of payments, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to such Person, or seeking to adjudicate such Person a bankrupt or insolvent or seeking appointment of a receiver, trustee, custodian or similar official for such Person or for all or any substantial part of such Person’s assets.

“**Breach Call Damages**” shall mean, with respect to any purchase of all of the ##### Shareholders’ Shares pursuant to Section 7.3, an amount equal to 20% of the amount determined pursuant to clause (i) of the definition of Breach Call Purchase Price to be the Fair Market Value of the ##### Shareholders’ Shares, which amount represents the Parents’ best estimate of the damages that ##### would suffer by reason of the ##### Event of Default (including failure of business expectations, liquidity and related financing burdens and associated costs, possible adverse effects on the business and operations of the Company, all of which are impossible to determine with any degree of precision).

“**Breach Call Purchase Price**” shall mean an amount equal to (i) the Fair Market Value of all of ##### Shareholders’ Shares (which Fair Market Value shall take into account the effect of any failure to make any required Capital Contributions) as determined as of the date of the Breach Call Notice, minus (ii) Breach Call Damages;

provided, however, that in no event shall the Breach Call Purchase Price be greater than \$80,000,000.

“Breaching Parties” shall mean (i) ##### and the ##### Shareholders, if an Event of Default has occurred and is continuing with respect to ##### or any ##### Shareholder, and (ii) Okusu and the ##### Shareholders, if an Event of Default has occurred and is continuing with respect to Okusu or any ##### Shareholder.

“Breach Put Damages” shall mean, with respect to any sale of all of the ##### Shareholders’ Shares pursuant to Section 7.2, an amount equal to 20% of the amount determined pursuant to clause (i) of the definition of Breach Put Purchase Price to be the Fair Market Value of such Shares, which amount represents the Parents’ best estimate of the damages that ##### would suffer as a result of the ##### Event of Default (including failure of business expectations, liquidity and related financing burdens and associated costs, possible adverse effects on the business and operations of the Company, all of which are impossible to determine with any degree of precision).

“Breach Put Purchase Price” shall mean an amount equal to (i) the Fair Market Value of all of ##### Shareholders’ Shares, as determined in accord with the Fair Market Value Determination Mechanism, as of the date of the Breach Put Notice, plus (ii) Breach Put Damages; *provided, however*, that in no event shall the Breach Put Purchase Price be greater than \$100,000,000.

“Business” shall mean (i) the opening and operation of locations in the Territory for the sale of apparel, and any other products, produced and sold under the **“American \$\$\$\$\$\$ Outfitters”**® brand and related marks identified in the Trademark License Agreement now and in the future (which, for purposes of clarification, shall not include other brands owned by ##### such as Martin & Osa) and targeted to the young adult consumer demographic, and (ii) all functions incidental thereto, including the purchase of merchandise and supplies, the ownership, leasing and operation of real and personal property acquired in connection with the foregoing, and the entering into and execution of agreements in connection with the foregoing.

“Business Day” shall mean any day except a Saturday, Sunday or other day on which commercial banks in Tokyo, Japan or New York, New York are authorized by law to close.

“Calendar Year” shall mean any year commencing on January 1 and ending on December 31.

“Closing Procedures” shall mean the following procedures:

(i) the Purchase Closing shall be held at the principal office of the Company on the 30th Business Day after delivery of the Purchase Notice or, in the case of a Section 6.2(a) Transaction or a Section 6.2(b) Transaction, the Section 6.2(a) Effective Date or the Section 6.2(b) Effective Date (or, if applicable, after the completion of the Company Value Determination Mechanism or the Fair Market Value Determination Mechanism) or at such other place or on such other date as may be determined pursuant to clause (iii) below or as the parties may agree (the **“Purchase Closing Date”**);

(ii) ##### shall or shall cause its designee to purchase all but not less than all of the ***** Shareholders' Shares for the applicable Sale Purchase Price, and against payment of the applicable portion of such Sale Purchase Price in cash (divided among the ***** Shareholders in proportion to their ownership of Shares), the ***** Shareholders shall deliver all such documents and instruments as are necessary to transfer, and shall be deemed to have transferred, and to have represented and warranted to ##### that the ***** Shareholders have transferred good title to the Shares being sold to ##### or its designee, free and clear of all Liens, other than those created by this Agreement;

(iii) the obligations of each of the ***** Shareholders and ##### to proceed with the Purchase Closing shall be conditioned upon, and the scheduled Purchase Closing Date shall be extended to 10 days following the last to occur of, the receipt of all material governmental and regulatory consents, approvals or waivers that may be required in connection with the purchase and sale of *****'s Company Interest; *provided* that neither the ***** Shareholders nor ##### shall not be obligated to, but may elect to, proceed with the Purchase Closing after 90 days beyond the scheduled Purchase Closing Date. The ***** Shareholders, Okusu, and ##### shall each use all reasonable efforts in cooperation with each other promptly to make all filings, give all notices and secure all consents, approvals and waivers that may be required in connection with the purchase and sale of the ***** Shareholders' Shares. In connection with any Purchase Closing and related transfer of the ***** Shareholders' Shares, the Company shall, and each Shareholder shall cause the Company to, comply with all procedural requirements set forth in the Commercial Code of Japan and the Company's Articles of Incorporation that are required to be complied with in order to consummate such transfer of the ***** Shareholders' Shares (including, without limitation, obtaining any required approval of the Board of Directors or Shareholders);

(iv) (x) each of the ***** Shareholders and ##### shall bear their own and their respective Affiliates' out-of-pocket costs and expenses incurred in connection with the purchase and sale of the ***** Shareholders' Shares (including stamp duty and transfer taxes and reasonable legal fees and expenses incurred in connection with obtaining any necessary governmental or regulatory consents, approvals or waivers, any costs and expenses (including legal fees and expenses) incurred in connection with the financing of such purchase); (y) each of the ***** Shareholders, on the one hand, and #####, on the other hand, shall bear one half of all out-of-pocket costs and expenses reasonably incurred by the Company and one half of all appraisers' fees, and (z) ##### is hereby authorized to deduct from the Sale Purchase Price the ***** Shareholders' applicable portion of such out-of-pocket costs and expenses of the Company and appraisers' fees (and to pay such appraiser's fees directly to the appraisers); and

(v) upon consummation of the purchase of the ***** Shareholders' Shares, the ***** Shareholders shall cease to be Shareholders, and they and their Affiliates shall cease or to have any right, title or interest in or to the Company, and the ***** Shareholders shall cease to have any rights to participate in the management of the Company (including any rights under Articles 3, 4 or 9).

“**Company Interest**” shall mean and include #####'s or, collectively, the ***** Shareholders' entire direct or indirect equity and debt (or other) interest in the Company, including (i) Shares and any Parent Loan, (ii) all of its interest in and rights under

this Agreement and (iii) all of their or their Affiliates' rights or claims of any kind in respect of any of the foregoing.

"Company Value Determination Mechanism" shall mean the determination of the Three-Year Average EBITDA and the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money of the Company as follows: the ***** Shareholders and ##### shall negotiate in good faith to reach an agreement on the Three-Year Average EBITDA and the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money, *provided, however*, that if the ***** Shareholders and ##### fail to reach such agreement within 30 days following delivery of the applicable Purchase Notice, then, at the election of either ##### or the ***** Shareholders, the Three-Year Average EBITDA and the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money shall be based upon an appraisal by a qualified independent certified public accountant, it being understood that such accountant shall be from a "Big Four" accounting firm, who shall be mutually selected by the ***** Shareholders and #####. If the ***** Shareholders and ##### cannot agree on an independent accountant, an independent accountant selected by ##### shall, jointly with an independent accountant selected by the ***** Shareholders, select an accountant to make the independent appraisal of the Three-Year Average EBITDA and the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money. No accountant selected pursuant to this determination mechanism shall be affiliated with any Parent or be associated with the principal accounting firm of any Parent or any Affiliate thereof. The accountant selected pursuant to this determination mechanism shall be an accountant with prior experience in auditing businesses comparable to the Business. If either the ***** Shareholders or ##### refuses to either propose what they believe to be the Three-Year Average EBITDA and the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money for the Company by the 10th day following #####'s or the ***** Shareholders' delivery of the applicable Purchase Notice, then the Three-Year Average EBITDA and the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money proposed by the other party shall be binding on all parties.

"Confidential Information" shall mean (i) the terms of this Agreement and the Ancillary Agreements, and (ii) all Proprietary Information; *provided* that such Confidential Information shall not include, with respect to any party desiring to disclose any information, any information that (A) has become generally available to the public other than as a result of a disclosure by such party, its Affiliates or its Agents (as defined in Section 8.1 hereof), (B) was already rightfully possessed by one party before the other party disclosed it, (C) has been independently developed by such party or an Affiliate of such party without violating any obligations owed to the Company or any other party or (D) was, or becomes, available to such party or an Affiliate of such party on a nonconfidential basis from a third party having no obligation of confidentiality to the other parties or the Company or any Subsidiary of the Company and which has not itself received such information directly or indirectly in breach of any such obligation of confidentiality.

"Control" shall mean, as to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The term **"Controlled"** shall have a correlative meaning.

"Controlled Affiliate" shall mean, when used with respect to a specified Person, any Affiliate as to which such Person possesses, directly or indirectly, the affirmative

power to direct or cause the direction of the management and policies of such Affiliate (whether through ownership of securities, partnership interest or other ownership interests, by contract, by membership or involvement in the board of directors, management committee or other management structure of such affiliate) or otherwise.

“Deadlock Buy-Out Purchase Price” shall mean the lesser of (i) the Fair Market Value of all of the ***** Shareholders’ Shares, determined in accordance with the Fair Market Value Determination Mechanism, as of the date the Deadlock Buy-Out Notice was delivered or (ii) \$100,000,000.

“Disposition” shall mean any sale, assignment, alienation, gift, exchange, conveyance, transfer, pledge, hypothecation, granting of a security interest (including a floating charge) or other disposition or attempted disposition of any interest whatsoever, whether voluntary or involuntary. The term **“Dispose”** shall mean to make a Disposition.

“Dollar” or **“\$”** shall mean lawful currency of the United States of America.

“EBITDA” shall mean, with respect to any fiscal period, the Company’s and its Subsidiaries’ consolidated net earnings (or loss), minus extraordinary gains and interest income, for such period, in each case, determined in accordance with GAAP, plus interest expense, income taxes, and depreciation and amortization for such period, in each case, determined in accordance with GAAP.

“Fair Market Value” shall mean, as to any Shares or other property, the price at which a willing seller would sell and a willing buyer would buy such property having full knowledge of the facts, in an arm’s-length transaction without time constraints, and without being under any compulsion to buy or sell.

“Fair Market Value Determination Mechanism” shall mean the determination of the Fair Market Value of all of the ***** Shareholders’ Shares as follows: the ***** Shareholders and ##### shall negotiate in good faith following delivery of the applicable Purchase Notice to reach an agreement on the Fair Market Value of the ***** Shareholders’ Shares, *provided, however*, that if the ***** Shareholders and ##### fail to reach such agreement within 30 days following delivery of the applicable Purchase Notice, then, at the election of either ##### or the ***** Shareholders, the independent appraisal of the Fair Market Value of the ***** Shareholders’ Shares shall be made by a qualified appraiser, who shall be mutually selected by the ***** Shareholders and #####. If the ***** Shareholders and ##### cannot agree on an independent appraiser, an independent appraiser selected by ##### shall, jointly with an independent appraiser selected by the ***** Shareholders, select an appraiser to make the independent appraisal of the Fair Market Value of the ***** Shareholders’ Shares. No appraiser selected pursuant to this determination mechanism shall be affiliated with any Parent or Shareholder or shall be the principal investment banker of any Parent, Shareholder or any Affiliate thereof. The appraiser selected pursuant to this determination mechanism shall be an investment banker or other qualified person with prior experience in appraising businesses comparable to the Business. If either the ***** Shareholders or ##### refuses to either propose what they believe to be the Fair Market Value of the ***** Shareholders’ Shares by the 10th day following the ***** Shareholders’ or #####’s delivery of the applicable Purchase Notice, then the Fair Market Value proposed by the other party shall be binding on all parties.

“Fiscal Year” shall mean any 52 or 53 week period beginning on the day following the Saturday closest to January 31 of any Calendar Year and ending on the Saturday closest to January 31 of the following Calendar Year; *provided, however*, that to the extent that such a period is not a permissible year for Japanese legal or tax purposes, a fiscal year beginning on February 1 of each Calendar Year and ending on January 31 of the following Calendar Year shall be used for such purpose (and only for such purpose).

“GAAP” shall mean such generally accepted accounting principles as are applied in the United States as of the date of the financial statement or other document with respect to which the term is used.

“Governmental Authority” shall mean (i) any multinational, federal, provincial, state, municipal, local or other governmental or public department, court, commission, board, bureau, agency, legislative or quasi-legislative body or instrumentality, domestic or foreign; (ii) any subdivision, agent, commission, board, or department, authority or similar body or instrumentality of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing governmental authority under or for the account of any of the foregoing.

“Indebtedness for Borrowed Money” shall mean (i) obligations for borrowed money (whether secured or unsecured), (ii) obligations representing the deferred purchase price of property or services other than accounts payable arising in the ordinary course of business, (iii) obligations in respect of capital leases, whether or not such obligations would be required to be shown as liabilities on a balance sheet under GAAP, and (iv) any guarantee or other obligations having the economic effect of a guarantee in respect of any obligations referred to in clauses (i), (ii) or (iii) above.

“Initial Annual Plan” shall mean the initial Annual Plan of the Company and its Subsidiaries for the period commencing on the date hereof and ending on the last day of the Fiscal Year ending in 2007, which is included in the Master Business Plan.

“Issued Shares” shall mean, for any date, the total number of Shares then issued and outstanding.

“Law” means any law, statute, code, ordinance, decree, rule, regulation, municipal by-law, judicial or arbitral or administrative or ministerial or departmental or regulatory judgment, order, decision, ruling or award, policy, voluntary restraint, guideline, or any provisions or interpretations of the foregoing, including general principles of common and civil law and equity binding on or affecting the Person referred to in the context in which such word is used.

“LIBOR” shall mean, with respect to any payment due under this Agreement, the rate per annum equal to (i) the arithmetic average (rounded upwards or downwards, if necessary, to the nearest 1/16th of one percent with the midpoint being rounded upwards) of the offered rates for Dollar deposits for the LIBOR Period beginning on the first day such payment is due (or the London banking day that is closest to the first day such payment is due) which appear on the LIBO page of the Reuters Monetary Money Rates Service (or such other page as may replace that page on that service for the purpose of displaying rates comparable to those displayed on the LIBO page) at approximately 11:00 A.M. (London time) on the day that is two (2) London banking days prior to the first day such payment is due or (ii) or if no such offered rates appear on the LIBO page (or such other page as may

replace that page on that service for the purpose of displaying rates comparable to those displayed on the LIBO page), the offered rate for Dollar deposits for the LIBOR Period which appears on the display page currently designated as page 3750 of the Dow Jones Telerate Service (or such other page as may replace that page on that service for the purpose of displaying rates comparable to those displayed on page 3750) as of 11:00 A.M. (London time) on the day that is two (2) London banking days prior to the first day such payment is due. If such payment, or any part thereof, is still due at the end of the first LIBOR Period with respect to such payment, then LIBOR shall be reset in accordance with the foregoing procedures, commencing with the last day of each preceding LIBOR Period, or part thereof, thereafter. For purposes hereof, the “**LIBOR Period**” shall be one (1) month and “**London banking day**” shall mean any Business Day on which commercial banks are open in London for the transaction of international business, including dealings in Dollar deposits in the international interbank markets.

“**Licensed Marks**” shall have the meaning set forth in the Trademark License Agreement.

“**Liens**” shall mean any liens, pledges, security interests, charges, restrictions on or conditions to transfer, voting or exercise or enjoyment of any right or beneficial interest, conditional sale agreement or other title retention agreement, lease, mortgage, options, rights of first refusal and other liens, claims, encumbrances, restrictions and equities of any nature whatsoever.

“**Losses**” shall mean all losses, liabilities, damages and claims (including taxes) and all costs and expenses related thereto (including any and all reasonable attorneys’ fees and costs of investigation, litigation, settlement, judgment, interest and penalties).

“**Master Business Plan**” shall mean the initial Three Year Plan of the Company and its Subsidiaries, which shall contain the Initial Annual Plan and preliminary Annual Plans for Fiscal Years ending in 2008 and 2009, and which is attached hereto as Exhibit D.

“******* Guarantee**” shall mean the guarantee dated as of the date hereof by ***** , BIGI, P/X and Okusu of the obligations of the ***** Shareholders under this Agreement and the Ancillary Agreements to which the ***** Shareholders are a party, attached hereto as Exhibit E.²

². The ***** Guarantee will provide for Okusu to agree (jointly and severally with the ***** Shareholders) to cause all of the ***** Shareholders to perform their obligations under all Agreements to which they are a party, but will not require Okusu to have personal financial liability for the obligations of the ***** Shareholders. The ***** Guarantee will also provide that, if the financial condition of the ***** Shareholders’ (either individually or in the aggregate) falls below a certain to-be-determined level or any of the initial ***** Shareholders ceases to be Controlled by Okusu, the ***** Shareholders will be required to place in escrow an amount equal to their Applicable Contribution Cap (minus all Capital Contributions previously made by the ***** Shareholders to the Company) and to provide adequate assurance of their ability to provide any guarantees required pursuant to Section 5.2.

“******* Services Agreement**” shall mean the ***** Services Agreement dated as of the date hereof among *****, BIGI, P/X and the Company, attached hereto as Exhibit F, as it may be amended from time to time.

“******* Shareholder**” shall mean each of (i) *****, (ii) BIGI and (iii) P/X.

“******* Start Up Assistance Agreement**” shall mean the ***** Start Up Assistance Agreement dated as of the date hereof among *****, BIGI, P/X and the Company, attached hereto as Exhibit G, as it may be amended from time to time.

“**Non-Breaching Parties**” shall mean (i) ##### and the ##### Shareholders, if Okusu and the ***** Shareholders are the Breaching Party, and (ii) Okusu and the ***** Shareholders, if ##### and the ##### Shareholders are the Breaching Party.

“**Parent Loan Rate**” shall mean LIBOR plus two percent (2%).

“**Percentage Share**” shall mean, with respect to any Parent (or the ***** Shareholders collectively) at any date, the number of Shares registered in the name of the Shareholder(s) that are Affiliates of such Parent (or the ***** Shareholders collectively) divided by the total number of Issued Shares, expressed as a percentage that is rounded to the nearest 1/1000.

“**Person**” shall mean any individual, corporation, general or limited partnership, firm, joint venture, association, joint-stock company, limited liability company, trust, estate, division, unincorporated organization, or other form of business or legal entity or Governmental Authority.

“**Proprietary Information**” means any proprietary ideas, plans or information, including, without limitation, information of a technological or business nature (including, without limitation, all trade secrets, proposed trade names, proposed slogans, computer software, technology, data, summaries, reports, or mailing lists, whether written or oral and if written, however produced or reproduced) (i) belonging to any Parent or any of its Affiliates or (ii) developed by or for the Company or its Subsidiaries.

“**Purchase Closing**” shall mean the consummation of the purchase of all of the ***** Shareholders’ Shares by ##### or its designee as provided in Section 3.10, Section 6.2(a), Section 6.2(b), Section 7.2, Section 7.3 or Section 9.3, as applicable.

“**Purchase Notice**” shall mean any of (i) a Deadlock Buy-Out Notice delivered to the ***** Shareholders pursuant to Section 3.10, (ii) a Section 6.2(a) Transaction Notice delivered pursuant to Section 6.2(a), (iii) a Section 6.2(b) Transaction Notice delivered pursuant to Section 6.2(b), (iv) a Breach Put Notice delivered to ##### pursuant to Section 7.2(a), (v) a Breach Call Notice delivered to the ***** Shareholders pursuant to Section 7.3(a) or (vi) a Termination Alternative Purchase Notice delivered to the ***** Shareholders pursuant to Section 9.3.

“**Rules of Usage**” shall mean, with respect to a document that states in substance that it is governed thereby, that, except as expressly provided therein:

(i) a reference in such document to a Person includes, unless the context otherwise requires, its predecessors in interest and its permitted assigns;

(ii) the term “**or**” shall be interpreted as “**and/or**”;

(iii) a reference in such document to a Law includes any amendment, modification or replacement to such Law;

(iv) accounting terms used in such document shall have the meanings assigned to them by GAAP applied on a consistent basis by the accounting entity to which they refer;

(v) references to any document, instrument or agreement (a) shall be deemed to include all appendices, exhibits, schedules and other attachments thereto and all documents, instruments or agreements issued or executed in replacement thereof and (b) shall mean such document, instrument or agreement, or replacement thereto, as amended, modified and supplemented from time to time in accordance with its terms and as the same is in effect at any given time;

(vi) unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in such document shall refer to such document as a whole and not to any particular provision of such document;

(vii) the words “**include**” and “including” and words of similar import when used in such document are not limiting and shall be construed to be followed by the words “without limitation”, whether or not they are in fact followed by such words;

(viii) the word “during” when used in such document with respect to a period of time shall be construed to mean commencing at the beginning of such period and continuing until the end of such period;

(ix) all time explicitly or implicitly referenced in such document shall be deemed to be local time in Tokyo, Japan; and

(x) any reference in such document to an Article, Section or subSection or other provision shall refer to such provision in such document unless otherwise specified.

“**Sale Purchase Price**” shall mean in the event of a sale of all of the ***** Shareholders’ Shares (i) pursuant to Section 3.10, the Deadlock Buy-Out Purchase Price, (ii) pursuant to Section 6.2(a), the Section 6.2(a) Transaction Purchase Price, (iii) pursuant to Section 6.2(b), the Section 6.2(b) Transaction Purchase Price, (iv) pursuant to Section 7.2, the Breach Put Purchase Price, (v) pursuant to Section 7.3, the Breach Call Purchase Price or (vi) pursuant to Section 9.3, the Termination Alternative Purchase Price.

“**Section 6.2(a) Company Value**” shall mean, if Three-Year Average EBITDA for the Company as of the date of the Section 6.2(a) Exercise Notice is:

(i) \$2,500,000 or less, (x) Three-Year Average EBITDA multiplied by seven (7) minus (y) the Company’s and its Subsidiaries’ consolidated Indebtedness for Borrowed Money;

(ii) greater than \$2,500,000 but not in excess of \$5,000,000,
(x) \$17,500,000 plus (y) (A) Three-Year Average EBITDA minus \$2,500,000 multiplied by (B) six (6) minus (z) the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money;

(iii) greater than \$5,000,000 but not in excess of \$7,500,000,
(x) \$32,500,000 plus (y) (A) Three-Year Average EBITDA minus \$5,000,000 multiplied by (B) five (5) minus (z) the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money;

(iv) greater than \$7,500,000 but not in excess of \$10,000,000,
(x) \$45,000,000 plus (y) (A) Three-Year Average EBITDA minus \$7,500,000 multiplied by (B) four (4) minus (z) the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money;

(v) greater than \$10,000,000, (x) \$55,000,000 plus (y) (A) such Three-Year Average EBITDA minus \$10,000,000 multiplied by (B) three (3) minus (z) the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money.

"Section 6.2(a) Transaction Purchase Price" shall mean (i) the excess of Section 6.2(a) Company Value determined as of the date of the Section 6.2(a) Transaction Notice multiplied by (ii) *****'s Percentage Share (expressed as a decimal); *provided, however,* that in no event shall the 6.2(a) Transaction Purchase Price be greater than \$100,000,000.

"Section 6.2(b) Company Value" shall mean, if the Three-Year Average EBITDA for the Company as of the date of the Section 6.2(b) Transaction Notice is:
(i) \$10,000,000 or less, (x) such Three-Year Average EBITDA multiplied by seven (7) minus (y) the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money; or
(ii) greater than \$10,000,000, (x) \$70,000,000 plus (y) (A) such Three Year Average EBITDA minus \$10,000,000 multiplied by (B) three (3) minus (z) the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money.

"Section 6.2(b) Transaction Purchase Price" shall mean (i) the excess of Section 6.2(b) Company Value determined as of the date of the 6.2(b) Transaction Notice multiplied over the Company's and its Subsidiaries' consolidated Indebtedness for Borrowed Money by (ii) *****'s Percentage Share (expressed as a decimal); *provided, however,* that in no event shall the Section 6.2(b) Transaction Purchase Price be greater than \$100,000,000.

"Shareholder" shall mean any ##### Shareholder or any ***** Shareholder; each such Shareholder may be referred to herein as its respective Parent's Shareholder.

"Shares" shall mean shares of capital stock in the Company.

"Subsidiary" shall mean, with respect to any specified Person, any other Person, as to which such specified Person owns, of record or beneficially, directly or indirectly (x) more than 50% of the voting power and (y) (A) if such other Person is a corporation, more than 50% of the outstanding capital stock or issued share capital and (B) if

such other Person is not a corporation, more than 50% of the equity and profits interests at the time any determination thereof is made, in each case, other than director's qualifying shares (it being understood that a pledge or floating charge for collateral security purposes of an equity interest in a Person shall not be deemed to affect the ownership of such equity security by the pledgor so long as such pledgor continues to be entitled, in all material respects, to all voting power and all of the income with respect to such equity interest).

"Supplemental Provisions" shall mean, with respect to a document that states in substance that it is governed thereby, that, except as expressly provided therein:

(i) all amounts required to be paid by any party to such document to any other party thereunder shall, unless otherwise specified in such document, be paid in Dollars by wire transfer to an account as such party may specify by notice to the paying party, or by other acceptable method of payment of immediately available funds;

(ii) if any payment under such document is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day;

(iii) except as otherwise specifically provided in such document, each party thereto shall, at its own cost and expense, obey and comply with all applicable Laws, as they may pertain to each party's performance of its obligations under such document; and

(iv) the parties to such document shall execute and deliver all further documents and perform all further acts that may be reasonably necessary to consummate the transactions contemplated by such document.

"Termination Alternative Purchase Price" shall mean an amount equal to (i) the Fair Market Value of all of the ***** Shareholders' Shares, determined in accordance with the Fair Market Value Determination Mechanism, as of the date of the Termination Alternative Purchase Notice, minus (ii) the Termination Purchase Discount; *provided, however*, that in no event shall the Termination Alternative Purchase Price be greater than \$100,000,000.

"Termination Purchase Discount" shall mean, with respect to any purchase of all of the ***** Shareholders' Shares pursuant to Section 9.3, an amount equal to 20% of the amount determined pursuant to clause (i) of the definition of Termination Alternative Purchase Price to be the Fair Market Value of such interest.

"Territory" shall mean Japan.

"Three Year Average EBITDA" shall mean, as of any time, (i) the Company's and its Subsidiaries' EBITDA for the most recently ended Fiscal Year and the two prior Fiscal Years, divided by (ii) three.

"Three Year Period" shall mean any three-Fiscal Year period covered by a Three Year Plan.

"Three Year Plan" shall mean a plan for each three-Fiscal Year period, beginning at the end of the period covered by the Master Plan and each three-Fiscal Year

period thereafter, as approved by the Board of Directors, conforming in form to the Master Business Plan and containing information in all categories included in the Master Business Plan, including preliminary Annual Plans for each Fiscal Year included within such Period. Unless the context otherwise requires, references to the Three Year Plan shall be deemed to be references to the Three Year Plan then in effect.

“**Trademark License Agreement**” shall mean the Trademark License Agreement dated as of the date hereof by and between Retail Royalty Company and the Company, attached hereto as Exhibit H, as it may be amended from time to time.

“**United States**” shall mean the fifty states of the United States of America and the District of Columbia.

“**U.S. Dollars**” or “**\$**” shall mean the lawful currency of the United States.

“**Yen**” or “**¥**” shall mean the lawful currency of Japan.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
#####	Preamble
##### Sub	Preamble
Agents	8.1
Agreement	Preamble
BIGI	Preamble
Board of Directors	3.1
Breach Call Notice	7.3(a)
Breach Put Notice	7.2(a)
Capital Contributions	5.1(a)
Capital Contributions Schedule	5.1(a)
Company	Preamble
Company Person	1.1
Controlled	1.1
Deadlock Buy Out	3.10
Deadlock Buy-Out Notice	3.10
Deadlock Valuation Notice	3.10
Directors	3.2(a)
Dispose	1.1
Event of Default	7.1
Formal Minutes	3.4(c)
Funding Date	5.1(b)
General Meeting of Shareholders	3.9(a)
Key Money Deposit Loans	5.2
LIBOR Period	1.1
Local Business Day	11.7
London banking day	1.1
*****	Preamble
***** Competing Business	8.2(a)
Non-American \$\$\$\$\$\$ Business	8.2(b)
Okusu	Preamble

Omitted Distributions.....	6.3
P/X	Preamble
Parent	Preamble
Parent Loan	5.3(b)
Parents.....	Preamble
President.....	3.7(a)
Proposed Annual Plan.....	3.6(b)
Proposed Three Year Plan	3.6(a)
Purchase Closing Date	1.1
Requisite Approval	3.3(a)
Restrictive Covenants	8.3
Section 6.2(a) Effective Date	6.2(a)
Section 6.2(a) Transaction	6.2(a)
Section 6.2(a) Transaction Notice.....	6.2(a)
Section 6.2(b) Effective Date.....	6.2(b)
Section 6.2(b) Transaction	6.2(b)
Section 6.2(b) Transaction Notice	6.2(b)
Statutory Auditors	3.8(a)
Term.....	2.4
Termination Alternative Purchase	9.3
Termination Alternative Purchase Notice.....	9.3
Termination Events.....	9.1(b)
Unanimous Approval	3.3(a)
Vice President	3.7(a)

ARTICLE 2

GENERAL PROVISIONS REGARDING THE COMPANY

2.1. *Corporate Name of the Company.* The name of the Company shall be American \$\$\$\$\$\$ Outfitters Japan KK or such other name as may be determined by Requisite Approval from time to time. Nothing in this Section 2.1 grants the Company any right to use any trade name, trademark, service mark, design or logo used by a Parent or any Affiliate of a Parent or otherwise to infringe upon the intellectual property rights of a Parent or any Affiliate of a Parent.

2.2. *Principal and Registered Office.* The principal and registered office of the Company shall be located at 2-18-1 Aobadai, Mguro-ku, Tokyo, 153-8906 Japan, or such other place as the Shareholders may designate from time to time. The books and records of the Company shall be kept and maintained at the principal and registered office of the Company.

2.3. *Purpose.* The purpose of the Company will be to engage in, conduct and expand the Business, directly or indirectly through Subsidiaries or other Persons. The Business shall be the sole businesses of the Company. The Company shall have all powers necessary, desirable or convenient, or which the Board of Directors deems necessary, desirable or convenient, and may engage in any and all activities necessary, desirable or convenient, or which the Board of Directors deems necessary, desirable or convenient, to accomplish the purpose of the Company or consistent with the furtherance thereof.

2.4. *Term.* The term of this Agreement shall commence on the date this Agreement is executed by the parties hereto and shall terminate pursuant to the terms contained in Article 9 (the “Term”).

ARTICLE 3

MANAGEMENT AND OPERATIONS OF THE COMPANY

3.1. *Board of Directors.* Except as otherwise provided herein, the Company shall be managed by its Board of Directors (the “**Board of Directors**”), pursuant to the provisions of this Agreement. The business activities of the Board of Directors shall be overseen by the Company’s Statutory Auditors.

3.2. *Designation; Removal.* (a) The Board of Directors of the Company shall have five members (“**Directors**”). On and after the date hereof, (i) the ##### Shareholder shall be entitled to designate three Directors, and (ii) the ***** Shareholders shall, collectively, be entitled to designate two Directors. Except as otherwise agreed among the Shareholders (such agreement not to be unreasonably withheld), each Director designated pursuant to this Section 3.2(a) or Section 3.2(c) hereof shall be an employee or director of the Shareholder (or one of the Shareholders) that designated him or her, such Shareholders’ Parent or one of their Affiliates. The Company shall have one representative director, who shall be elected from among the Directors by majority vote of the Board of Directors.

(b) Each Shareholder agrees, and each Parent hereby agrees to cause the Shareholder or Shareholders it Controls, to vote all of its Shares to cause the election to the Board of Directors of the persons designated in accordance with Section 3.2(a).

(c) The Company hereby agrees to take all actions necessary (and the Shareholders agree to cause the Company) to cause (i) the size of the board of directors or similar governing body of any Subsidiary of the Company to have five (5) members, (ii) the election to the board of directors or similar governing body of any Subsidiary of the Company of each of the individuals designated in accordance with Section 3.2(a) or appointed or elected in accordance with Section 3.2(e), and (iii) the removal from the board of directors or similar governing body of any Subsidiary of the Company of any of the individuals removed from the Board of Directors in accordance with Section 3.2(d) or, if such director is not a Director, if the Shareholder who designated such director requests such removal by written notice to the Company and the other Shareholders.

(d) Each Shareholder shall, and each Parent shall cause its Shareholders to, vote all of the Shares owned by such Shareholder for the removal of any Director designated and elected pursuant to Section 3.2(a) if the Shareholder(s) who designated such Director requests such removal by written notice to the other Shareholder(s).

(e) If as a result of death, disability, retirement, resignation, removal (with or without cause) or otherwise, there shall exist or occur any vacancy on the Board of Directors or board of directors of any Subsidiary of the Company, the Shareholder(s) entitled to designate (pursuant to Section 3.2(a)) the Director or director of any Subsidiary of the Company whose death, disability, retirement, resignation or removal resulted in such vacancy shall designate another individual to serve as a Director or director of any Subsidiary of the

Company and each Shareholder shall, and each Parent shall cause the Shareholder it Controls to, vote its respective Shares in favor of the individual designated by such Shareholder(s).

3.3. *Decision-Making.* (a) The presence at any meeting of the Board of Directors or the board of directors of any Subsidiary of not less than three Directors or directors of any Subsidiary of the Company, including at least two designated by the ##### Shareholder, shall constitute a quorum for the transaction of business. The transaction of business at a meeting of the Board of Directors or the board of directors of any Subsidiary shall require (i) in the case of matters specified in pursuant to Section 3.5(a) hereof, the affirmative vote of all of the Directors present at the meeting (“**Unanimous Approval**”), and (ii) in the case of all other matters considered by the Board of Directors or the board of directors of any Subsidiary in accordance with the Laws of Japan and with the Articles of Incorporation or other similar organizational documents of the Company or any Subsidiary, the affirmative vote of a majority of those Directors present at the meeting or such other number of Directors as may be required by the Laws of Japan from time to time (“**Requisite Approval**”).

(b) If the Shareholders, Board of Directors or board of directors of any Subsidiary of the Company are unable to reach an agreement on any matter requiring unanimous consent pursuant to Section 3.5(a) or 3.9(c) at any meeting and such deadlock continues for a period of three months (during which each Shareholder shall use reasonable efforts to resolve such deadlock), each of ##### and ***** will designate a senior executive respectively thereof to meet to attempt in good faith to resolve such deadlock.

3.4. *Meetings of the Board of Directors.*

(a) The Board of Directors shall hold regular quarterly meetings upon at least 10 Business Days prior notice to all Directors to decide such matters as the Board of Directors may deem appropriate, one of which shall be an annual meeting to review (x) the Annual Plan of the Company and its Subsidiaries for the following Fiscal Year and (y) the operating strategies of the Company and its Subsidiaries at which meeting the President, Vice President and each senior employee-manager of the Company shall present to the Board of Directors a report concerning the aspect of the Company’s and its Subsidiaries’ operations. The President may call a special meeting of the Board of Directors on at least five Business Days’ prior written notice to all members of the Board of Directors.

(b) Any Director may call a special meeting of the Board of Directors on at least 10 Business Days’ prior written notice to all Directors.

(c) All meetings of the Board of Directors shall be held in a location in Japan (unless otherwise agreed by the Directors) to be designated by the President or the Director requesting the meeting in the notice of each such meeting. Directors may attend any meeting of the Board of Directors via videoconference or teleconference. The attendance of any Director or Statutory Auditor at any meeting of the Board of Directors shall constitute a waiver of notice of such meeting by such Director or Statutory Auditor, except where such Director or Statutory Auditor attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not properly called or convened. The meetings shall be conducted in English. The formal minutes of the meetings (“**Formal Minutes**”) shall be written in Japanese.

(d) The Company shall pay all travel costs of all Directors incurred in connection with their attendance at meetings of the Board of Directors.

(e) All actions by the Board of Directors shall be reflected in Formal Minutes kept by an individual (who need not be a Director) designated by action of the Board of Directors, copies of which Formal Minutes, together with an English translation thereof, will be furnished to each Director or Statutory Auditor within 30 days after the date of such meeting by such recording secretary. Subject to the provisions of this Agreement the Board of Directors may regulate its proceedings as it determines.

(f) Each of the Directors may communicate to the Parent (or its Shareholder) that designated him or her any information acquired by him or her in relation to the Company, subject always to the Parents' and Shareholders' duty of confidentiality contained in Section 8.1.

3.5. *Actions Requiring Unanimous Board Approval.* (a) Except as expressly provided for in or approved in connection with the approval of the Three Year Plan or the Annual Plan, the following actions shall not be authorized or taken by the Company or any Subsidiary of the Company without the Unanimous Approval thereof by the Board of Directors or board of directors of such Subsidiary:

(i) the approval of any Three Year Plan (other than the Master Business Plan);

(ii) the approval of any Annual Plan (other than the Initial Annual Plan) or any amendment or modification thereto to the extent that such modification or amendment causes the amended Annual Plan to vary more than 20% in the aggregate (or in any major category of annual capital expenditure) from the preliminary Annual Plan for the Fiscal Year reflected in the relevant Three Year Plan;³

(iii) any action that would result in a variance of more than 20% in the aggregate (or in any major category of annual capital expenditure) from the Annual Plan;

(iv) the taking of any action not permitted by or the operation of the Business in a manner not consistent with the definition of "Business" set forth herein and the purpose of the Company set forth in Section 2.3 hereof;

(v) the amendment of any Ancillary Agreement;

(vi) the commencement or settlement of any legal proceeding involving amounts in excess of ¥200,000,000 (adjusted annually by [JAPANESE EQUIVALENT OF THE CONSUMER PRICE INDEX]), or the settlement by the Company or any of its Subsidiaries of any litigation or arbitration, if such settlement would require either Shareholder or their Affiliates to make any Capital Contributions or other payments, provided that this clause shall not limit the right of the Company to

^{3.} Discuss making (ii) and (iii) more specific based on contents and format of Master Business Plan.

enforce its rights hereunder or under any Ancillary Agreement against either Parent or its Affiliates;

(ix) entering into any contract, agreement, commitment or arrangement except as contemplated by or permitted under the Annual Plan that involves total payments to or from the Company and any of its Subsidiaries involving more than ¥150,000,000 (adjusted annually by [JAPANESE EQUIVALENT OF THE CONSUMER PRICE INDEX]) in any Fiscal Year;

(x) the making of any loan to, or guarantee of any obligation of, a Parent, Affiliate of any Parent, Director, Statutory Auditor or senior employee-manager of the Company (which loan or guarantee, if made with respect to a Director, shall be voted upon by the Board of Directors without the presence or vote of such Director), in accordance with the Commercial Code of Japan);

(xi) the making of any loan to, or guarantee of any Indebtedness for Borrowed Money of, any other Person, other than (x) loans to, or guarantees of Indebtedness for Borrowed Money of, the Company or any Subsidiary thereof, or (z) the extension of credit to customers in the ordinary course of business;

(xii) the incurrence of any Indebtedness for Borrowed Money that requires the guarantee of any Parents or any Affiliate thereof, other than as expressly contemplated in Section 5.1 (b); *provided*, that Unanimous Approval shall not be required for any such Indebtedness for Borrowed Money requiring a guarantee solely by ##### or its Affiliates, so long as ##### notifies the Company in writing that it is willing to provide such guarantee;

(xiii) entering into any contracts, agreements, commitments or arrangements with any Parent, Affiliate of any Parent, Director, Statutory Auditor or senior employee-manager of the Company that involve, in the aggregate, total payments to or from the Company and any of its Subsidiaries in excess of ¥150,000,000 in any Fiscal Year, other as contemplated herein, in the Annual Plan or under the Ancillary Agreements (which contracts, agreements, commitments or arrangements, whether or not in excess of such amount, if made with respect to a Director, shall be voted upon by the Board of Directors without the presence or vote of such Director), in accordance with the Commercial Code of Japan);

(xiv) the acquisition or Disposition by the Company of assets or group of assets, in any one transaction or related series of transactions, for an amount in excess of ¥200,000,000, other than in the ordinary course of business or as contemplated by the Annual Plan;

(xv) the formation of any Subsidiary of the Company or the investment in the equity or debt securities of any Person or otherwise acquiring any interest in any other Person, other than investments of working capital in the ordinary course of business or the formation of any wholly-owned Subsidiary of the Company;

(xvii) entering into any consulting agreement with any industry consultant or consulting company regarding the Business, management or operation of the Company, providing for total payments in excess of ¥150,000,000 (adjusted

annually by [JAPANESE EQUIVALENT OF THE CONSUMER PRICE INDEX]), other than as contemplated in the Annual Plan;

(xviii) the filing by the Company or any of its Subsidiaries of a petition under the Bankruptcy Law of Japan, Corporate Reorganization Law of Japan, Civil Rehabilitation Law of Japan or any other insolvency Law, or the admission in writing by the Company or any of its Subsidiaries of its bankruptcy, insolvency or general inability to pay debts as they become due;

(xix) any request for Capital Contributions other than or in addition to those required pursuant to Section 5.1;

(xxi) the voting of any shares of any Subsidiary of the Company with respect to any matter listed in this Section 3.5(a); and

(xxii) the entering into of any contract, agreement, commitment or arrangement to effect any of the foregoing.

(b) The Shareholders agree that, except as expressly provided in Section 3.5(a) above, 3.9(c) below or with respect to other matters which are required by Law or by the Company's or the relevant Subsidiary's Articles of Incorporation to be approved by any board of directors, general meeting of shareholders or similar governing body, all other matters relating to the operations and management of the Company and its Subsidiaries are within the power and discretion of the Board of Directors acting by Requisite Approval or, to the extent authorized by the Board of Directors acting by Requisite Approval, the President and other senior employee-managers of the Company.

3.6. *Master Business Plan; Three Year Plan and Annual Plan Approval.* (a) The President shall submit to the Board of Directors at least 120 days prior to the start of each Three Year period after the period covered by the Master Plan, a proposed Three Year Plan comprised of three proposed preliminary Annual Plans, each of which shall include a proposed business plan, budget and projected cash flow statement for the Company and its Subsidiaries for each of the ensuing three Fiscal Years (the "**Proposed Three Year Plan**"), which Proposed Three Year Plan shall be in substantially the same form and containing substantially all of the information contained in the Master Business Plan. The Proposed Three Year Plan shall be prepared on a basis consistent with the Company's and its Subsidiaries' financial statements and GAAP, except as noted therein. The Proposed Three Year Plan shall be subject to the approval of the Board of Directors as provided in Section 3.3, after which approval, such Proposed Three Year Plan, as amended in connection with its approval by the Board of Directors, shall become the Three Year Plan for the applicable three Fiscal Year periods. The Parents hereby approve, and the Company hereby adopts, the Master Business Plan.

(b) For each Fiscal Year other than the first Fiscal Year covered by a Three Year Plan, the President shall submit to the Board of Directors at least 90 days prior to the start of such Fiscal Year a proposed Annual Plan which shall include a proposed business plan, budget and projected cash flow statement for the Company and its Subsidiaries for the ensuing Fiscal Year (the "**Proposed Annual Plan**"), which Annual Plan shall be in substantially the same form and containing substantially all of the information contained in the Annual Plan for such Fiscal Year contained in the Three Year Plan there in effect. The Proposed Annual Plan for any Fiscal Year shall be subject to the approval of the Board of

Directors as provided in Section 3.3, after which approval, such Proposed Annual Plan, as amended in connection with its approval by the Board of Directors, shall become the Annual Plan for such Fiscal Year. The Parents hereby approve, and the Company hereby adopts, the Initial Annual Plan.

3.7. *Officers.* (a) The Board of Directors shall from time to time appoint (i) an individual designated by ##### as the President of the Company (the “**President**”), and (ii) an individual designated by the ***** Shareholders as the Vice President of the Company (the “**Vice President**”). The President and the Vice President may be removed by the Board of Directors only by Unanimous Approval. The Board of Directors may in its discretion appoint and remove any other senior employee-managers it deems desirable voting by Requisite Approval. The Shareholders shall, and the Parents agree to cause their respective Shareholders and Directors, as required, to, vote to elect or remove any senior employee-manager of the Company appointed or removed as provided in Section 3.7 at any meeting of the Shareholders of the Company.

3.8. *Statutory Auditors.* (a) The Company initially shall have three statutory auditors (“**Statutory Auditors**”). The ##### Shareholder shall be entitled to designate two individuals to be Statutory Auditors, subject to the approval of the ***** Shareholders (which approval shall not be unreasonably withheld or delayed), and the ***** Shareholders shall be entitled to designate one individual to be Statutory Auditor, subject to the approval of the ##### Shareholder (which approval shall not be unreasonably withheld or delayed). Notwithstanding the foregoing, if at any time the Company is only required by the Japanese Commercial Code to have only one Statutory Auditor, then the Company shall have one Statutory Auditor who shall be designated by the ##### Shareholder, subject to the approval of the ***** Shareholders (which approval shall not be unreasonably withheld or delayed).

(b) Each Shareholder hereby agrees to, and each Parent hereby agrees to cause its Shareholders to (i) cause the Directors designated by such Shareholders to recommend as the Statutory Auditors the persons designated and approved in accordance with Section 3.8(a) at a Shareholders’ meeting and (ii) vote at the relevant Shareholders’ meeting for the election as Statutory Auditors the persons designated and approved in accordance with Section 3.8(a).

(c) Each Shareholder hereby agrees to, and each Parent hereby agrees to cause its Shareholders to, take all actions necessary to cause (i) the election as statutory auditors of any Subsidiary of the Company (if such Subsidiary is required by Law to have statutory auditors) of each of the individuals designated and approved in accordance with Section 3.8(a) or appointed in accordance with Section 3.8(e) and (ii) the removal as statutory auditor of any Subsidiary of the Company of each of the individuals removed as Statutory Auditors in accordance with Section 3.8(d).

(d) Each Shareholder shall, and each Parent shall cause its Shareholders to, vote for the removal of any Statutory Auditor designated and elected pursuant to Sections 3.8(a) and 3.8(b) if the Shareholders who designated such Statutory Auditor requests such removal by written notice to the other Shareholders.

(e) If, as a result of death, disability, retirement, resignation, removal (with or without cause) or otherwise, there shall exist or occur any vacancy among the Statutory Auditors, the Shareholders entitled to designate (pursuant to Section 3.8(a)) the

Statutory Auditor whose death, disability, retirement, resignation or removal resulted in such vacancy shall designate another individual to serve as a Statutory Auditor, and, subject to the approval of such individual by the other Shareholders (such approval not to be unreasonably withheld), each Shareholder shall, and each Parent shall cause its Shareholders to, vote in favor of the individual designated by such Parent at the relevant Shareholders' meeting.

3.9. *General Meeting of Shareholders.* (a) The presence at any general meeting of Shareholders of the Company ("**General Meeting of Shareholders**") who hold Shares representing more than 50% of the total number of issued and outstanding Shares shall constitute a quorum for the transaction of business. The transaction of business at a General Meeting of Shareholders shall be in accordance with the Articles of Incorporation and shall require, unless otherwise required by Law, the affirmative vote of the holders of more than 50% of the total number of issued and outstanding Shares present at the meeting.

(b) The General Meeting of Shareholders shall be held once annually to (i) approve the financial statements of the Company and (ii) approve such other matters as the Board of Directors shall deem appropriate. The President may call an extraordinary General Meeting of Shareholders whenever necessary based upon a resolution of the Board of Directors.

(c) Notwithstanding any other provision of this Agreement, the Company shall not take any of the following actions without approval thereof by Shareholders holding at least two-thirds of the outstanding Shares:⁴

(i) the Disposition (directly or indirectly through sales of the stock or assets of Subsidiaries of the Company) of all or substantially all of the assets of the Company in any one transaction or related series of transactions;

(ii) the merger or consolidation of the Company with or into another Person, other than a merger in which the Company is the surviving Person and there is no change in the equity ownership of the Company;

(iii) the issuance of any additional equity in or right to acquire equity in, the Company, including, without limitation, the approval of any stock option plan and the allocation and terms of the stock options thereunder, except as contemplated in Section 5.1 hereof; and

(iv) the making of any distribution to the Shareholders.

3.10. *Deadlock Buy Out Option.* If the Board of Directors are unable to achieve Unanimous Approval with respect to any matter specified in clauses (i), (ii) or (iii) of Section 3.5(a), then ##### may, within ninety (90) days after the applicable meeting of the Board of Directors, deliver a written notice (a "**Deadlock Valuation Notice**") to the ***** Shareholders that it desires to determine the Deadlock Buy-Out Purchase Price. If a Deadlock Valuation Notice is delivered, then the Deadlock Buy-Out Purchase Price shall be determined in accordance with the Fair Market Value Determination Mechanism. Within

⁴ Because these items require the approval by the Shareholders under the Japanese Commercial Code, we have provided for their approval by a super-majority of the Shareholders instead of the Board of Directors.

30 days of such determination of the Deadlock Buy-Out Purchase Price, ##### may elect, by delivering a written notice to such effect the ***** Shareholders (the “**Deadlock Buy-Out Notice**”) to purchase (or to cause a designee to purchase) all of the ***** Shareholders’ Shares (the “**Deadlock Buy Out**”) for the Deadlock Buy-Out Purchase Price. Any such purchase shall be effected for cash. ##### and the ***** Shareholders shall proceed with the closing of the Deadlock Buy Out in accordance with the Closing Procedures.

3.11. *Liability and Indemnification.* (a) No Shareholder, former Shareholder, Director or former Director, no Affiliate of any thereof, nor any member, partner, shareholder, director, officer, employee or agent of any of the foregoing, shall be liable, responsible or accountable, in damages or otherwise, to the Company or any Shareholder for any act or failure to act in such Person’s capacity as a Shareholder or Director or otherwise on behalf of the Company unless such act or omission constituted fraud, willful misconduct or gross negligence.

(b) Each Shareholder, Director or former Director, and each officer or former officer of the Company, each Affiliate of any thereof, and each member, partner, shareholder, director, officer, employee and agent of any of the foregoing, shall be indemnified and held harmless by the Company from and against any liability for damages and expenses, including reasonable attorneys’ fees and disbursements and amounts paid in settlement, resulting from any threatened, pending or completed action, suit or proceeding relating to or arising out of such Person’s acts or omissions in such Person’s capacity as, or mere status or capacity as, a Shareholder, Director or officer or otherwise involving such Person’s activities on behalf of the Company, except to the extent that such damages or expenses result from the fraud, willful misconduct or gross negligence of such indemnified Person. Expenses incurred by any Person in defense or settlement of a claim that may be subject to a right of indemnification under this Section 3.11(b), including attorneys’ fees, may be advanced prior to the final disposition of the matter provided that such Person undertakes to repay the advanced funds to the Company if it is determined that such Person is not entitled to indemnification hereunder. Any indemnity by the Company under this Section 3.11(b) shall be provided out of and to the extent of Company assets only.

ARTICLE 4

ACCOUNTING AND TAXATION

4.1. *Fiscal Year.* The books and records of the Company and each Subsidiary of the Company shall be kept on an accrual basis, and the Fiscal Year shall be used by the Company and each Subsidiary of the Company for financial accounting and Japanese tax purposes.

4.2. *Maintenance of Books and Records.* At all times during the continuance of the Company, the Company shall keep or cause to be kept (and cause its Subsidiaries to keep or be kept), at the principal and registered office referred to in Section 2.2 (or, in the case of the Company’s Subsidiaries, their respective principal and registered offices), full and complete books of account. The books of account shall be maintained as required by Law. The Company shall cause its Subsidiaries to make similar provisions with respect to each such Subsidiary’s books and records as the Company is required to take under this Section 4.2 with respect to its books and records.

4.3. *Access to Books of Account.* Notwithstanding any other provision of this Agreement (but subject to Section 8.1), each Shareholder shall have the right upon reasonable advance notice at all reasonable times during usual business hours to (i) audit, examine and make copies of the books of account of the Company and each Subsidiary of the Company, (ii) visit the facilities of the Company and each Subsidiary of the Company and (iii) discuss the affairs of the Company and each Subsidiary of the Company with its senior employee-managers, employees, attorneys, accountants, customers and suppliers; *provided* that such audit, examination or visit shall be conducted in such a manner as not to interfere unreasonably with the business of the Company or any Subsidiary of the Company. Such right may be exercised through any agent or employee of such Shareholder designated by it or by independent certified public accountants or counsel designated by such Parent. Each Shareholder shall bear all expenses incurred in any examination made for such Shareholder's account.

4.4. *Financial Statements.*

(a) *Annual Statements.* As soon as practicable following the end of each Fiscal Year, but in any event within 60 days after the end of the Fiscal Year, the Company shall prepare and deliver to each of ##### and the ***** Shareholders an audited balance sheet of the Company and its Subsidiaries as at the end of such Fiscal Year, and audited statements of income (loss) and cash flows of the Company and its Subsidiaries for such Fiscal Year, prepared in accordance with GAAP and accompanied by the Accountants' report thereon.

(b) *Quarterly Statements.* As soon as possible following the end of each fiscal quarter, but in any event within 15 Business Days after the end of each such quarter, the Company shall prepare and deliver to each Shareholder unaudited statements of income (loss) and cash flows of the Company and its Subsidiaries for such fiscal quarter and for the Fiscal Year to date and an unaudited balance sheet of the Company and its Subsidiaries together with a reconciliation of actual and budgeted results and a certificate of the Director of Finance to the effect that such financial statements have been prepared under his supervision and that such financial statements, in his judgment, fairly present in all material respects the interim results of operations, financial position and cash flows of the Company and its Subsidiaries for the period and as of the date indicated, subject to normal audit adjustments. At such time, the Company shall also prepare and deliver to each Parent current forecasts of Fiscal Year end results of the Company and its Subsidiaries.

(c) *Monthly Statements.* As soon as possible (but in any event within three Business Days) after the last Saturday of each month, the Company shall prepare and deliver to each Shareholder unaudited consolidated profit and loss statements of the Company and its Subsidiaries for such month together with a reconciliation of actual and budgeted results.

(d) *Other Information.* At the request of any Shareholder, the Company shall prepare and deliver to each Shareholder, as soon as practicable following such request, any additional financial information and statements as such Shareholder shall from time to time reasonably request.

(e) Any information to be provided pursuant to this Section 4.4 shall be prepared in English. Notwithstanding the foregoing, any report required by Japanese

Law to be prepared in Japanese shall be prepared in Japanese, and an English translation thereof shall be provided to the Shareholders.

ARTICLE 5

FUNDING OF COMPANY

5.1. *Capital Contributions.* (a) Each Shareholder agrees to, and each Parent agrees to cause its Shareholders to, make capital contributions to the Company (“**Capital Contributions**”) at the times and in the amounts specified in Schedule 5.1 hereto (the “**Capital Contributions Schedule**”) or at such times and in such other amounts as approved by the Board of Directors in accordance with Section 3.3; *provided, however*, that, notwithstanding anything to the contrary in this Agreement, no Shareholder shall be required to make any Capital Contribution to the extent that, after giving effect to such Capital Contribution, the aggregate amount of all Capital Contributions made through such date by such Shareholder (or, in the case of the ***** Shareholders, the ***** Shareholders collectively) shall exceed its Applicable Contribution Cap unless approved by Unanimous Approval by the Board of Directors.

(b) In the event that during any Fiscal Year the Board of Directors authorizes a demand for Capital Contributions pursuant to the Capital Contributions Schedule or, in accordance with Section 3.3, a demand for Capital Contributions in addition to, or at times other than, those specified in the Capital Contributions Schedule, prompt written notice of such request shall be given to the Shareholders by the Board of Directors setting forth the date or dates on which such Capital Contribution will be made (each such date, a “**Funding Date**”), the aggregate amount thereof in Dollars, and each Shareholder’s share thereof.⁵

(c) On each Funding Date, each Shareholder shall make (and each Parent shall cause its Shareholders to make) a Capital Contribution to the Company in an amount equal to 60% (in the case of the ##### Shareholder) or its pro rata share (based upon the number of Shares already owned by it) of 40% (in the case of the ***** Shareholders) multiplied by the aggregate amount of the aggregate Capital Contributions to be made on such Funding Date, as determined in accordance with Section 5.1(a) or (b). In addition to any other remedies provided herein, any such Capital Contribution required to be made and not made on the Funding Date shall accrue interest at the rate of 1 1/2% per month for the period commencing on the Funding Date and continuing until but not including the earliest to occur of (i) the date such payment is paid or (ii) if applicable, the date of the consummation of a Breach Put Closing pursuant to Section 7.2 or a Breach Call Closing pursuant to Section 7.3. Each Shareholder shall be entitled to receive Shares in the Company for its Capital Contributions (exclusive of any interest pursuant to the immediately preceding sentence). The per-Share purchase price for such Shares shall be equal to an amount equal to 0.75 multiplied by the lesser of (x) ¥ ____ per Share⁶, adjusted proportionally to reflect any stock split or other subdivision, combination or reclassification of the Shares or (y) the amount equal to (1) the Board of Directors’ good faith determination of the Fair Market Value of the Company as of the applicable Funding Date divided by (2) the total

⁵ Discuss limiting contributions in the first Fiscal Year to ¥100,000,000, with the balance of the funds to be loaned to the Company and converted to capital contributions in the second Fiscal Year.

⁶ This should be the per-Share price for which the Shareholders receive their initial Shares upon making their initial Capital Contributions

number of Shares outstanding on such Funding Date after giving effect to the issuance of additional shares on such Funding Date. Such Shares shall be issued by the Company to the applicable Shareholder as soon as practicable after (but in no event before) the payment of the applicable Capital Contribution. In connection with any issuance of Shares pursuant to this Section 5.1(c), the Company shall, and each Shareholder shall (and each Parent shall cause its Shareholders to) use reasonable efforts to cause the Company to, (i) make, provide or obtain any registrations, filings, applications, notices, consents, releases, approvals, orders, qualifications and waivers that are required to be made, provided or obtained under Japanese Laws in order to consummate such issuance of Shares (including, without limitation, a securities notice in accordance with the Securities Exchange Act of Japan) and (ii) comply with all procedural requirements set forth in the Commercial Code of Japan that are required to be complied with in order to consummate such issuance of Shares (including, without limitation, obtaining approval at a meeting of Shareholders, if necessary). Each Shareholder shall, and each Parent agrees to cause its Shareholders to, vote all of its Shares in favor of any such issuance of Shares.

(d) All Capital Contributions shall be made in Dollars by wire transfer or other direct funds transfer of immediately available funds to the bank account of the Company specified by the Company at least 10 days prior to the applicable Funding Date.

5.2. *Key Money Deposit Loans.* In addition to the Capital Contributions pursuant to Section 5.1, the Company will finance its refundable key money deposits by obtaining loans from third party lenders (“**Key Money Deposit Loans**”). To the extent required by such lenders and approved by the Board of Directors of the Company by Requisite Approval, the ##### and the ##### Shareholders shall guarantee the Company’s repayment of the total amount of such loans. ##### shall guarantee 60% of the amount of all Key Money Deposit Loans outstanding at any given time, and the ##### Shareholders shall jointly and severally guarantee 40% of such Key Money Deposit Loans; *provided* that the parties understand and agree that the lenders under such Key Money Deposit Loans may require a joint and several guarantee of the whole amount of any Key Money Deposit Loans, in which case ##### and the ##### Shareholders shall make such joint and several guarantee for such whole amount but further agree that (i) as between ##### and the ##### Shareholders, #####’s liability under any such guarantee shall be 60% and the ##### Shareholders’ aggregate liability shall be 40% and (ii) ##### shall indemnify and hold harmless the ##### Shareholders or the ##### Shareholders jointly and severally shall indemnify and hold harmless #####, as the case may be, in the event that the indemnified party suffers more than its agreed-upon share of any liability on any such guarantee. Notwithstanding anything to the contrary in this Section 5.2, in no event shall the total amount of Key Money Deposit Loans that ##### and the ##### Shareholders are obligated to guarantee exceed \$30 million in the aggregate at any time, except to the extent that such cap is exceeded as a result of currency fluctuations (*provided* that no new guarantees shall be required for so long as such cap is so exceeded).

5.3. *Additional Funding.* (a) If at any time or from time to time the Company requires funding in addition to that provided for in Section 5.1 and Section 5.2, such additional funding shall be satisfied by the Company obtaining a revolving credit facility. In the event that the lender under any such facility requires a guarantee from ##### and the ##### Shareholders to provide such revolving credit facility, and ##### and the ##### Shareholders agree to provide such guarantee, ##### shall guarantee 60% of the amount of the revolving credit facility outstanding at any given time,

and the ***** Shareholders shall jointly and severally guarantee 40% of such revolving credit facility; *provided* that ##### and the ***** Shareholders understand and agree that the lenders under such revolving credit facility may require a joint and several guarantee of the whole amount of any revolving credit facility, in which case, should ##### and the ***** Shareholders agree to provide such guarantee, ##### and the ***** Shareholders further agree that (i) as between ##### and the ***** Shareholders, #####'s liability under any such guarantee shall be 60% and the ***** Shareholders' aggregate liability shall be 40% and (ii) ##### shall indemnify and hold harmless the ***** Shareholders or the ***** Shareholders shall jointly and severally indemnify and hold harmless #####, as the case may be, in the event that the indemnified party suffers more than its agreed-upon share of any liability on any such guarantee.

(b) In the event that (i) the Company is not able to obtain a revolving credit facility adequate for the funding needs of the Company or (ii) the lender requires a guarantee and one or more of ##### or the ***** Shareholders is unwilling to provide such a guarantee, ##### shall have the right (but not the obligation) to guarantee any such loans or provide funding to the company through one or more loans to the Company (a **"Parent Loan"**). Should ##### provide any Parent Loan, the ***** Shareholders shall have the right (but not the obligation) to also provide funding to the Company by making one or more loans to the Company on the same terms and conditions as #####'s Parent Loan, in which case ##### shall provide 60% of such Parent Loan and the ***** Shareholders shall collectively provide 40% of such Parent Loan. Any such Parent Loan shall be denominated in Dollars and shall be payable on demand and prepayable by the Company at any time (*provided* that in the event that Parent Loans made by both ##### and the ***** Shareholders are outstanding, any such prepayment shall be made on a pro rata basis based upon the outstanding balances of such Parent Loans) in whole or in part, and shall bear interest at the Parent Loan Rate, adjusted and compounded monthly, and the terms and conditions of any such loans shall be commercially reasonable.

ARTICLE 6

RESTRICTIONS ON DISPOSITION OF COMPANY INTEREST

6.1. *General Restriction on Dispositions.*

(a) *General Restrictions.* No Shareholder shall, and no Parent shall permit its Shareholders to, directly or indirectly Dispose of or encumber (or permit any of their Affiliates to encumber) its Shares, Company Interest or portions thereof except pursuant to the provisions of Section 3.10, Article 6, Section 7.2 or Section 7.3 or Section 9.3.

(b) *Permitted Transfers and Assignments.* The ##### Shareholders may Dispose of their Shares, and ##### and the ##### Shareholders may Dispose of their rights and obligations under this Agreement to (i) any ##### Shareholder or one or more of #####'s other Affiliates, or (ii) with the prior consent of the ***** Shareholders. The ***** Shareholders may Dispose of their Shares, and Okusu and the ***** Shareholders may Dispose of their rights and obligations under this Agreement to (x) any ***** Shareholder or (y) with the prior consent of #####. In no event shall any Disposition pursuant to this Section 6.1(b) relieve such Parent or such Shareholder of its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, it is understood and agreed that neither a merger of ##### with or into another

Person or a consolidation of ##### with another Person or the assignment of Shares and this Agreement in connection with the sale of all or a substantial portion of #####'s assets shall be deemed to be a Disposition of the ##### Shareholders' Shares for purposes of this Agreement.

6.2. *Purchase and Sale Options.* (a) By delivery of a written notice (the "**Section 6.2(a) Transaction Notice**"), to the other Parent no later than 6 months prior to February 1, 2014 (the "**Section 6.2(a) Effective Date**"), ##### may elect to purchase (or cause its Affiliates to purchase), or the ##### Shareholders may elect to sell to #####, all of the ##### Shareholders' Shares (the "**Section 6.2(a) Transaction**"). Any such purchase shall be effected for cash at a purchase price equal to the Section 6.2(a) Transaction Purchase Price. ##### and the ##### Shareholders shall proceed with the closing of the Section 6.2(a) Transaction in accord with the Closing Procedures.

(b) By delivery of a written notice to the other Parent (the "**Section 6.2(b) Transaction Notice**") no later than 6 months prior to February 1, 2017, or any anniversary of February 1, 2017 (the "**Section 6.2(b) Effective Date**"), ##### may elect to purchase (or cause its Affiliates to purchase), or the ##### Shareholders may elect to sell to #####, all of the ##### Shareholders' Shares (the "**Section 6.2(b) Transaction**"). Any such purchase shall be effected for cash at a purchase price equal to the Section 6.2(b) Transaction Purchase Price. ##### and the ##### Shareholders shall proceed with the closing of the Section 6.2(b) Transaction, and the Section 6.2(b) Purchase Price shall be determined, in accord with the provisions the Closing Procedures. Upon the consummation of the Section 6.2(b) Purchase Transaction, all Ancillary Agreements shall terminate; *provided*, that any Ancillary Agreement that is approved by the Board of Directors shall survive such consummation and remain in full force and effect.

(c) In the event of a that a Section 6.2(a) Transaction Notice or a 6.2(b) Transaction Notice is delivered to either ##### or the ##### Shareholders, then the closing of the purchase of all of the ##### Shareholders' Shares shall be consummated in accordance with the Closing Procedures.

6.3. *Effect of Prohibited Dispositions.* Each Shareholder hereby agrees, and each Parent hereby agrees to cause its or his Shareholders, to cause the Directors it has designated to refuse to approve or register any Disposition or purported Disposition of any Shares or any Company Interest (or portion thereof) in violation of (i) any provision of this Agreement or (ii) the provisions of the Commercial Code of Japan. No actual or purported Disposition of any Shares or of all or any portion of a Company Interest, nor any right with respect thereto, whether voluntary or involuntary, in violation of (x) any provision of this Agreement or (y) the provisions of the Commercial Code of Japan, shall be valid or effective to grant to any other Person any right, title or interest in or to such Shares or Company Interest (or portion thereof). In addition to any other remedies provided herein, the transferor of any Shares or Company Interest (or portion thereof) Disposed of in violation of any provision of this Agreement, until such Disposition or purported Disposition shall be rescinded, shall not be entitled to, and hereby specifically waives, all right, title and interest in or to such Shares or Company Interest (or portion thereof) from and after the date of such Disposition or purported Disposition or failure to comply, as the case may be. Notwithstanding the foregoing, to the extent that a Shareholder would have been entitled to Company dividends or other distributions but for the preceding provisions of this Section 6.3 ("**Omitted Distributions**"), if and when such Disposition or purported Disposition shall be

rescinded, such Shareholder shall be entitled to receive all such Omitted Distributions (but interest need not be paid thereon with respect to the period between the date such Omitted Distribution would have been made but for this Section 6.3 and the date they are actually made).

6.4. *Compliance with Laws of Japan.* Any transfer of assignment of Shares in accordance with this Article 6 shall be made in accordance with the requirements set forth in the Commercial Code of Japan and in the Articles of Incorporation (including, without limitation, any requirement that a transfer of Shares be approved by the Board of Directors, and each Shareholder agrees to, and each Parent agrees to cause its or his Shareholders to, cause the Directors designated by such Shareholders to approve any such transfer or assignment of Shares).

6.5. *Control of Shareholders.*

(a) In the event that Okusu or any ***** Shareholder at any time intends, or otherwise becomes aware, that any ***** Shareholder shall cease to be Controlled by Okusu, then prior to such ***** Shareholder ceasing to be Controlled by Okusu, Okusu and the ***** Shareholders shall cause such ***** Shareholder to transfer all of its Company Interest to another ***** Shareholder that will remain Controlled by Okusu (or such other Affiliate of ***** agreed to by ##### in writing). For purposes of this Section 6.5, a ***** Shareholder shall be treated as Controlled by Okusu if and only if Okusu is able to direct the voting of more than 66 2/3% (or, in the case of P/X, more than 50%) of the voting shares of such ***** Shareholder. Okusu and the ***** Shareholders covenant that at least one of *****, BIGI or P/X will at all times be Controlled by Okusu. [Notwithstanding the foregoing, in the event that Okusu dies or becomes incapacitated, this Section 6.5 shall be satisfied so long as each ***** Shareholder is an Affiliate of BIGI, and each ***** Shareholder which ceases to be an Affiliate of BIGI shall transfer its Company Interest to BIGI.]⁷

(b) In the event that ##### or any ##### Shareholder at any time intends, or otherwise becomes aware, that any ##### Shareholder shall cease to be Controlled by #####, then prior to such ##### Shareholder ceasing to be Controlled by #####, ##### shall cause such ##### Shareholder to transfer all of its Company Interest to an Affiliate of ##### that will remain Controlled by #####.

ARTICLE 7

EVENTS OF DEFAULT; REMEDIES

7.1. *Events of Default.* An “**Event of Default**” means, with respect to any Shareholder or Parent, the occurrence of any of the following:

(a) the failure by such Shareholder or Parent to provide any funding or provide any guarantee required to be made or provided pursuant to Section 5.1 when due and such failure continues for a period of 10 Business Days after receipt of written notice from the Company or the other Parent that such funding (or any portion thereof) or guarantee is overdue;

⁷

Discuss.

(b) any breach or inaccuracy in any material respect of any representation or warranty of such Shareholder or Parent or any of its Affiliates contained in this Agreement or any Ancillary Agreement;

(c) the Disposition of such Shareholder's Shares or all or any portion of such Parent's or Shareholder's Company Interest except as permitted by this Agreement; *provided* that no Event of Default shall be considered to have occurred for 30 days following the involuntary encumbrance or all or any part of such Shares or Company Interest if during such 30-day period such Parent removes any such encumbrance, including, but not limited to, by effecting the posting of a bond to prevent foreclosure where necessary;

(d) a Bankruptcy Proceeding is commenced with respect to such Parent or Shareholder, or such Person makes an admission in writing of its or his bankruptcy, insolvency or general inability to pay debts as they become due;

(e) the failure by such Parent or Shareholder or any of its Affiliates to perform any of their respective covenants or obligations, if any, contained in this Agreement or any Ancillary Agreement to be performed by such Parent or Shareholder or any of their Affiliates hereunder or thereunder or the violation by such Parent or Shareholder or any of their Affiliates of any term or condition contained in this Agreement or any Ancillary Agreements, which failure or violation continues for 10 Business Days after written notice thereof from the Company or another Shareholder (or such other cure period as may be expressly provided for in the applicable Ancillary Agreement); and

(f) a Director designated by such Person (or its Shareholders) files a petition under the Bankruptcy Law of Japan, Corporate Reorganization Law of Japan, Civil Rehabilitation Law of Japan or any other insolvency Law, and such filing was not authorized by Unanimous Approval.

Each Parent or Shareholder shall notify the other Parent and Shareholders in writing as soon as practicable after learning of the existence of an Event of Default.

7.2. *Put Right of *****.*

(a) Upon the occurrence and during the continuance of an Event of Default with respect to ##### or the ##### Shareholders, if such Event of Default is not cured upon 60 days written notice to #####, the ***** Shareholders may by written notice (a "**Breach Put Notice**") to ##### elect to sell all but not less than all of the ***** Shareholders' Shares to ##### for a purchase price equal to the Breach Put Purchase Price, payable in cash.

(b) In the event that a Breach Put Notice is delivered to #####, then the closing of the purchase of the ***** Shareholders' Shares shall be consummated in accordance with the Closing Procedures.

(c) The failure of the ***** Shareholders to exercise its rights under this Section 7.2 in connection with any Event of Default shall in no way affect or limit the exercise by the ***** Shareholders of such rights in connection with any other Event of Default by ##### or the ##### Shareholders.

7.3. *Purchase Right of #####.*

(a) Upon the occurrence and during the continuance of an Event of Default with respect to Okusu or the ***** Shareholders, if such Event of Default is not cured upon 60 days written notice to the ***** Shareholders, then ##### may by written notice (a “**Breach Call Notice**”) to the ***** Shareholders, elect to purchase all but not less than all of the ***** Shareholders’ Shares for Breach Call Purchase Price payable in cash.

(b) If a Breach Call Notice is delivered to the ***** Shareholders pursuant to Section 7.3(a), then the closing of the purchase of the ***** Shareholders’ Shares shall be consummated in accord with the Closing Procedures.

(c) The failure of ##### to exercise its rights under this Section 7.3 in connection with any Event of Default shall in no way affect or limit the exercise of such rights by ##### in connection with any other Event of Default by Okusu or the ***** Shareholders.

7.4. *Additional Remedies.* Notwithstanding any provision of Sections 7.2 and 7.3 to the contrary, the foregoing provisions of this Article 7 shall be in addition to and not in limitation of any other rights or remedies that the Company or any Non-Breaching Party may have against the Breaching Parties or their Affiliates at Law or in equity, pursuant to statute or regulation or otherwise and the Company and the Non-Breaching Parties shall be entitled to recover from the Breaching Parties in an appropriate proceeding any damages incurred by any of them in connection with such Event of Default.

ARTICLE 8

CERTAIN COVENANTS

8.1. *Confidential and Proprietary Information.* All Proprietary Information of any Parent or its Affiliates shall remain the property of such Parent or its Affiliates, and all Proprietary Information of the Company and its Subsidiaries shall remain the property of the Company and its Subsidiaries. Each of the Parents and their respective Shareholders and other Affiliates (i) shall use any and all Confidential Information of the Company and the other Parent and its Shareholders and other Affiliates only for purposes of the Company and the Subsidiaries of the Company and shall not use such Confidential Information for the benefit of or in connection with any other business or enterprise of such Parent, Shareholder or any of their Affiliates and (ii) shall, and shall cause its and their respective officers, senior employee-managers, directors, employees, attorneys, accountants, and agents (collectively, “**Agents**”) to, keep secret and retain in strictest confidence any and all Confidential Information of the Company and the other Parent and its Shareholders and other Affiliates, and shall not disclose such Confidential Information, and shall cause its Agents not to disclose such Confidential Information, to any Person other than such Parent, its Shareholders and other Affiliates, the Company or its Subsidiaries or their respective Agents, except for (i) such disclosures as may be required by Law or legal process, disclosures to such Parent’s or Shareholder’s counsel, or disclosures pursuant to any listing agreement with, or the rules or regulations of, any securities exchange on which securities of such Parent, Shareholder or any such Affiliate are listed or traded (in which event the Parent or Shareholder making such disclosure or whose Affiliates or Agents are making such

disclosure shall so notify the other Parent and its Shareholders as promptly as practicable (and if possible, prior to making such disclosure) and shall seek confidential treatment of such information); (ii) as may be necessary to establish or enforce its rights hereunder; (iii) if applicable to such Parent and its Shareholders and other Affiliates, as part of the normal review or reporting procedure to its auditors and its attorneys; *provided*, that such Parent and its Shareholders shall be liable for any breach by such auditors or attorneys of any provision of this Section 8.1; (iv) disclosures to an Affiliate of, or a professional advisor to, such Parent, Shareholder or other Affiliate in connection with the performance by such Parent, Shareholder or other Affiliate of their obligations hereunder, under the Ancillary Agreements or under an agreement with the Company or its Subsidiaries; *provided*, that such Parent and its Shareholders shall be liable for any breach by such Affiliate or professional advisor of any provision of this Section 8.1; and (vi) with the prior written consent of the nondisclosing Parent or its Shareholders. The obligations under this Section 8.1 shall survive the termination of this Agreement, any Shareholder ceasing to be a Shareholder or any Person ceasing to be an Affiliate of a Parent or Shareholder for a period of five years after the occurrence of such event.

8.2. *Covenant Not to Compete.*

(a) For so long as any ***** Shareholder owns Shares and for a period of two years thereafter, Okusu and the ***** Shareholders shall not, and shall cause their Affiliates not to, directly or indirectly engage in or conduct (whether as owner, operator, shareholder, manager, consultant, strategic partner or employee) any retail or wholesale business competitive with the Company in the Territory by selling similar quality wearing apparel within the same price range as that sold by the Company and targeted to the same general consumer demographic (a “***** **Competing Business**”); *provided* that (x) this Section 8.2(a) shall in no way prevent the ***** Shareholders, Okusu or their Affiliates from conducting their current businesses as they are conducted as of the date of this Agreement. By way of example, but without limitation, a “***** **Competing Business**” shall include the Gap, Abercrombie, Aeropostale and Pacific Sunwear and (y) nothing in this Section 8.2(a) shall prevent Okusu and the ***** Shareholders from owning securities in a publicly traded company if (x) such securities are listed on a national securities exchange or quoted on an automated quotation system and such ownership (of Okusu and the ***** Shareholders collectively) does not exceed five percent (5%) of the voting securities of such company or (y) such securities are held through a mutual fund.

(b) For so long as any ***** Shareholder owns Shares, ##### shall not, and shall cause its Shareholders and other Affiliates not to, directly or indirectly engage in or conduct (whether as owner, operator, shareholder, manager, consultant, strategic partner or employee) any retail business involving a physical presence in the Territory and selling (through such physical presence) wearing apparel branded with any brand other than the Licensed Marks (a “**Non-American \$\$\$\$\$\$ Business**”) without first negotiating on an exclusive basis with one or more of the ***** Shareholders for a 60 day period to conduct such Non-American \$\$\$\$\$\$ Business through the Company (it being understood that such right of first negotiation is not a right of first offer or first refusal and that ##### does not have any obligation to enter into an agreement with any of the ***** Shareholders or the Company and is free to engage in or conduct such Non-American \$\$\$\$\$\$ Business without the participation of any of the ***** Shareholders or the Company following such negotiation period); *provided* that (x) this Section 8.2(b) shall not apply to any brand owned by any Person that is not currently an Affiliate of ##### and that

becomes an Affiliate of ##### at the time such Person becomes an Affiliate of #####, and nothing in this Section 8.2(b) shall be deemed to limit the rights of ##### and its Affiliates set forth in the last sentence of Section 8.5 and (y) nothing in this Section 8.2(b) shall prevent ##### and the ##### Shareholders from owning securities in a publicly traded company if (x) such securities are listed on a national securities exchange or quoted on an automated quotation system and such ownership (of ##### and the ##### Shareholders collectively) does not exceed five percent (5%) of the voting securities of such company or (y) such securities are held through a mutual fund.

(c) Unless otherwise agreed to by the other Parent or its Shareholders, each Parent will, and will cause its Shareholders and other Affiliates not to, directly or indirectly, solicit for employment, recruit or hire, either as an employee or a consultant, any employee of the other Parent, its Shareholders or other Affiliates or the Company or its Affiliates to become an employee or consultant of, or otherwise provide services to, such Parent or its Shareholders or other Affiliates, either while such employee is employed by the other Parent, its Shareholders or other Affiliates or the Company or its Affiliates or for a one-year period after such employment relationship ceases. Notwithstanding the foregoing, each Parent and its Shareholders and other Affiliates shall be free to rehire or recall any employee such Parent or its Shareholders or other Affiliates seconds to the Company or its Affiliates on a permanent or temporary basis.

(d) It is the desire and intent of the Parents and the Shareholders that the provisions of this Section 8.2 shall be enforced to the fullest extent permitted under the Laws and public policies of each jurisdiction in which enforcement is sought. If any court determines that any provision of this Section 8.2 is unenforceable in any particular jurisdiction, such court will have the power (in relation to such jurisdiction) to reduce the duration or scope of such provision, as the case may be, or terminate such provision and, in reduced form, such provision shall be enforceable; it is the intention of the Parents and the Shareholders that the foregoing restrictions shall not be terminated, unless so terminated by a court, but shall be deemed amended to the extent required to render them valid and enforceable, such amendment to apply only with respect to the operation of this Section 8.2 in the jurisdiction in which enforcement is sought.

8.3. *Rights and Remedies Upon Breach.* If a Parent or any of its Shareholders or other Affiliates or Agents breaches, or threatens to commit a breach of, any of the provisions of Section 8.1 and 8.2 (the “**Restrictive Covenants**”), the other Parent and its Shareholders and the Company shall have the right and remedy to have the Restrictive Covenants specifically enforced by any court having jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to such other Parent’s Company Interests and the Company, and that money damages will not provide an adequate remedy to such other Parent or its Shareholders or the Company. Nothing in this Section 8.3 shall be construed to limit the right of any Parent or its Shareholder or the Company to collect money damages in the event of a breach of any Restrictive Covenant.

8.4. *Supplier Relations.* (a) ##### will, at no cost to the Company, provide all commercially reasonable assistance necessary to facilitate the Company’s relationships with its suppliers, it being understood and agreed that the Company will pay for its own merchandise and that such assistance shall not otherwise include ##### making any monetary expenditure.

(b) The purchase of merchandise by the Company will be made via purchase orders written directly to existing ##### vendors. To the extent that the Company purchases products identical to those purchased by ##### from the same vendors from which ##### purchases such products, the Company shall be entitled to the same prices provided to #####, adjusted to reflect destination-specific differences such as shipping and customs-related costs.

(c) Notwithstanding anything to the contrary in this Agreement, ##### shall have the authority, in its sole discretion, to make all decisions relating to merchandise selection, and vendor selection for merchandise, for the Company and its Affiliates and may include both existing and other vendors in the Territory or elsewhere in Asia deemed by #####, in its sole discretion, to be cost-effective and prudent for the Company.

(d) the Company may, but shall not be required to, use the services of the ***** Shareholders to source goods other than merchandise.

8.5. *Creation of Other Online Interests.* For so long as the ***** Shareholders own any Shares, in the event that ##### or any of its Affiliates decide to create a website targeted to customers in the Territory through which such customers can order apparel and other products produced and sold under the “**American \$\$\$\$\$\$ Outfitters**”® brand and related marks identified in the Trademark License Agreement and targeted to the young adult consumer demographic that will be shipped from the Territory or elsewhere in Asia for delivery in the Territory, such business shall be conducted through (i) the Company or (ii) a new joint venture entity in which the ***** Shareholders shall own a 40% interest in the aggregate, provided that the ***** Shareholders agree to fund 40% of the costs of such business in a manner satisfactory to #####; *provided, however*, if the ***** Shareholders do not agree to provide such funding in a manner satisfactory to #####, then ##### shall be entitled to conduct such activities directly, through a wholly-owned Subsidiary, with another joint venture partner, or otherwise. Notwithstanding anything to the contrary in this Agreement, ##### and its Affiliates shall be entitled to sell products to customers in the Territory independently of either the Company or the ***** Shareholders over the internet in a manner consistent with its current practices through its current websites (including those set forth on Exhibit I hereto) or any general U.S.-based website subsequently developed by ##### or its Affiliates, regardless of whether such website or websites contain Japanese-language content, so long as such website is not primarily targeted to customers in the Territory.

8.6. *Further Actions.* Each Shareholder shall, and each Parent shall cause its respective Shareholders to, exercise its voting rights and, to the extent that it has the power to do so, otherwise take all action necessary or appropriate from time to time to cause the Company and its Subsidiaries to be operated in accordance with the provisions of this Agreement and applicable Japanese Laws, including voting its Shares in any meeting of Shareholders or causing the Directors designated by such Shareholder to approve such actions in any meeting of the Board of Directors.

ARTICLE 9

TERMINATION OF THE JOINT VENTURE

9.1. *Termination.* Termination of the joint venture contemplated by this Agreement shall take place upon the first to occur of the following:

(a) the mutual agreement of the Parents to terminate the joint venture;
or

(b) The delivery by either Parent to the other Parent and the Company of a written notice requesting the termination of the joint venture, which notice must be delivered, if at all, within 30 days following the earlier of July 1, 2010 or 40 months after the opening of the first store, if on the third anniversary of the opening of the first store (or, if earlier, July 1, 2010), at least two of the following conditions are met:

(i) average annual sales of all stores open at least one year is less than \$[]/square foot (calculated as a trailing 12 months of sales).

(ii) total four wall profits (*i.e.*, direct operating profits) of stores open at least one year is below []% of sales (calculated as the trailing 12 months of profit).

(iii) the Annual Plan for the Fiscal Year ending in January 2011 does not reflect any improvement in profitability for the Company.

(the events set forth in (a) or (b) of this Section 9.1 shall be collectively referred to herein as “**Termination Events**”).

9.2. *Consequences of a Termination Event.*

(a) Upon the occurrence of any Termination Event, subject to #####’s rights under Section 9.3, the Company shall be liquidated and dissolved in accordance with the applicable provisions of the Laws of Japan. In such event, the Parents hereby agree to take, or cause their Shareholders and other Affiliates to take, all such steps (including the approval of such liquidation and dissolution at a meeting of the Shareholders) as shall be reasonably necessary to ensure that the Company is wound up promptly and that the liquidator shall be an independent public accountant of international repute to be appointed by agreement between the Parents or, in the event of absence of such agreement, on the application of either Parent by the appropriate court in Japan.

(b) The Parents hereby agree that, in the event that the Company is liquidated and dissolved in accordance with this Section 9.2, or should the Company be liquidated and dissolved for any other reason, then (i) each of the Ancillary Agreements, if not earlier terminated in accordance with its terms, shall terminate upon the dissolution of the Company; *provided* that no termination of any Ancillary Agreement shall relieve any party thereto of any of its obligations or liabilities thereunder arising prior to (including, without limitation, any obligations or liabilities arising out of or based upon transactions or events occurring prior to) the date of such termination, (ii) either Parent may elect to advance funds in order to finance a systematic and practical termination of the Company’s operations and (iii) any proceeds remaining after debt repayment (including repayment of amounts owed to

the Parents and their Affiliates) shall be distributed among the Shareholders on a pro rata basis based upon their ownership of Shares.

9.3. *Termination Alternative Transaction.* In the event that a written notice is delivered requesting the termination of the joint venture as provided in Section 9.1(b), then ##### may, by written notice to ***** and the Company (the “**Termination Alternative Purchase Notice**”), which notice must be delivered (if at all) within 30 days of the receipt of *****’s written notice requesting termination, elect to purchase all but not less than all of ***** Shareholders’ Shares (the “**Termination Alternative Purchase**”) for a purchase price equal to the Termination Alternative Purchase Price, payable in cash. The Parents shall proceed with the closing of the Termination Alternative Purchase, in accordance with the Closing Procedures.

ARTICLE 10

REPRESENTATIONS AND WARRANTIES

10.1. *Representations and Warranties of the Parents and Shareholders.* In order to induce the other Parent and its Shareholders to enter into this Agreement and to perform their obligations hereunder, each Parent and its Shareholders hereby represents and warrants to the other Parent and its Shareholders that:

(a) It is a corporation, duly organized and validly existing under the Laws of the jurisdiction of its incorporation or organization, as the case may be or, in the case of Okusu, he is a natural person and is legally competent;

(b) All corporate or other proceedings required to be taken by or on behalf of such Person to authorize it to enter into, execute, deliver and carry out this Agreement and the Ancillary Agreements to which it or he is a party have been duly taken, and this Agreement and the Ancillary Agreements to which it or he is or will be a party have been duly executed and delivered by, and constitute a legal, valid and binding obligation of, such Person, enforceable against such Person in accordance with their respective terms, except (i) as such enforceability may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws affecting the enforcement of creditors’ rights generally and (ii) to the extent that equitable remedies, such as injunctive relief or specific performance, are within the discretion of courts of competent jurisdiction;

(c) The execution and delivery of this Agreement and the Ancillary Agreements to which it or he is a party, the performance by such Person of its terms, and the consummation by such Person of the transactions contemplated hereby and thereby, will not conflict with, or result in any violation of, or default or loss of a benefit under, or permit the acceleration of any obligation (i) under the articles of association or charter (or comparable instruments with different names) of such Person, if any, (ii) under any contract, agreement or commitment to which such Person is a party or otherwise bound, or (iii) under any permit, concession, grant, franchise, license, judgment, order or decree applicable to such Person or to its or his respective properties, other than such conflicts, violations, defaults or losses which do not and will not, individually or in the aggregate, have a material adverse effect on the ability of such Person to perform its obligations under this Agreement;

(d) The execution and delivery of this Agreement and the Ancillary Agreements to which it is a party and the performance by such Person of their respective

terms will not conflict with, or result in any violation of, or default or loss of a benefit under, or permit the acceleration of, any obligation under any Law applicable to such Person or its or his respective properties, other than such conflicts, violations, defaults or losses which do not and will not, individually or in the aggregate, have a material adverse effect on the ability of such Person to perform its obligations under this Agreement;

(e) No consent, approval, order, or authorization of, or registration, declaration or filing with, any Governmental Authority is required in connection with the execution and delivery of this Agreement and the Ancillary Agreement to which it is a party by such Person or the performance by such Person of its terms except as set forth therein; and

(f) All negotiations relative to this Agreement and the Ancillary Agreements to which such Person is a party and the transactions contemplated hereby and thereby have been carried on by such Person or its or his Affiliates directly with the other Parent or its or his Shareholders or other Affiliates thereof and without the intervention of any person who, either as a result of any act of such Person or otherwise to the knowledge of such Person has or will have a valid claim against either of the Parents or their Shareholders or other Affiliates for a finder's fee, brokerage commission or other like payment with respect to this Agreement or such transactions.

10.2. *Representation and Warranty of Okusu.* In order to induce ##### and its Shareholders to enter into this Agreement and to perform their obligations hereunder, Okusu hereby represents and warrants to ##### and its Shareholders that he is able to direct the voting of more than 66 2/3% (or, in the case of P/X, more than 50%) of the voting shares of each ***** Shareholder.

10.3. *Survival.* The representations and warranties contained in this Agreement shall survive the termination of this Agreement and any investigation made by or on behalf of any of the parties hereto at any time with respect thereto.

ARTICLE 11

MISCELLANEOUS

11.1. *Entire Agreement; Construction.* This Agreement, together with the Ancillary Agreements and the Exhibits hereto (and any other agreements expressly contemplated hereby or thereby), constitute the entire agreement and understanding and supersedes all other prior agreements and understandings, both written and oral, among the Parents or their Shareholders or other Affiliates or any of them with respect to the subject matter hereof, including the Memorandum of Understanding dated as of October 25, 2005, among ##### and *****, as amended through the date hereof.

11.2. *Arbitration.* (a) All disputes arising out of or in connection with this Agreement or any of the Ancillary Agreements shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed as provided below, unless ##### and the ***** Shareholders agree to use only one arbitrator. Any such arbitration shall be held in Tokyo, Japan if the arbitration is requested by ##### or the ##### Shareholders and in the City of New York, State of New York, U.S.A. if the arbitration is requested by Okusu or the ***** Shareholders. If three arbitrators are to be appointed, each of ##### and the ***** Shareholders shall name one (1) arbitrator and the two (2) arbitrators so named shall name the third arbitrator, who

shall act as chairman *provided*, that if such two arbitrators cannot agree on a third, such third arbitrator shall be appointed in accordance with the Rules. Each party hereto shall bear its or his own costs and expenses, but the compensation and costs and expenses of the arbitrators shall be borne equally between #####, on the one hand, and the ***** Shareholders, on the other. The English language shall be used in any and all arbitral proceedings and all documents, exhibits and other evidence shall be translated into the English language.

(b) The award of the arbitrators shall be final and unappealable. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction or application may be made to such court for confirmation of such award or a judicial acceptance of such award, and for an order of enforcement, or other legal remedy, as the case may be. The parties hereto hereby waive all jurisdictional defenses in connection with any arbitration hereunder or the enforcement of an order or award rendered pursuant thereto (assuming that the terms and conditions of this arbitration clause have been complied with) and defenses based on the general invalidity of the underlying agreement or this Section 11.2.

(c) Notices and written communications in connection with any arbitration under this Section 11.2 may be sent in the manner provided for the giving of notices pursuant to this Agreement.

(d) Nothing in this Section 11.2 shall prevent any party from applying to a court that would otherwise have jurisdiction for interim or provisional measures, including but not limited to preliminary injunctive relief. Such an application shall not be considered inconsistent with or a waiver of the right of any party to arbitration under this section.

11.3. *Governing Law.* This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without regard to the conflict or choice of Law provisions thereof.

11.4. *Third Party Beneficiaries.* This Agreement is for the benefit solely of, and shall inure solely to the benefit of, each of the Parents and Shareholders and is not enforceable by any Person (including the Company) other than the Parents.

11.5. *Expenses.* Each party hereto shall assume and pay its own expenses incident to the negotiation and execution of this Agreement, the preparation for carrying it into effect and the consummation of the transactions contemplated hereby.

11.6. *Waivers and Amendments.* This Agreement may be amended, superseded, canceled, renewed or extended and the terms hereof may be waived, only by a written instrument signed by each of the Parents and Shareholders, or, in the case of a waiver, by the Parent or Shareholder waiving compliance. Except where a specific period for action or inaction is provided herein, no failure on the part of any Parent or Shareholder to exercise, and no delay on the part of a Parent or Shareholder in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of a Parent or Shareholder of any such right, power or privilege, or any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11.7. *Notices.* All notices, requests, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing (which shall include notice by telecopy or like transmission) and shall be deemed given (i) on the day it is delivered when delivered personally against receipt (or if that day is a Saturday or a Sunday or is not a day on which commercial banks are open for business in the city specified in the address for notice provided by the recipient (a “**Local Business Day**”), or if delivered after the close of business on a Local Business Day, on the first following day that is a Local Business Day), (ii) on the day it is received when sent by internationally recognized air courier, (iii) on the day when transmittal confirmation is received if sent by telecopy (or if that day is not a Local Business Day, or if after the close of business on a Local Business Day, on the first following day that is a Local Business Day) and (iv) on the third Local Business Day after it is mailed (if the recipient’s address for notice is in the same country as the place of mailing, otherwise, on the tenth Local Business Day after it is mailed) by certified or registered first-class mail (airmail, if overseas) to the recipient party at the address indicated for such party below (or to such other address as the recipient party may have specified by notice given to the other party hereto pursuant to this provision):

If to the Company, to:

[Address of the Company]

with copies to:

all other Persons specified in this notice section.

If to Okusu or the ***** Shareholders:

[*****’s Address]

with copies to:

[***** attorney]

If to ##### or the ##### Shareholders:

Attention:

Facsimile Transmission No.:

with a copy to:

Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, New York 10004
Attention:
Facsimile Transmission No.:

11.8. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute

one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all parties hereto.

11.9. *Severability.* If any provision of this Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Agreement or the application of such provision to other Persons or circumstances shall not be affected thereby; *provided* that the parties shall negotiate in good faith with respect to an equitable modification of the provision or application thereof held to be invalid. To the extent that it may effectively do so under applicable Law, each party hereto hereby waives any provision of Law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect.

11.10. *Successors and Assigns.* Except as otherwise specifically provided in this Agreement, no Parent may assign its rights hereunder without the prior written consent of the other Parent. This Agreement shall be binding upon and inure to the benefit of the Parents, and their legal representatives, successors and permitted assigns. Any rights to designate or remove Directors or directors of any Subsidiary of the Company as provided in Section 3.2, any rights with regard to Board of Directors approval as provided in Section 3.3(a)(i) or Section 3.5, any rights with regard to Shareholder approval as provided in Section 3.9(c) and any rights provided in Section 3.10, Section 6.2, Section 8.5 or Section 9.3 are not assignable to any Person other than to Affiliates of such Parent in accordance herewith without the consent of the other Parent. Any assignment by any party hereto in violation of this Section 11.10 shall be null and void *ab initio*.

11.11. *Headings; Section References.* The Section headings contained in this Agreement are for reference purposes only and are to be given no effect in the construction or interpretation of this Agreement. All Section and paragraph references contained herein shall refer to this Agreement unless otherwise specified.

11.12. *Supplemental Provisions.* This Agreement shall be governed by the Rules of Usage and the Supplemental Provisions.

11.13. *Conflicts with Articles of Incorporation.* In the event of any conflict between the terms and provisions of this Agreement and those contained in the Articles of Incorporation, the terms and provisions of this Agreement shall govern, except as provided otherwise by mandatory provisions of Japanese Law. Each Shareholder shall, and each Parent shall cause its Shareholder to, vote its Shares, and take all other actions, as necessary to ensure that the Articles of Incorporation facilitate and otherwise give full effect to (and do not at anytime conflict with) and each Shareholder shall, and each Parent shall cause its Shareholders to, otherwise vote its Shares, and take all other actions, as necessary to facilitate and otherwise give full effect to, the provisions of this Agreement.

11.14. *Termination.* This Agreement (except for the provisions of Sections 8.1, 8.2 and 8.3) shall terminate upon the consummation of the dissolution of the Company; *provided* that no termination of this Agreement shall relieve either Parent of any of its obligations or liabilities arising under this Agreement prior to (including, without limitation, any obligations or liabilities arising out of or based upon transactions or events occurring prior to) the date of such termination.

11.15. *Survival.* The agreements and covenants of the Shareholders contained in Sections 8.1, 8.2, 8.3, 9.2, and Article 11 shall survive the termination of this

Agreement. Except as otherwise provided in Section 8.1, 10.3 and 11.14, all other agreements and covenants in or pursuant to this Agreement shall not survive the termination of this Agreement.

11.16. *No Presumption.* The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

11.17. *Publicity.* The parties hereto will mutually agree on the form of any public announcement or press release to be issued with respect to the subject matter of this Agreement; *provided, however*, that no party shall be required to obtain the consent of any other party for any disclosure required by Law or by the rules of any national securities exchange or the NASDAQ Stock Exchange.

IN WITNESS WHEREOF the undersigned respective duly authorized officer or partner, as the case may be, of each of the Parents and the Company have executed this Agreement on the date first above written.

******* CO. LTD.**

By: _____
Name:
Title:

BIGI CO. LTD.

By: _____
Name:
Title:

P/X CO. LTD.

By: _____
Name:
Title:

YUJI OKUSU

**AMERICAN \$\$\$\$\$\$ OUTFITTERS,
INC.**

By: _____
Name:
Title:

INTERNATIONAL CORP.

By: _____
Name:
Title:

**AMERICAN \$\$\$\$\$\$ OUTFITTERS
JAPAN KK**

By: _____
Name:
Title:

Schedule 5.1

Capital Contributions Schedule

	(iv)	# # # # # # S h a r e h o l d e r s' <u>C</u> <u>o</u> <u>n</u> <u>t</u> <u>r</u> <u>i</u> <u>b</u> <u>u</u> <u>t</u> <u>i</u> <u>o</u> <u>n</u> <u>A</u> <u>m</u> <u>o</u> <u>u</u> <u>n</u> <u>t</u>	(v)	*** *** *** Sha reh old ers' <u>Con</u> <u>trib</u> <u>utio</u> <u>n</u> <u>Am</u> <u>oun</u> <u>t</u>
<u>Fundin</u> <u>g Date</u>				
Date of Agreem ent ⁸	\$2,000,000		\$1,333,333	
Date of Beginni ng of Incurrin g Expend itures (“ Oper ations Start ”	\$6,000,000		\$4,000,000	

⁸ Discuss limiting contributions in the first Fiscal Year to ¥100,000,000, with the balance of the funds to be loaned to the Company and converted to capital contributions in the second Fiscal Year.

Date”)

1st Annive rsary of Operati ons Start Date	\$10,000,000	\$6,666,667
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2nd Annive rsary of Operati ons Start Date	\$6,000,000	\$4,000,000
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JOINT VENTURE AGREEMENT

dated as of [_____] [], 2005

among

******* CO. LTD.,**

BIGI CO. LTD.

and

P/X CO. LTD.

AMERICAN \$\$\$\$\$\$ OUTFITTERS, INC.

and

INTERNATIONAL CORP.

and

AMERICAN \$\$\$\$\$\$ OUTFITTERS JAPAN KK

ドラフト：2008 年 2 月 15 日

注：最終的に上級経営陣の承認を得た場合にのみ有効

2008 年●月●日

●●●●●●●株式会社.

および

▲▲▲▲株式会社

株主間契約書

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添付書類

定款

付随契約

2-1: [何かありますか?]

株主一覧

本契約は、2008 年●月●日に締結される。

当事者：

●●●●●●●株式会社、但し、日本法に基づき設立され、存続する法人であり、日本国 []に主たる営業所を有する（「●●●●●●」）

▲▲▲▲株式会社、但し、日本法に基づき設立され、存続する法人であり、日本国 []に主たる営業所を有する（「▲▲▲▲」）

背景説明

そもそも、株式会社マグ（「**マグ**」または「**本件会社**」）は、●●●●●●および日本板硝子株式会社（「**日本板硝子**」）の各々が、**本件会社**の株式の約 43.6%を所有し、その他数名の関係をもたない株主が残余の株式を所有するところの、日本国の「株式会社」であり、

そもそも、▲▲▲▲および**日本板硝子**は、これに基づき**日本板硝子**が▲▲▲▲に対し、**日本板硝子**が所有する**本件会社**の株式すべてを売却する条件に既に合意しており、

そもそも、●●●●●●は、**日本板硝子**が所有する**本件会社**の株式を**日本板硝子**が▲▲▲▲に譲渡することに同意する用意があり、および

そもそも、●●●●●●および▲▲▲▲は、**本件会社**の二大主要株主としてのその関係に関して一定の合意された手続および原則を規定するため、**本契約**を締結することを望んでいる。

以下のとおり、合意する。

1. 解釈

1.1 本契約において、

「**関連会社**」とは、**両当事者**の何れかにに関して、直接又間接に、かかる**当事者**を**支配**し、かかる**当事者**によって**支配**され、または当該**当事者**との共通の支配下におかれるところの他の会社を意味し、また、本定義の目的において、「**支配**」とは、いずれかの会社に関連して、議決権証券の過半数を所有することにより、直接または間接に、かかる会社の経営および方針について指図する権限を意味し、さらに「**支配する**」および「**支配される**」という用語は、これと同様に解釈されるものとする。

「**付随契約**」とは、*「おそらく該当するものはないでしょう」* 意味する。」

「**本件会社定款**」とは、**本件会社**の定款であって、(1) **本契約**にしたがい改定される前に存在しているところの、(2) **本契約**の規定を反映するために改定されるところの、および (3) その後、随時、改定されるところのものを意味する。**添付書類第 1** として添付するものは、**本契約**により何らかの改定が行われる前の、**発効日**現在存在する日本語版の**本件会社定款**である。**添付書類第 2** として添付するものは、参照のためのみの、**添付書類第 1** の英語訳である。

「**本件会社取締役会**」とは、**本件会社**の取締役会を意味する。

「**本件会社事業**」とは、第3条に定める意味を有する。

「**営業日**」とは、東京において銀行が通常業務を行うため営業するすべての日（土曜日または日曜日を除く）を意味する。

「**事業計画**」とは、**両当事者**間で随時合意される**本件会社**およびその**本件会社各子会社**の事業計画（およびその改定版）を意味する。

「**会社法**」とは、日本国の**会社法**（その後の改正を含む）を意味する。

「**本件会社**」とは、「株式会社」として設立された会社である日本語で「**株式会社マグ**」、そして英語でMAG CO., LTD.という会社を意味する。

「**本件会社取締役**」とは、**本件会社**の取締役を意味する。

「**発効日**」とは、**▲▲▲▲**が、**本件会社**の既発行社外株式の約43.6%を構成する、**日本板硝子**が所有する**本件会社**の株式の、法律上の所有者となる日を意味する。

「**本件会社執行役員**」とは、**本件会社**の執行役員を意味する。

「**マグ・グループ**」とは、**本件会社**およびその**本件会社各子会社**から構成されグループを意味する。

「**両当事者**」とは、**●●●●●●**および**▲▲▲▲**を意味し、「**当事者**」は、同様に解釈されるものとする。

「**本件製品**」とは、断熱目的で使用するグラスウール製品を意味する。

「**会計監査人**」とは、アーンスト・アンド・ヤング（新日本監査法人）または**両当事者**の合意により任命されるその後継監査人を意味する。

「**▲▲▲▲側取締役**」とは、**▲▲▲▲**の指名に基づき選任される取締役を意味する。

「**▲▲▲▲保有株式**」とは、**▲▲▲▲**が保有する**本件会社**の株式を意味する。

「**本件会社株式**」とは、**本件会社**の一切の株式を意味する。

「**本件会社株主**」とは、当該時点において**本件会社株式**の保有者として、**本件会社**の株主名簿に登録されているあらゆる人を意味する。

「**本件株式買取契約**」とは、**本契約**と同日付の**▲▲▲▲**と**日本板硝子**との間の株式買取契約を意味する。

「**本件会社監査役**」とは、**本件会社**の監査役を意味する。

「**本件会社子会社**」とは、**本件会社**の子会社一社を意味し、「**本件会社各子会社**」とは、マグ加工株式会社、東洋ファイバーグラス株式会社、株式会社東北安田商会および株式会社インシュレーションを意味する。

「**●●●●●●側取締役**」とは、**●●●●●●**の指名に基づき選任される取締役を意味する。

「●●●●●●保有株式」とは、●●●●●●が保有する**本件会社**の株式を意味する。

1.2 **本契約**において、

1.2.1 人という場合は、法人、法人格なき社團またはパートナーシップを指す場合を含む。

1.2.2 単一の人という場合には、かかる人の人格代表者または承継人を指す場合を含む。

1.2.3 条または添付書類という場合は、文脈上別段の意味に解すべき場合でない限り、**本契約**の条または添付書類を指す。

1.3 **添付書類**は**本契約**の一部を構成し、あたかもそれが**本契約**の本文に規定されているかのごとく契約書本文と同一の効力および有効性をもつものとし、**本契約**という場合には、**添付書類**を含む。

1.4 **本契約**の見出しは、**本契約**の解釈に影響を与えないものとする。

2. **本件会社**

2.1 **両当事者**は、**発効日**に、▲▲▲▲が日本板硝子から**本件会社株式**の買取を完了次第、細目を下記に記載するとおり、**本件会社株式**の約 43.6%を●●●●●●と▲▲▲▲の各々が保有することになることを了承している。

2.2 **本件会社株式**の要項

2.2.1 授權**本件会社株式**の数は、〔四千八百万〔48,000,000〕〕株である。

2.2.2 発行済**本件会社株式**の数は、壱千貳百七拾五万（12,750,000）株である（うち五百五拾六万四千（5,564,000）株を▲▲▲▲が保有し、またうち五百五拾六万四千（5,564,000）株を●●●●●●が保有する）。

2.2.3 **本件会社**は、**本件会社株式**一種類（すなわち、普通株式）を発行する。

2.2.4 すべての**本件会社株式**は、同等の議決権を有するものとする。

2.3 **両当事者**は、**発効日**にまたはその後可及的速やかに、以下の**本件会社取締役**（および代表取締役）、監査役を選任し、また（2008 年 4 月から 2008 年 12 月の間の何れかの適当な時点で）事業年度を 1 月 1 日から 12 月 31 日とするよう**本件会社定款**を改正するため、必要な**本件会社取締役会**および**本件会社**の株主総会が、適式かつ適時に開催されるよう確保するものとする。

2.3.1 以下の人が、**本件会社**の株主により、**発効日**付で（またはその後可及的速やかに）、**本件会社取締役**に選任されるものとする。

●●●●●●側取締役 []氏、[]氏、[]氏および[]
(4 名)

▲▲▲▲側取締役 []氏、[]氏、[]氏および[]

(4 名)

- 2.3.2 **本件会社取締役**より、[]氏を、社長を務める代表取締役に、[]氏を、会長を務める代表取締役に、互選するものとする。

- 2.3.3 当会社の監査人は以下のとおりとする。

会計監査人：アーンスト・アンド・ヤング（新日本監査法人）

●●●●●●および▲▲▲▲が指名する []氏および[]
 本件会社監査役：

- 2.3.4 2008 年 4 月より後は、**本件会社**（および**本件会社各子会社**）の会計年度を変更し、毎年 1 月 1 日より 12 月 31 日までとするものとする。

3. 本件会社事業

本件会社の目的（「**本件会社事業**」）は、**添付書類第 1**（日本語原本）および**添付書類第 2**（英訳）に掲記する**本件会社定款**に、現在、定められている目的であるものとするが、但し、これらは、相互の合意により随時、改定されることがある。

4. **本件会社および本件会社各子会社の運営**

- 4.1 両当事者間に別段の合意がない限り、**本件会社取締役**は、[6名][8名]とし、うち[4]名を●●●●●●**側取締役**、またうち[4]名を▲▲▲▲**側取締役**とする。
- 4.2 ある**当事者**が保有する**本件会社株式**のすべてを売却、譲渡、移転その他の処分（**関連会社**に対するものを除く）する場合には、その完了時点で、当該**当事者**は、その指名した各**本件会社取締役**および**本件会社監査役**を辞任せしめるものとする。
- 4.3 いずれの**当事者**も、他方**当事者**と事前に合理的な協議を行うことなく、**本件会社取締役**または**本件会社監査役**を指名しないものとする。
- 4.4 いずれかの**当事者**が、その指名した**本件会社取締役**または**本件会社監査役**を解任する場合には、その解任もしくは失職を原因としてかかる**本件会社取締役**または**本件会社監査役**が提起する請求に起因しまたは関連して、他方**当事者**または**本件会社**が被ることのある損失、債務および費用すべてについて責任を負い、他方**当事者**および**本件会社**を防御し免責することを、他方**当事者**に同意するものとする。
- 4.5 常時、代表取締役を二(2)名を置くものとするが、うち1名は●●●●●●**側取締役**、また1名は▲▲▲▲**側取締役**を以てあてるものとする。
- 4.6 両**当事者**は、誰が**本件会社**の社長および**本件会社**の会長に相応しいかを、随時、協議し、決定するものとする。社長および会長に関するかかる決定は、二**当事者**の合意に基づき、共同決定として行うものとする。誰を社長または会長とすべきかを決定する主たる要因

は、候補者と▲▲▲▲または●●●●●●との関係ではなく、むしろ、候補者の能力および経歴とがその役職に必要なとされる技能に適合しているかであるものとする。

- 4.7 仮に、合理的な期間内に、▲▲▲▲と●●●●●●とが、社長および/または会長職の候補者について合意に達することができなかった場合には、各**当事者**は、交渉権限を有する上級役員を任命するものとする。かかるそれぞれの上級役員は、誠実な協議により、緊急且つ迅速に意見の一致に達するよう、直接面談する（かまたは必要であればその他の手段により連絡をとる）ものとする。
- 4.8 それにもかかわらず、**両当事者**の上級役員が、社長および/または会長候補者について意見の一致に到達することができなかった場合には、かかる例外的な状況においてのみであるが、●●●●●●は、●●●●●●**側取締役**の1名を指名し、**本件会社取締役会**により代表取締役**兼**会長に任命させるものとし、▲▲▲▲は、▲▲▲▲**側取締役**の1名を指名して、**本件会社取締役会**により代表取締役**兼**社長に任命させる権利を有するものとする。かかる例外的状況において指名され、選任された社長および/または会長については、通常の1年の任期終了時に、**両当事者**は、任期更新するかまたは更迭するかを協議し、第4.6条以下の規定に定める手続にしたがい、再度、合意による決定に達するよう試みるものとする。
- 4.9 **両当事者**が別段の合意をしていない限り、二名の代表取締役のみと、二名以下の**本件会社取締役**（1名は●●●●●●**側取締役**、1名は▲▲▲▲**側取締役**）とが、その資格で**本件会社**より報酬を受ける常勤の**本件会社取締役**であるものとする。**本件会社取締役**の報酬の総額は、**本件会社株主**による株主総会で決定するものとする。常勤の**本件会社取締役**の報酬は、かかる総額の限度内で、**本件会社取締役会**が決定するものとする。
- 4.10 **本件会社**は、**本件会社監査役**二(2)名をおくものとする。うち一(1)名は、●●●●●●の指名にしたがい任命され、また一(1)名は、▲▲▲▲の指名にしたがい任命されるものとする。●●●●●●が指名する常勤の**本件会社監査役**を除き、**本件会社監査役**は**本件会社**から報酬を受けることはないものとする。
- 4.11 日本の法律、**本契約**〔、執行役員会規程、取締役会規程〕および**本件会社定款**の規定にしたがうものの、社長は、すべての重要な決定事項については会長と綿密に協議しつつ、**本件会社取締役会**の決定および計画を実施し、すべての面において**本件会社**の日常の常務を管理し、実行する広範な権限を有するものとする。前記規定の一般的な授權を制限するものではないが、但し、**本件会社取締役会**の決定にしたがうことを条件に、社長は、殊に、以下の権限を有し職責を負うものとする。
- 4.11.1 各部署の職責と職能に関する規則を含め、**本件会社**の運営と管理に関する規則および規程を制定し、または変更し、並びにかかる規則および規程を実施すること、
- 4.11.2 **本件会社**の職員（**本件会社執行役員**を除く）を雇用し、解雇すること、
- 4.11.3 職員の報奨、懲戒、昇進および給与を決定すること、

- 4.11.4 直接的にまたは自らが任命した 1 名もしくは複数名のプロジェクト・マネージャーを通じて間接的に、**本件会社**が関係する建設またはプロジェクトの、監督、指揮、調整、管理すること、
- 4.11.5 購買、調達、販売、価格設定、宣伝および広報に関するすべての方針を策定し、実施すること、並びに
- 4.11.6 対外的な関係において**本件会社**を代表すること、および、前記規定の一般性を制限するものではないが、**本件製品**の供給者として、製造業者、物品もしくはサービスの購入者またはサプライヤー、販売業者、代理店、商社、請負業者、コンサルタント、政府機関、地方公共団体、公的機関/公共団体、労働組合/従業員組織その他と、事業上、組織法上および経営管理上の契約その他の文書に署名すること。
- 4.12 日本の法律、**本契約**、〔執行役員会規程、取締役会規程〕および**本件会社定款**にしたがうものの、会長は、以下のとおり行うものとする。
- 4.12.1 社長、**執行役員会**および/または**本件会社取締役会**に対し、第 4.11 条に言及する事項についてを含め、**本件会社**の組織および行為について助言し、勧告を行うこと、
- 4.12.2 かように代表を務めることが慣例となっている場合には、専門業界団体およびその他の機会に、**本件会社**の代表を務めること、
- 4.12.3 社長がその任務を遂行するにあたって、社長に助言し、社長を支援すること、および
- 4.12.4 **マグ・グループ**の主要な顧客との取引を進展させ、また、かかる顧客への**本件製品**の販売を促進すること。

5. 資金調達

- 5.1 **本件会社**の資本金は、金 [] [¥2,217,375,000] とする。
- 5.2 **両当事者**は、第 5.1 条に規定するところのものに加え、財務上の必要に応えるために、**本件会社**は、独自に、第三者から調達した借入により、つまり▲▲▲▲または●●●●●●に資金の拠出を求めるのではなく、資金調達を行うため（また、可能な範囲では、**本件会社各子会社**に資金を提供するため）最善の努力を払うことに合意する。しかしながら、**本件会社**の資金調達の必要額が、その調達能力を超える場合には、**本件会社**は、**本件会社株主**からの貸付、保証状またはコンフォート・レターによることを含め（これに限られない）、**両当事者**が合意する条件で、**両当事者**に資金の提供を申し出ることができる。**両当事者**が、合理的な期間内に、貸付による資金提供、保証状またはコンフォート・レターの条件について合意に達することができなかった場合には、第 5.3 条に基づいて**両当事者**が共同してまたは個別に、**本件会社**に対し追加資金を行うことに合意した場合を除き、**本件会社**は、**本件会社**と実行意思のある**当事者**との間で合意した条件にしたがって、当該**当事者**から、かかる資金を調達し、保証状またはコンフォート・レターを自由

に入手することができるものとする。ただし、かかる条件は、常に、日本市場で一般的に適用されている条件と本質的に同様なものであることを前提とする。同一の原則は、**本件会社各子会社**との関係についても「準用」する。

5.3 第 5.2 条で言及する貸付/保証/コンフォート・レターによる資金調達に対する代替手段として、**▲▲▲▲**および**●●●●●●**は、**本件会社株式**の新株を引き受ける方法により、**本件会社**に追加資金を提供することに合意することができる。ただし、こうした出資は、その時点におけるそれぞれの株式保有比率に比例して行われることを条件とする。**両当事者**が、かかる新株引受の条件に合意できなかった場合には、各**当事者**は、**本件会社取締役会**の決定するところにしたがい、**本件会社株式**の新株を引き受ける権限を有するものとする（但し、義務を負うものではない）。

5.4 **●●●●●●**および**▲▲▲▲**は、その時点におけるそれぞれの株式保有比率に比例して、**本件会社**が発行する**本件会社株式**の新株を引き受けることのできる、新株引受権を有するものとする。

5.5 いずれの**当事者**も、連帯債務であると個別債務であるとを問わず、**本件会社**の債務を保証し、または担保を提供する義務を負わないものとする。

6. 予算、事業計画および財務成績

6.1 各会計年度の始めまでに、**本件会社取締役会**は、年間予算を、また場合によっては提案された**事業計画**を検討し、承認するものとする。

6.2 各会計年度が始まるまでに、但し第 6.1 条の規定に基づき必要とされる検討および審査を**本件会社取締役会**が行う十分な時間的余裕をもって、社長は、年間予算を提出し、**事業計画**または当該時点で実施されている**事業計画**の改定案（もしあれば）を提案するものとする。これら予算、および、場合に応じて、**事業計画**または**事業計画**の改定案は、社長がそのスタッフの支援を受けて日本語で（但し、参考のための英語版を付して）作成するものとする。社長は、**両当事者**がそれらについて有することのある質問に対して、合理的に詳細な説明および回答を提出するものとする。

6.3 各会計年度の始めまでに、**本件会社取締役会**は、年間予算および、また場合によっては、第 6.1 条に規定する手続にしたがい、改定された**事業計画**を検討し、承認するものとする。

6.4 なお、**本件会社取締役会**は、**本件会社**の各会計年度中はいつでも、年間予算を再検討し、**事業計画**を改定することができる。

6.5 社長は、**本件会社**のこれまでの慣行どおりに、**本件会社取締役**および**本契約両当事者**に提出するため、**本件会社**をして、日本語の月次財務諸表を引き続き作成させるものとする。

6.6 社長は、**本件会社**の四半期財務諸表を作成し、当該財務諸表を各暦四半期の期末から三十(30)日以内に**本件会社株主**に送付するものとする。当該財務諸表は、日本語で作成されるものとし、体裁は、日本の GAAP（一般に認められた会計原則）に従う。社長は、

両当事者が有することのある質問に対して、合理的な詳細にわたる説明および回答を行うものとする。

- 6.7 両当事者は、▲▲▲▲が、▲▲▲▲グループの報告およびその他会計処理義務を満たすことができるような措置を、**本件会社**および**本件会社各子会社**にとらせるようにするために必要な措置を講ずることに合意するが、かかる措置には、当該時点において委任している**会計監査人**が使用または提出したものを含め、必要なすべての財務、会計およびその他の関連する文書を、その委任している会計監査人およびアドバイザー（現在、PriceWaterhouseCoopers）が閲覧できるようにすることが含まれる（これに限られない）。これに関連する一切の出費およびその他の費用は、▲▲▲▲が負担する。

7. 株主の同意

- 7.1 **本件会社**の株主総会は、以下の原則にしたがい開催されるものとする。

7.1.1 定足数の出席がない限り、株主総会においていかなる議事も行わない。

7.1.2 **本件会社株主**による定時株主総会は、各会計年度終了後三(3)ヵ月以内に招集されるものとする。**本件会社株主**による臨時株主総会は、必要に応じて開催できる。**本件会社株主**による株主総会は、**本件会社**の本社または**本件会社取締役会**が指定するその他の場所で開催するものとする。**本件会社株主**による総会の議長は、社長が務めるものとする。社長が欠席した場合には、総会に出席している**本件会社取締役**であって、総会で議長を務めるものを、**本件会社取締役会**が事前に定めた順序にしたがい指定されるものとする。日本語（適切な場合には、英訳を付すが、これは参考のためのみのものである）の書面による株主総会の招集通知を、少なくとも会日の二十(20)日前までに**本件会社株主**に対して行うものとする。但し、**本件会社株主**は、全員一致の書面による同意により、かかる通知を受ける権利は放棄することができる。

7.1.3 法律もしくは**本件会社定款**または**本契約**によりこれより高い比率が義務づけられていない限り、(i) **本件会社株主**による総会の定足数は、議決権の三分の二を表章する**本件会社株主**が、本人または代理人により出席している場合に満たされるものとし、(ii) **本件会社株主**の総会の決議は、定足数を満たす議決権の三分の二以上により採決されるものとする。

7.1.4 特に、以下の事項は、**本件会社株主**による総会に、本人または代理人が出席した**本件会社株主**が所有する議決権の三分の二を超える賛成票をもって、**本件会社株主**による総会で決議されるものとする。

- (a) **本件会社定款**を変更する場合
- (b) **本件会社事業**または**本件会社**の資産の全部もしくは重要な部分を譲渡または売却する場合
- (c) 他の人との吸収合併または新設合併する場合
- (d) **本件会社**を解散しまたは清算する場合

- (e) **本件会社取締役**または**本件会社監査役**を任命しまたは解任する場合
- (f) 増資、減資、株式償還またはその他の方法により発行済**本件会社株式**の数を変更する場合、および
- (g) **会社法**に従い、株主総会に本人または代理人が出席した**本件会社株主**が所有する議決権の三分の二以上の決議により可決することを要するその他の事項

7.1.5 配当方針：各会計年度に関して**本件会社**の分配可能な利益は、**本件会社取締役会**が決定するところにしたがう、設備投資のための準備金、元利金返済のため**本件会社**の財政的な必要性を考慮することを含め（これに限られない）、適切な運転資金の準備金その他の準備金を積み立てた後に、配当のかたちで分配されるものとする。配当の支払に関するすべての決定は、本契約の**両当事者**が誠実に協議した後の合意により行われるものとする。

8. 取締役会の同意

- 8.1 **本件会社取締役会**の取締役会の定足数は、**本件会社取締役**六(6)名、但し、その中に各**当事者**が任命した**本件会社取締役**が少なくとも1名出席した場合に満たされるものとし、**本件会社取締役会**のすべての決定は、定足数を満たした取締役会に出席した**本件会社取締役**の議決数の三分の二超をもってなされるものとする。すべての**本件会社取締役**は、1個の議決権を有し、社長、会長、その他の**本件会社取締役**のいずれも、決定票を有さないものとする。
- 8.2 **本件会社取締役会**の会合は、**本件会社**定款にしたがい招集されるものとし、少なくとも三(3)カ月に1回、開催されるものとする。**本件会社取締役会**に本人が出席しない取締役は、電話会議またはビデオ会議により**本件会社取締役会**に出席することができる。**本件会社取締役会**は、**本件会社取締役**の何人もその出席に異議を申し立てない限り、議決権を有さない第三者に取締役会への出席するよう招請することができるものとする。通訳の出席に関しては、**本件会社取締役**は、その同意を不合理に留保してはならない。かかる招請された第三者は、**本件会社取締役会**の議事に関し**本件会社取締役**と同一の秘密保持義務を負うものとする。
- 8.3 **本件会社取締役会**の招集通知は、会日の少なくとも七(7)日前までにすべての**本件会社取締役**および**本件会社監査役**に対しなされるものとする。緊急の場合にはこの期間を短縮するか、または、すべての**本件会社取締役**および**本件会社監査役**による書面によりこれを受け取る権利の放棄を求めることができる。
- 8.4 **本件会社取締役会**の承認を受けるべき事項（**本件会社取締役会**の以下の決定は、少なくとも各**当事者**が任命した**本件会社取締役**1名を含む、出席した**本件会社取締役**全員の過半数の賛成票によりなされるものとする。）
 - 8.4.1 法律により規定されている事項に加え、また第7条または取締役会規程のその他の規定に基づき義務づけられている事項に加え、以下の事項に関する**本件会社**のすべての決定を行うにあたって、**本件会社取締役会**の事前の承認を要するものとする。

中期戦略ならびに年次財務、投資、キャッシュフロー計画を含む事業計画（当初の事業計画およびその後の事業計画）の承認、変更および修正

取締役会規程、執行役員会規程または**本件会社執行役員**に適用される規程の改定および修正

合併事業の計画、他の企業におけるあらゆる種類の参加権の取得または売却、および子会社または支店の設立の承認

一方**当事者**を**本件会社**とし、他方**当事者**を**両当事者**またはそれらの**関連会社**とする、二**当事者**間の取引

第三者に対する**本件会社株式**の譲渡の承認

年間最低保証所得が金[]円を超える、**本件会社執行役員**またはその他の主要な運営幹部の雇用、任命または解任（雇用および報酬の条件を含む）

法定最低限度を上回る退職金制度の創設

(a) 通常の業務範囲外の、または (b) 個々の場合において金[]円を超える**本件会社**の債務の負担

個々の場合ごとに金[]円を超えるところの、承認済み事業計画の範囲外の、または当該事業計画を上回る投資

顧客および取引先に対する通常取引による与信を除き、個々の場合ごとに金[]円を超える貸付

個々の場合ごとに金[]円を上回る、担保権、保証状、念書などの提供

通常の業務の範囲外の、または簿価総額で金[]円を超える、**本件会社事業**にとって重要な資産または一群の資産の処分（以下のものに限定されないが、売却、移転、譲渡、質入れなどを含む）（および当該資産に関しオプションまたは類似する権利を第三者に付与すること）

12 カ月間に金[]円の支払または支払の受領を伴う、**本件会社事業**にとって重要な販売、代理店、ライセンスの契約または類似の契約の締結、修正または終了、および

本件会社の通常取引活動から生じる請求権の行使を除く、金[]円を超えるあらゆる種類の訴訟を第三者に提起する場合

8.4.2 法律により規定されている事項に加え、下記の事項に関するところの、**本件会社**が株主の資格で行為する場合の決定を行うにあたっては、**本件会社取締役会**の事前の承認を要するものとする。

(i) **本件会社子会社**の定款の変更

本件会社子会社の事業または資産の全部もしくは重要な一部の譲渡または売却

本件会社子会社の他の人との吸収合併または新設合併

本件会社子会社の解散または清算

本件会社子会社の取締役または監査役の任命または解任、および

本件会社子会社の株式の譲渡、処分もしくは取得、または増資、減資、株式償還その他による、**本件会社子会社**の発行済株式数を変更する場合、および

会社法にしたがい、**本件会社子会社**の株主総会の決議で可決することを要するその他の事項

8.4.3 **両当事者**は、現在実施されている関係会社管理規程の変更の可能性を含め、**本件会社子会社**に関して、どのような類似の規程または措置を実施すべきかについて協議し、決定するものとする。

8.4.4 以下の場合には、**本件会社**は、少なくとも三十(30)日前の書面による通知を**両当事者**に対して行うものとする。即ち、(a) **本件会社**の株主総会の議題となる事項、(b) **本件会社**が証券取引所において公開される上場会社となることについての決定またはその他の主要な**本件会社**の政策決定、および (c) **本件会社**の株主にとって重要なその他の事項。

9. 株式の譲渡等

9.1 他方**当事者**の事前の書面による同意を得た場合を除き、いずれの**当事者**も、

9.1.1 **本件会社株式**を（一方の**当事者**の**関連会社**ではない）別の**本件会社株主**から購入することはできず、

9.1.2 **本件会社株式**または**本件会社株式**の持分に質権、抵当権、担保を設定し、その他の物上負担を設定することはできず、

9.1.3 **本件会社株式**または**本件会社株式**に関する権利についてのオプション権を付与することはできず、また、

9.1.4 （一方の**当事者**の**関連会社**ではない）別の**本件会社株主**との間も含め、**本件会社株式**に付随する議決権に関し、いかなる契約も締結することはできないものとする。

9.2 いずれの**当事者**も、**本契約**および**本件会社定款**にしたがう場合を除き、**本件会社株式**または**本件会社株式**に関するいかなる権利も譲渡または処分できないものとする。**本件会社株式**を譲渡する場合には、譲渡する**当事者**は、その所有する**本件会社株式**全部（一部は不可）を譲渡するものとする。**本契約**または**本件会社定款**に違反してなされた**本件会社株式**の譲渡は無効とみなされるものとし、**本件会社**および**両当事者**に対して対抗できないものとする。

9.3 **当事者**が、**本契約**の規定にしたがいまだ**本件会社株主**となっていない人に対して、その保有する**本件会社株式**を譲渡する場合には、当該**当事者**は、譲受人に対し、譲渡の条件として、譲受人が譲渡される各**本件会社株式**に関し**当事者**として**本契約**に拘束されるこ

とを他の**当事者**（複数の場合もある）に対し確認する文書を作成するよう求めるものとする。

- 9.4 いずれの**当事者**も、他方**当事者**（複数の場合もある）の保護のための、以下に規定する優先購入権にしたがうことを条件に、誠実な第三者にその所有する**本件会社株式**全部（一部は不可）を譲渡することができる。

- 9.4.1 譲渡を希望する通知（「**申込通知**」）を、まず、受領確認を伴う書留郵便で他方**当事者**（複数の場合もある）に対しなし、希望する譲受人の身元情報、譲渡を希望する**本件会社株式**の数、申し込んだ価格（「**申込価格**」）および申込のその他の条件を十分に詳細にわたり記載するものとする。

譲渡人でない**当事者**（複数の場合もある）には、譲渡人以外の**当事者**（複数の場合もある）が**申込通知**を受領した日より三十(30)日間は、（上記の期間内に受け取られる）受領確認を伴う書留郵便によりその旨の通知を譲渡人である**当事者**に対し行うことにより、**申込価格**で、かつ、**申込通知**に明記されるその他の条件にしたがい、関連する**本件会社株式**（「**売却株式**」）の全て（一部は不可）を購入するか否かを決定する猶予期間が与えられるものとする。

- 9.4.2 与えられた期間内に、譲渡人でない**当事者**（複数の場合もある）が**売却株式**の全てを購入する決定を伝えなかった場合には、または**売却株式**の一部に関してのみ優先購入権を行使した場合には、優先購入権は行使されなかったとみなされる。

- 9.4.3 二名以上の**当事者**が優先購入権を行使し、当該**当事者**が優先購入権により取得する**売却株式**の数が、**売却株式**の数を上回る場合には、優先購入権を行使した**当事者**の間においては、**売却株式**の割当を、**本件会社**のそれぞれの相対的な株式持分に比例して行うものとする。

- 9.4.4 譲渡人でない**当事者**（複数の場合もある）が、**売却株式**全てを購入するとの選択を行わなかった場合には、譲渡は、上記の三十(30)日の期間が終了した後三十(30)日以内に、希望していた譲受人に対しなされるものとする。**申込価格**を下回る価格で、また**申込通知**に記載されたものよりも譲受人に有利な条件で、譲渡してはならないものとする。

- 9.5 上記本第9条の規定にかかわらず、当該**当事者**の**関連会社**に対する場合には、**当事者**（複数の場合もある）はいつでも、その所有する**本件会社株式**すべてを、**本契約**に基づくその権利および利益と併せて、譲渡することができる。本項に基づくかかる**本件会社株式**の譲渡は、譲受人がもとから譲渡人であったかのごとく**本契約**の**当事者**になり、**本契約**に基づく譲渡人の権利および義務を引き受けることに、譲受人が書面にて同意する旨の先行条件が満たされることを条件に行われるものとする。譲受人が、譲渡人の**関連会社**でなくなった場合には、譲受人は、譲渡人の**関連会社**でなくなる前の時点に、（準用される本第9.5条の条件に基づき）その所有する**本件会社株式**すべてを譲渡人または譲渡人の**関連会社**に譲渡するものとする。

10. 競業避止の誓約

10.1 第 10.3 条にしたがうものの、●●●●●●および▲▲▲▲の各々（ならびにその**関連会社**）が**本件会社株式**の所有者である間、および各々が**本件会社株主**でなくなってから 1 年間は、それぞれ他方**当事者**の事前の書面による同意を得ない限り、それは「●●●●●●も、また▲▲▲▲も？」、単独であると第三者と共同してであると、直接的または間接的であるとを問わず、日本において、**本契約**の期間中に遂行されるものとされる、**マグ・グループ**「事業と？」競合する**本件製品**の製造、輸入、販売、マーケティングおよび流通を目的として、いかなる会社もしくは支店も設立してはならず、またいかなる**関連会社**も設け（また、その**関連会社**に設立または所有させ）てはならないものとする。〔TCC 注：「その他の**本件会社事業**」という言葉は削除しました。「**本件会社事業**」は、**本件会社定款**が承認するすべての目的を包含するものとして、**本契約**に定義されており、中核となるガラスウール断熱材事業以外の、さまざまな付随する、サイドビジネスも含まれるからです。〕

10.2 ●●●●●●および▲▲▲▲の各々（ならびにその**関連会社**）が、**本件会社株式**の保有者である間は、それは「●●●●●●も、また▲▲▲▲も？」、相手方**当事者**の事前の書面による同意を得ることなく、単独であるいは第三者と共同であると、直接的または間接的であるとを問わず、以下の行為を行わない（また、その**関連会社**に行かせない）ものとする。

10.2.1 **本契約**の期間中に遂行される**本件会社事業**と競合する事業に関連して、**マグ・グループ**の人、従業員、役員もしくは運営者、または**本契約**の期間中のいずれかの時点で**マグ・グループ**の従業員、役員もしくは運営者であった人を採用し、もしくは雇用すること、または採用もしくは雇用する目的で勧誘もしくは連絡をとること。

10.2.2 **マグ・グループ**、他の**当事者**およびその**関連会社**の評判を害し、または以前提示されていたものと実質的に同等の条件で、**マグ・グループ**との取引もしくは一切の取引を中止させることにつながる可能性がある何らかの行為を行うこと、または提案すること。

11. 知的財産権

11.1 ▲▲▲▲は、**本件会社**と▲▲▲▲の**関連会社**との間で現在実施されている技術援助契約および供給契約が、完全なる効力を有し、有効であり続けるようにするものとする。かかる技術援助契約または供給契約の条件は、**本件会社**と関連する▲▲▲▲の**関連会社**との間で、随時、別途交渉され、決定されるものとする。

12. 本契約、本件会社定款および付随契約の順守

12.1 各**当事者**は、他方**当事者**に対し、以下の事項に限定されないが、**本契約**の条件、**本件会社定款**、[取締役会規程、執行役員会規程、**本件会社執行役員**に適用される規程]、**本件会社各子会社**の定款が順守されるよう確保するため、また、代表取締役、**本件会社取締役会**、**本件会社**および**本件会社各子会社**にその義務を遂行させるよう確保するため、**本件会社**または**本件会社各子会社**の**本件会社取締役会**および**本件会社株主**による株主総

会において、自らが直接的または間接的に支配する議決権を行使することを含め（これに限られない）、すべての実行可能な措置を講じること、また、**本契約**および上記の一連の規程を実行するために必要または望ましいその他のすべての行為および事項を行うことを約束する。

12.2 現行の**本件会社定款**の日本語版を、**添付書類第 1**として添付し、また英訳（参照のためのみのもの）を**添付書類第 2**として添付する。

12.3 仮に、**本件会社定款**および第 12.1 条に言及する規程を一方とし、**本契約**を他方として、その間に相違または抵触の存する場合には、**会社法**に基づき認められる範囲で、また日本において慣例となっており、望ましいものとして**両当事者**が合意する範囲で、**両当事者**間においては、**本契約**が優先適用されるものとし、**両当事者**は、準拠法に基づき可能な範囲で、**本契約**に一致させるよう、**本件会社定款**および当該規程を改正することに合意する。さらに、そのような相違または抵触がある場合には、**本件会社定款**および上記の規程ではなく、**本契約**が、**本件会社**が準拠すべき法的文書であるかのごとく、実施可能な限り厳密に、**本契約**の定めが適法に効力を有し、履行され、順守されるよう、**両当事者**は、**両当事者**が所有する**本件会社株式**の議決権を行使し、またその他の必要な措置を講ずることに合意する。

13. 契約期間および契約終了

13.1 **本契約**は、**発効日**に発効し、**本契約**の条件にしたがい終了するまで継続するものとする。

13.2 **本契約**は、**両当事者**の書面による合意により、何時でもこれを終了することができ、**本契約**の**両当事者**が所有するすべての**本件会社株式**が、**当事者**一名により適式に所有されることになった日に、通知を要せず、当然に終了するものとする。

13.3 以下の場合には、何れの**当事者**（「**終了当事者**」）も、書面による通知（「**契約終了通知**」）を他方**当事者**（「**不履行当事者**」）に行うことにより、**本契約**を終了できる。

13.3.1 **不履行当事者**が、**本契約**に基づくその義務に実質的、顕著かつ重大な違反を犯し、**終了当事者**からかかる違反を治癒するよう書面にて明示に求められてから九十(90)日以内に、これを治癒することを怠った場合、

13.3.2 **不履行当事者**の財産に、差押、強制執行、強制管理その他の類似の手続が執行され、または行われ、訴求されたときにおいて、それらが 3 ヶ月以内に取り消されなかった場合、または、**不履行当事者**の事業、財産または資産の全部もしくは一部の占有を担保権者が取得した場合、またはこれに関して管理人、管財人もしくは清算人が任命された場合、あるいはより一般的に、**不履行当事者**が、破産、特別清算、会社更生、会社整理、民事再生もしくは強制和議またはこれらのいずれかに類似する手続きを含む（これに限られない）、倒産処理手続の対象となった場合、または、**不履行当事者**について解散決議が可決された場合、または**不履行当事者**が支払期日の到来した債務一般に支払うことを怠った場合、

13.3.3 手形交換所が、その規則にしたがい、**不履行当事者**の銀行および類似の機関との取引を停止させる何らかの措置をとった場合、

- 13.3.4 **不履行当事者**（またはその持株会社）の**支配**に変更が生じた場合。本第 13 条の目的において、「**支配**」とは、会社の場合には、当該会社の発行済株式もしくは議決権の 50%超の所有者であるか、または定款、株主間契約もしくは当該会社の業務を規制するその他の文書により付与される権限により、当該会社の取締役の過半数を任命・解任し、あるいはその他の方法により取締役会において議決権を**支配する**権利を有することのいずれかにより、その人の希望どおりに、直接的または間接的に、他の人の業務が執行されるようにすることのできる、ある人の能力を意味する。各**当事者**は、自らの「**支配**」の変更が**本契約**の期間中に生じた場合には、他方の**当事者**（複数の場合もある）に対し、書面により直ちに通知するものとする。
- 13.4 **契約終了通知**が発送されてから三十(30)日以内に、但し、**終了当事者**の決定を、未だ、**契約終了通知**に記載していない場合には、**不履行当事者**の**本件会社株式**を購入するまたは**不履行当事者**に対してその所有する**本件会社株式**を売却する（何れの場合も、これらの**本件会社株式**を「**売却株式**」という）旨の自らの意思決定の内容を、書面による通知（「**譲渡通知**」）をもって、**終了当事者**は、**不履行当事者**に通知するものとする。
- 13.5 **売却株式**の価格は、現行の▲▲▲▲の**関連会社**との技術援助契約および供給契約に基づき、継続企業として**本件会社**の業務が継続されることを前提とし、また売却後は、**本件会社**の所有権の百パーセント(100%)が一つの企業に所有されることになるとの仮定に基づき、日本円建ての、**本件会社**の公正市場価値とする（「**譲渡価格**」）。仮に、**両当事者**が、**不履行当事者**が**譲渡通知**（または**終了当事者**の決定の趣旨を記載する**契約終了通知**）を受け取ったから六十(60)日以内に、合意価格に達し得なかった場合には、本件は、**終了当事者**と**不履行当事者**が合意する評価人、またかかる評価人の選任についての協議開始後十(10)日以内に合意に達することができなかった場合には、**終了当事者**の申立に基づき、日本公認会計士協会東京会の推薦委員会が任命する評価人（いずれの場合も「**評価人**」）に付託される。**評価人**は、上記の前提および仮定に基づき、**譲渡価格**の評価を行うものとする。
- 13.6 **当事者**が**譲渡価格**について同意してから、または、場合によっては第 14.5 条にしたがい**評価人**が**譲渡価格**を決定してから 15 日以内に、該当する**当事者**は、**譲渡価格**全額の支払いと引き換えに、他方**当事者**に**売却株式**の譲渡に必要な証書を交付および/または作成するものとする。
- 13.7 **契約終了通知**を送付してから、第 13.6 条にしたがい**売却株式**の譲渡が完了するまでの間（適宜、評価のための期間または本条に関連する事項が、準拠法に基づき規制機関の承認を要する手続に係属する、もしくはかかる承認を得るために必要な期間を含む）、各**当事者**は、その権限において、**契約終了通知**が送付された時に行われていたとおりの通常の業務執行方法にしたがい、**本件会社**の経営に引き続きあたるためすべての方策を講ずる行うものとする。
- 13.8 各**当事者**は、本第 13 条の規定を実現するため必要な範囲で、**売却株式**の譲渡に優先する優先購入権を放棄する。

14. 経営意思統一不能 (DEADLOCK)

14.1 本第 14 条の目的においては、「**経営意思統一不能**」とは、以下の場合を意味する。

14.1.1 **本件会社取締役会**が、適式に開催された取締役会の会合において、第 8.4.1 条(i)項、(v)項、(viii)(b)項、(xii)項および(xiii)項または第 8.4.2 条(ii)項、(iv)項および(vi)項に規定された事項 **[注：重要な事項を選ぶべき]** (ただし、**経営意思統一不能**は、**本件会社事業**の内容を変更するものではない事項に関連してのみ生ずるものとする) であって、関連する取締役会の議題となっている事項について、**▲▲▲▲**と**●●●●●●**との間の意見の不一致を理由に、および/または、**▲▲▲▲側取締役**もしくは**●●●●●●側取締役**の欠席により、**本契約**および**本件会社定款**にしたがい必要とされる定足数または議決権数を確保できないことを理由に、合意に達することができなかった場合、および

14.1.2 かかる事項が、1 カ月の期間内に開催される少なくとも 2 回の取締役会において、**本件会社取締役**を通じて行為する当該**両当事者**の何れかにより提出されたにかかわらず、当該事項に関し合意を達することができなかった場合。かかる場合には、以下の**経営意思統一不能**解決手続が適用されるものとする。

14.2 **経営意思統一不能事由**が発生しており、当該**経営意思統一不能事由**により**本件会社**が正常に機能することが妨げられていると一方**当事者**が考える場合には、**両当事者**は、第 14.1.2 条に言及する**本件会社取締役会**の最後の取締役会の会合の後に、**経営意思統一不能**を解決するため、**両当事者**のトップレベルで相互に受入れ可能な条件での解決策を協議し、**両当事者**および/または(場合に応じて) **本件会社取締役会**が解決策に達することができるよう誠実に努力するものとする。トップレベルにおいて、**両当事者**間(またはそれらの適式に任命された代表者間)で、解決策に到達できない場合には、いずれの**当事者**も、**本件会社取締役**の最後の取締役会が開かれた会日から六十(60)日間の期間の終了時点から 15 日間内に、他方**当事者**に第 14.3 条記載の手続にしたがう旨の当該本件**当事者**の意思を確認する書面による通知(「**経営意思統一不能事由発生通知**」)を行うことができる。その後は、第 14.3 条の規定が適用される。

14.3 **経営意思統一不能事由発生通知**を送付した後は、以下の手続が適用されるものとする。

14.3.1 いずれかの**当事者**が他方**当事者**に対して**経営意思統一不能事由発生通知**を送付した後の十(10)暦日目(「**意思表示日**」)に、二**当事者**は、封緘された封筒を交換して、他方**当事者**の所有する全**本件会社株式**を買い取るか、または他方**当事者**に対し自らが所有する全**本件会社株式**を売り付けるかの意思を表示するものとする。

14.3.2 購入－売却の意思表示があった場合。一方の**当事者**が売り付ける意思を表示し、他方**当事者**が買い取る意思を表示した場合には、売主は、第 13.5 条にしたがい決定される**譲渡価格**と等しい価格で、買主にその所有する全**本件会社株式**を売却するものとする。支払いは現金で行うものとし、**本件会社株式**は**譲渡価格**が決定された日から 30 日以内に譲渡されるものとする。

- 14.3.3 購入－購入の意思表示があった場合。**両当事者**とも、買い取る意思を表示した場合には、**両当事者**は以下の手順にしたがい、互いに入札を行うものとする。**両当事者**は、**意思表示日**から十(10)暦日以内に、各**当事者**が他方**当事者**の**全本件会社株式**を購入する用意のあるところの、**本件会社株式** 1 株当たりの現金価格を記載した入札書を交換する。低い方の価格を提示した**当事者**は、かかる入札書を受け取ってから 10 暦日以内であればいつでも、他方**当事者**から受け取った入札価格の 105%以上の金額の対抗入札を提出する権限を有するものとする。この入札手順は、一方**当事者**が、該当する 10 日間の期間内により高い入札書を提出できなくなるまで繰り返され、この時点で、落札者は落札価格で購入し、落札に至らなかった者は同価格で売却する義務を負う。落札価格は現金で支払われるものとし、**本件会社株式**は落札に至った入札書が送付された日から 30 日以内に譲渡されるものとする。
- 14.3.4 売却－売却の意思表示があった場合。**両当事者**ともに売り付ける意思を表示した場合には、**両当事者**は、**意思表示日**から 6 カ月以内に、**両当事者**が受入れ可能な条件で各**当事者**の**全本件会社株式**を購入する、1 名または複数名の買主を見つけるように努めるものとする。それができなかった場合には、**両当事者**は、直ちに清算手続きを開始し、準拠法にしたがい**本件会社**を整理、清算させることに合意する。
- 14.3.5 不参加が生じた場合。一方の**当事者**が、買主または売主になる意思を表示しない場合には、当該**当事者**は、本条の目的において、売り付ける意思を表示したものとみなされる。この時には、他方**当事者**の意思次第で、第 14.3.2 条または第 14.3.4 条の規定を適用するものとする。
- 14.3.6 本条にしたがって売却または購入される**本件会社株式**は、関連**当事者**が所有する**本件会社株式**の一部のみではなく、全部を対象とするものとする。
- 14.4 **経営意思統一不能事由発生通知**の送付から、準用される第 13.6 条にしたがい、**本件会社株式**の譲渡（譲渡がなされるのであれば）が完了する時まで、各**当事者**は、その権限内において、**経営意思統一不能事由発生通知**が送付された時に行っていたとおりの通常の業務執行方法にしたがい、**本件会社**の経営に引き続きあたるためすべての方策を講ずる行うものとする。
15. **僅少数株式保有株主からの株式の買取り**
- 15.1 第 5.3 条および第 9.1 条の規定にしたがうものの、**両当事者**は、**本契約**の期間中、**本件会社株式**を同比率で保有することを意図している。一方の**当事者**（またはその**関連会社**のいずれか）（「**取得当事者**」）が、当該**当事者**の**関連会社**ではない**本件会社株主**が所有する**本件会社株式**を（すなわち、僅少数の株式を保有する**本件会社株主**（「**僅少数株式保有株主**」）の 1 名から）、公正な条件の売買で取得することを望み、その結果として、**取得当事者**が、当該取引に直接関与しない他方**当事者**（「**非取得当事者**」）より多くの**本件会社株式**を保有することとなる場合には、**取得当事者**は、**本件会社**と**非取得当事者**に対し、同時に書面による通知（「**買取通知**」）を速やかに行うものとする。**買取通知**には、譲渡される予定の**本件会社株式**の株式数、かかる譲渡の性質、支払い予定の

対価、およびその**僅少数株式保有株主**の名称と住所を含む（これに限られない）、譲渡案の条件を合理的に詳細に記載するものとする。

- 15.2 **非取得当事者**は、**買取通知**を受け取ってから[三十(30)]日以内に**本件会社**に対して行う書面による通知（「**参加通知**」）をもって行使可能な、**取得当事者**による買取に参加し、**買取通知**に規定されたのと同じ条件で**僅少数株式保有株主**が売却する**本件会社株式**の一部を買い取ることを選択するか否かの通知を、**本件会社**に対し行う権利を有する。**参加通知**には、**非取得当事者**が本第 15.2 条にしたがって買い取ることを選択した**本件会社株式**の株式数を記載するものとする。**非取得当事者**が買い取ることのできる**本件会社株式**の最大数は、売却される**本件会社株式**の 50%、または**両当事者**間に所有する株式の不均衡がある場合には、**僅少数株式保有株主**が保有する売却を完了した直後に、**非取得当事者**と**取得当事者**の保有する**本件会社株式**の数が等しくなるような株式数とする。
- 15.3 **非取得当事者**が、**取得当事者**による買い取りに参加することを決定しなかった場合には、**非取得当事者**は、**買取通知**に規定される条件で売却される全**本件会社株式**を**取得当事者**が買い取ることに同意したものとみなされる。**買取通知**に記載されたものより有利な条件での買取提案があった場合には、**非取得当事者**は、その提案について改めてその買取権に服し、**取得当事者**は本第 15 条に規定された手続を履践する義務を負うものとする。**非取得当事者**が本条に基づき、**取得当事者**による 1 回または複数の買い取りにあたり、これに参加する権利を行使しまたは行使しなかった場合にも、本第 15 条にしたがい、**取得当事者**がその後に行う**本件会社株式**の買い取りに参加する**非取得当事者**の権利は不利な影響を被らないものとする。
- 15.4 **僅少数株式保有株主**が、本条に基づいて買取権を行使する**非取得当事者**に対して直接に、自己の保有する**本件会社株式**の一部を売却することを拒否した範囲では、**取得当事者**は、**僅少数株式保有株主**から売却される**本件会社株式**を取得し、当該**本件会社株式**の半数、または**両当事者**間の平等を維持するもしくは回復させるために必要な数の**本件会社株式**を、**買取通知**所定の条件と同一の条件（または、**取得当事者**が実質的に確保した、より有利な条件）で、**非取得当事者**にさらに売却するものとする。
16. **秘密保持**
- 16.1 **本契約**の期間中、および理由の如何を問わず**本契約**が終了または満了されてから 3 年間、**受領当事者**は、
- 16.1.1 **秘密情報**を秘匿し、
- 16.1.2 **開示当事者**の事前の書面による同意を得ることなく、また第 16.2 条および第 16.3 条にしたがうことなく、いかなる人に対しても**秘密情報**を開示しないものとし、
- 16.1.3 **本契約**または何れかの**付随契約**に基づく義務の履行以外の目的で**秘密情報**を使用しないものとする。
- 16.2 **本契約**の期間中、**受領当事者**は、**本契約**または**付随契約**の目的のために必要な範囲で、その従業員、**関連会社**およびそれらそれぞれの従業員（「**受領者**」）に対して**秘密情報**を開示することができる。

- 16.3 **受領当事者**は、各**受領者**に、**受領者**が**本契約の当事者**であるかのごとく**本契約**に基づく**受領当事者**の秘密保持義務を理解させ、これを順守させるようにするものとする。
- 16.4 第 16.1 条ないし第 16.3 条所定の義務は、以下の**秘密情報**には適用されない。
- 16.4.1 **本契約**の日において、または**本契約**の日より後のいつであれ、**受領当事者**または**受領者**による**本契約**の違反によることなく、公知となった情報。
- 16.4.2 **開示当事者**により**受領当事者**に対して開示される前に、**受領当事者**に知られていたことを、**開示当事者**が合理的に満足のいくように、**受領当事者**が証明できる情報。
- 16.4.3 後に**受領当事者**が第三者から得て合法的に占有することとなった情報。
- 16.5 本条の目的において、「**秘密情報**」とは、**本契約**の日付の前後を問わず、一方の**当事者**または**本件会社**（「**開示当事者**」）が他方**当事者**（「**受領当事者**」）に対して（書面、口頭もしくはその他の方法の何れによるとを問わず、直接的または間接的に）開示した秘密の性質を有するすべての情報であって、これらに限定されないが、**開示当事者**の製品、業務、工程、計画もしくは意志、製品情報、ノウハウ、意匠権、営業秘密、市場機会および業務に関連する情報を含むものを意味する。
17. **費用**
- 17.1 **本契約**に明示に別段の定めがある場合を除き、各**当事者**は、**本契約**および**本契約**において言及されるその他すべての文書についての協議、作成、締結および実施に係るまた付随する自らの費用および経費を支払うものとする。
18. **通則**
- 18.1 **本契約**の変更は、これを、**当事者**の各々またはその代理人が署名した書面によらない限り、有効とはならないものとする。
- 18.2 **本契約**に基づく権利もしくは救済方法の行使を怠りもしくはその行使を遅滞した場合にも、これは、その権利もしくは救済方法を放棄したもの、または、その他いずれかの権利もしくは救済方法を放棄したものとはならず、また、**本契約**に基づく何れかの権利もしくは救済方法の何れか一つもしくは一部を行使した場合にも、これは、その権利もしくは救済方法をさらに行使すること、またはその他何れかの権利もしくは救済方法を行使することの妨げとはならないものとする。
- 18.3 **本契約**に規定する権利および救済方法は重疊的なものであり、法律により与えられる何らかの権利または救済方法を排除するものではない。
19. **公表**
- 法律または**当事者**の何れかが拘束される証券取引所もしくは類似の機関の規則もしくは規制により義務づけられる場合を除き、**本契約**の条件に関しては、その公表の時機と内容の両方について**両当事者**の事前の同意が得られた場合を除き、これを公表してはならないものとする。

20. 譲渡

本契約にこれに反する何らかの定めがある場合を除き、**当事者**は、**本契約**に基づくその権利または義務を一切、譲渡もしくは移転してはならず、また、譲渡もしくは移転しようと試みてはならない。

21. 通知

21.1 **本契約**に基づくまたは関連する通知またはその他の意思表示はすべて、日本語または英語で書面にて行うものとし、手交するか、第一種郵便料金前払いの書留郵便（海外宛ての場合は航空便）またはファックスにて、通知を受領すべき**当事者**に対して、**本契約**に記載された住所、または**当事者**が他方**当事者**に書面による通知にて指定する他の住所に宛てて送付するものとする。

21.2 通知その他の意思表示は、これより早く受領されたことが証明されない限り、以下の時点で適正に行われたとみなされるものとする。

21.2.1 手交される場合は、第 21.1 条所定の住所に差し置かれた時、

21.2.2 航空便により送付された場合には、投函してから 6 日目、および

21.2.3 ファックスで送付する場合は、送信が確認された時点。

22. 言語に関する事項

本件会社株主および**本件会社取締役**に与えられるすべての招集通知および議事録は、日本語で作成されるものとし、受領者の理解を促すために必要な範囲で、参考目的のためのみの翻訳を英語で作成するものとする。**本件会社**内で使用されるその他の報告書、文書および事務書類は、**本件会社取締役**によるものを含め、法律により義務づけられる限りまたは所定の目的に鑑みて便利である限り、日本語で作成されるものとし、可能かつ合理的な場合にはいつでも、受領者が英語を話す場合には英語の訳文または要約を付すものとする。▲▲▲▲は、**本件会社**の現在の職員が英語で文書を作成する十分な言語能力を有していないとの●●●●●●の懸念を理解している。さらに、●●●●●●は、将来のより大きな成功に向けて**本件会社**に活力を与えるため、株主として▲▲▲▲を暖かく迎え、**本件会社**の運営に対する▲▲▲▲が関心を高まることを歓迎する一方で、●●●●●●は、現在実施されているとおり、**本件会社**に関する報告書を日本語で引き続き受け取ることができるよう期待している。**両当事者**は、**本件会社**が 2 カ国語の文書または英訳を作成しなければならないことにより、過度な負担を負うべきではないことに合意している。▲▲▲▲は、今日までの**本件会社**の現地に根ざした日本式の業務運営法に対し相当の注意と感度をもって、言語に関する事項に対応するものとする。▲▲▲▲は、自らの資源を投じて、このような態様で支援する必要があることがあり、また必要な場合には、徐々に変更を加えて行く必要があることがある。

23. 準拠法

本契約は、日本法に準拠し、同法にしたがい解釈される。

24. 裁判管轄

両当事者は、**両当事者**間の紛争、争訟または請求を解決するにあたり、東京地方裁判所の裁判管轄に服することに同意する。

上記の証として、**両当事者**またはそれらの適式に授権された代表者をして、頭書の日に署名せしめた。

●●●●●●●●株式会社

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署名者 []
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